

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1878.—Ordered to be printed.

Mr. THURMAN, from the Committee on the Judiciary, submitted the following

R E P O R T :

[To accompany bill S. 15.]

The Committee on the Judiciary, to whom was referred Senate bill No. 15, entitled "A bill to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first named act," report the same back with an amendment to strike out all after the enacting clause and insert a substitute for the matter stricken out, and also to strike out the preamble to the bill and insert a substitute therefor.

And now, in support of their views, your committee present the following statement of facts, and their reasons for recommending the adoption of said substitutes.

*Union Pacific.*

Capital stock, all paid.....	\$36,762,300 00
Government loan, principal.....	\$27,236,512 00
Interest paid by government on above .....	15,969,801 45
	43,206,313 45
Interest repaid government by half transportation account, and covered into the Treasury .....	5,134,327 84
Balance due government January 31, 1878, exclusive of its claim for interest upon the interest it has paid .....	38,071,985 61
But the company claims further credits that have not been allowed and some of which are in litigation, to wit: 1,299,652+1,600,000=	2,899,652 00
Leaving .....	35,172,333 61

as the indebtedness to the government, should said further credits be allowed, exclusive of the government's claim for interest upon interest above mentioned.

As to the foregoing see—

Report of Secretary of Interior for 1877, Forty-fifth Congress, second session, Ex. Doc. 1, part 5, vol. 1, pp. xxiv, xxv, xxvii, xxix, xxx.

Public debt statement for January, 1878.

The interest (payable in semi-annual installments) which the government pays annually upon its loan to the company—6 per cent. on \$27,236,512—is \$1,634,190.72.

The first mortgage of the company, and whose lien is prior to that of the government, is for about the same amount as the government loan, and bears the same rate of interest. The annual interest on it is, therefore, about \$1,634,190.72. It is stated by the government directors (see report, *ante*, p. 828) as \$1,633,920.

The total funded indebtedness of the company June 30, 1877 (see Secretary's report, *ante*, xxv), was \$78,733,712.

The items of this indebtedness (see manuscript report of the company to the Secretary for 1877) were as follows:

First-mortgage bonds .....	\$27,232,000
Sinking-fund mortgage bonds.....	14,188,000
Income bonds .....	1,000
Land-grant bonds.....	7,374,000
Omaha bridge bonds .....	2,225,000
Certificates for bonds.....	477,200
United States bonds loaned.....	27,236,512
<b>Total funded debt, including government loan.....</b>	<b>78,733,712</b>

The nature of this indebtedness is more fully shown by the report of the government directors for 1876 (pamphlet 17), as follows:

*Statement of the funded debt of the company June 30, 1876.*

Name of bonds.	Amount issued.	Amount redeemed.	Amount outstanding.	Rate of interest.	Coupons payable.
First mortgage ..	\$27,237,000	\$5,000	\$27,232,000	6 per cent., gold .....	January and July.
Sinking fund .....	14,470,000	144,000	14,326,000	8 per cent., currency .	March & September.
Income .....	9,355,000	9,345,000	10,000	10 per cent., currency .	Last coupon Sept. '74.
Land-grant .....	10,400,000	2,889,000	7,511,000	7 per cent., currency .	April and October.
Omaha bridge.....	2,400,000	221,000	2,179,000	8 per cent., gold.....	Do.
<b>Total outstanding.....</b>			<b>51,358,000</b>		
<b>United States for 6 per ct. currency bonds.</b>			<b>27,236,512</b>		
<b>Grand total.....</b>			<b>78,594,512</b>		

"The *floating* debt of the company on August 28, 1876, was \$740,153. This includes \$82,703.20 of outstanding overdue coupons. Against this the company holds, sinking funds bonds, amount owned by the company June 30, 1876, \$1,530,000; United States, amount due the company for one-half approved accounts for transportation June 30, 1876, \$1,252,505.92, and interests in several railroads in Colorado and Utah more or less directly connected with its line."

In considering the question of the ability of the company to comply with the requirements of the pending bill, as proposed to be amended, the floating debt of the company may be laid out of view, as it is very small, less than \$1,000,000, and the available assets of the company are more than sufficient to extinguish it at any moment. The land-grant bonds may also be laid out of view, for the land-grant is sufficient not only to pay the current interest upon them, but also the principal when due, and leave a large surplus to be applied to the other indebtedness of the company. The land grant was about 12,000,000 acres. (See Report No. 440, H. of R., 44th Cong., 1st sess., page 3, note 15.)

And see Report of Government Directors for 1877 (Report of Secretary of the Interior, *ante*, p. 821), who say:

"The land granted to the company is mortgaged to secure the payment of the land-grant bonds. Number of acres sold, 1,341,779.30; amount due company on contracts, \$3,049,134.53. Principal received, \$2,618,293.71; interest, \$442,681.79; total, \$3,060,775.50. Acres sold during last year, 67,971.53; average price per acre, \$2.92.

"In view of the grasshopper scourge which has afflicted Nebraska for several years

past, the number of acres of land sold by the company during the last year is a gratifying surprise, and now that the scourge seems to have passed away, and immigration is again pouring into the State the sales in the future must increase rapidly.

The amount of land-grant bonds originally issued was.....	\$10,400,000 00
Amount outstanding June 30, 1877.....	7,374,000 00
Amount retired from sales of land.....	3,026,000 00

"Undoubtedly the land grant will retire the land-grant bonds, and leave a large surplus over for the extinguishment of other indebtedness of the company."

#### RECEIPTS AND OPERATING EXPENSES.

The gross receipts and operating expenses of the company for the last four years were as follows :

For the year ending—	No. of report.	Gross receipts.	Operating expenses.	Net receipts.
June 30, 1874.....	23	\$10,246,760 16	\$5,089,789 17	\$5,156,970 99
June 30, 1875.....	18	11,522,021 54	5,373,655 87	6,048,365 67
June 30, 1876.....	11	12,113,990 69	5,447,819 27	6,666,171 42
June 30, 1877.....	825	13,719,343 82	5,402,252 24	8,317,091 58
				26,188,599 66
Average annual net receipts .....				6,547,149 91

The Attorney-General insists that, in ascertaining the 5 per cent. of net profits to which the government is entitled under the charter, nothing but the operating expenses are to be deducted from the gross receipts of the company. On the other hand, the company contends that net earnings are whatever it has left after payment of all its just and lawful obligations, and in support of this position cites *St. John vs. The Erie Railway Company* (22 Wall.). That case merely decides that as between a preferred stockholder, entitled to dividends out of net earnings, and the creditors of a company, there are no net earnings until the creditors are paid, it being a familiar principle that the shareholders of a company cannot lawfully divide its assets or profits among themselves, and thereby leave its creditors unpaid.

But the question in this case is different, and depends upon the charter of the company which is as binding upon its creditors as upon its shareholders, and if that entitles the government, as a preferred creditor, to 5 per cent. upon the gross receipts less the operating expenses, neither shareholders nor other creditors have a right to complain. The right to the 5 per cent. is given by the 6th section of the act of 1862, and, reading that section in connection with the 18th section, we are not prepared to admit the claim of the company. But whatever may be the true interpretation of these sections, we are of the opinion that, under its reserved right to alter, amend, or repeal, it is competent for Congress to define, for the future at least, what shall be deemed to be net earnings. And, in view of the rights of the first-mortgage bondholders, and as a fair adjustment of the conflicting claims of the government and the company, we think it would be right to deduct, in future, not merely the operating expenses, but also the interest on the first mortgage; and the amendment we report is to that effect. As to the past, we leave the question upon the law as it now stands to the decision of the Supreme Court in the case pending before it.

## THE FIVE PER CENT. IN THE FUTURE.

We have seen that, for the four last years, the average annual net income of the company, deducting operating expenses alone from its gross receipts, has been \$6,547,149.91. We think that this income will be largely increased in the future by the increasing business of the company, the sales of its lands, and its immense coal-mines. In reference to these mines the Report of the Directors to the Stockholders for 1874, says :

"The Union Pacific Railroad Company own, in Wyoming Territory, an area of coal-fields greater than the entire anthracite-coal fields of the State of Pennsylvania.

"The coal-fields of the company extend along *four hundred miles* of the road, and five million acres of its lands are within the Coal-Measures. The coal is superior for ordinary fuel, and unequaled for making steam, and for all manufacturing purposes,

"It will furnish cheap fuel to the company for its own traffic, and will afford large additional revenues from the sale and transportation of coal for domestic and manufacturing uses, to supply the country extending for nearly two thousand miles—from Omaha to the Pacific coast."

But if we assume that the net earnings of the future will not exceed those of the last four years, and deduct from the average annual earnings of those years, to wit, \$6,547,149.91, the annual interest on the first mortgage, namely, \$1,633,920, we will have \$4,913,229.91 as annual net earnings, 5 per cent. on which would be \$245,661, which we think is the very least sum that the government would probably receive annually from this source should the bill we report become a law. Whatever it may be, it will, under the provisions of now existing law, be applicable immediately upon its receipt toward repayment of the interest paid or to be paid by the government on its loan, and this right ought not to be surrendered.

## THE GOVERNMENT TRANSPORTATION ACCOUNT.

By the sixth section of the charter, as amended by section 5 of the act of 1864, one-half of the compensation to which the company may become entitled for services rendered by it for the government is immediately applicable to the payment of the interest and principal of the bonds issued by the government in aid of the company; that is, the government loan. This right of immediate application reimburses the government, *pro tanto*, the interest paid and to be paid on said bonds, and ought not to be surrendered. The aggregate of the whole transportation account for the years 1871 to 1876, inclusive, six years, as stated in the report of the directors to the stockholders for 1876, was \$5,055,742.54; an annual average of \$842,623.75, one-half of which is \$421,311.87.

We think it will not be less in the future. It has been argued before us that owing to the removal of the Indians to the Missouri River it will probably decrease; but, taking all circumstances into view, especially the immense increase that is likely to occur in the mail-service, as population shall increase in the West, it is our opinion that the future annual earnings will exceed those of the past.

From the foregoing data, it is obvious that the company can pay its interest upon all its obligations, and the sums payable by it annually under the law as it now exists, and allow the government to pay the other one-half of the transportation account into the proposed sinking-fund, and can annually pay into the same the further sum of \$850,000, and have a surplus left sufficient to pay a dividend annually to its stockholders of  $4\frac{1}{2}$  per cent. on the nominal, or  $6\frac{1}{2}$  per cent. on the present market-value of their stock. This is shown in detail by the following

table, which includes the entire indebtedness of the company on which it pays interest annually or semi-annually, except its land-grant bonds, which are omitted because the proceeds of the land-grant more than provides for them, as before stated. The small floating debt—less than a million—is also omitted because the company has assets with which to pay it at any time.

Average annual gross receipts, less operating expenses, as <i>ante</i> .....	\$6,547,149 91
Deduct interest on first mortgage .....	\$1,633,920 00
Five per cent. on net earnings, payable to government under existing law, say .....	245,661 00
One-half transportation, payable to government under existing law, say .....	4 1,311 87
Interest on company's sinking-fund bonds, 8 per cent. on \$14,326,000 .....	1,146,080 00
Interest on income-bonds, 10 per cent. on \$10,000 .....	1,000 00
Interest on Omaha bridge bonds, 8 per cent. on \$2,279,000 .....	182,320 00
One-half transportation account to be paid into the sinking-fund as per bill .....	421,311 87
Further sum to be paid to same as per bill.....	850,000 00
	4,901,604 74
Leaving for dividends among stockholders .....	1,645,545 17

Being about  $4\frac{1}{2}$  per cent. on the nominal amount of the stock, or  $6\frac{1}{2}$  per cent. on its present market-value.

From the foregoing it will be seen that the amount the company will have to pay annually to the government and the sinking-fund, should the bill we report become a law, will be about as follows :

Five per cent. of net earnings payable under existing law .....	\$245,661 00
One-half transportation-account, payable under existing law .....	421,311 00
	666,972 00
Into the sinking-fund:	
One-half transportation-account, say .....	\$421,311 00
Cash.....	850,000 00
	1,271,311 00
Total .....	1,938,283 00

As the annual interest payable by the government is \$1,634,190.72, the above sum would provide only \$304,092 annually for the payment of the principal of the government loan.

#### CENTRAL PACIFIC.

"This company embraces, by consolidation (besides the original Central Pacific Company), the Western Pacific, the California and Oregon, the San Francisco, Oakland and Alameda, and the San Joaquin Valley Companies."—Report of Secretary of Interior for 1877, p. xxv.

Three of these roads, the original Central Pacific, the Western Pacific, and the California and Oregon, whose aggregate length is about 1,027 miles, have received subsidies from the government, the last-named in lands. The other roads, whose aggregate length is about 187 miles, have not directly received such subsidies.

It has been suggested that in ascertaining the 5 per cent. of net earnings to which the government is entitled under the charter, the earnings of the non-subsidized roads are not to be taken into account. Such was not the view taken by the company in 1872. In the report of the directors to the stockholders for that year the directors said (page 12):

Since the construction of your road to a junction with the Union Pacific at Ogden, there has been added to it by construction and consolidation 480 miles, viz: Western division, 141 miles; Oregon division, 152 miles; San Joaquin, 146 miles; San José, 18

miles; Alameda, 17 miles; Oakland, 6 miles. All these additions to the main line have proven at once profitable investments, adding to and with themselves increasing the pro-rata earnings and net income of each mile of the whole.

And treating of the "relations of your road to the government" and referring to the additions above mentioned, they said (page 15):

All the additions are consolidated with the main line and are equally with it security to the government for its loan, and these additions are and will ever be more valuable per mile than the greater part of the main line.

This view is, perhaps, in some degree supported by the decision of the Supreme Court in *St. John vs. The Erie Railway Company* herein-before cited; but we do not feel called upon to express an opinion upon it. For whether it is correct or whether the earnings of the subsidized roads alone are to be taken into account, the company will be able, without difficulty, to comply with the provisions of the bill herewith reported.

The capital stock of the company paid in is (report of Secretary of Interior for 1877, p. xxv) .....	\$54,275,500 00
The government loan is—	
To Central Pacific .....	25,885,120 00
To Western Pacific .....	1,970,560 00
	27,855,680 00
Interest paid by United States to October 31, 1877, on Central Pacific loan, and not reimbursed .....	12,519,447 11
Interest paid by United States to October 31, 1877, on Western Pacific loan, and not reimbursed .....	988,891 54
Total, October 31, 1877 .....	41,364,018 65
(Report of Secretary, <i>supra</i> , p. xxix.)	

This is exclusive of a claim by the government for interest upon the interest it has paid.

The government pays (in semi-annual installments) interest on its subsidy bonds amounting annually to 6 per cent. on \$27,885,680—\$1,671,340.80.

Under the power conferred by the charter the company has issued first-mortgage bonds, whose lien is paramount to that of the United States to about the same amount, and bearing the same rate of interest.

The funded debt of the company, according to the report of the directors to the stockholders for 1876 (the last report we have been able to obtain), was, on December 31, 1876, as follows:

Funded debt in detail, December 31, 1876.

Character of bonds.	Series.	Date of bonds.	Amount of bonds authorized.	Amount of bonds issued.	When due.	Rate of interest.	Interest payable—	
Convertible mortgage.....	.....	Dec. 1, 1862	\$1,500,000	\$1,483,000	Jan. 1, 1883	7 per cent.	January and July...	Sinking-fund commencing 1863; \$35,000 yearly. Interest payable by State of California, sinking-fund commencing 1870; \$50,000 yearly.
California State aid.....	.....	July 1, 1864	1,500,000	1,500,000	July 1, 1884	do do	do do	
Central Pacific, first mortgage.....	A	July 1, 1865	3,000,000	2,995,000	July 1, 1895	6 per cent.	do do	A, B, C, D, sinking-fund commencing 1870; \$50,000 yearly.
Do.....	B	July 1, 1866	1,000,000	1,000,000	July 1, 1896	do do	do do	
Do.....	C	July 1, 1866	1,000,000	1,000,000	July 1, 1896	do do	do do	
Do.....	D	July 1, 1866	1,390,000	1,383,000	July 1, 1896	do do	do do	
Do.....	E	Jan. 1, 1867	4,000,000	3,997,000	Jan. 1, 1897	do do	do do	E, F, G, H, I, sinking-fund commencing 1872; \$50,000 yearly.
Do.....	F	Jan. 1, 1868	4,000,000	3,999,000	Jan. 1, 1898	do do	do do	
Do.....	G	Jan. 1, 1868	4,000,000	3,999,000	Jan. 1, 1898	do do	do do	
Do.....	H	Jan. 1, 1868	4,000,000	3,999,000	Jan. 1, 1898	do do	do do	
Do.....	I	Jan. 1, 1868	3,525,000	3,511,000	Jan. 1, 1898	do do	do do	
Western Pacific, old issue.....	.....	Dec. 1, 1865	.....	112,000	Dec. 1, 1895	do do	June and December.	See note.
Western Pacific, first mortgage.....	A	July 1, 1869	1,970,000	1,858,000	July 1, 1899	do do	January and July...	Sinking-fund commencing 1876; \$25,000 yearly.
Do.....	B	July 1, 1869	765,000	765,000	July 1, 1899	do do	do do	
California and Oregon, first mortgage.....	A	Jan. 1, 1868	6,000,000	6,000,000	Jan. 1, 1898	do do	do do	Sinking-fund commencing 1876; \$100,000 yearly.
Central Pacific, California and Oregon division.....	B	Jan. 1, 1872	7,200,000	2,000,000	Jan. 1, 1892	do do	do do	Do.
San Francisco, Oakland and Alameda.....	.....	July 1, 1870	1,500,000	500,000	July 1, 1890	8 per cent.	do do	Sinking-fund commencing 1880; \$100,000 yearly.
San Joaquin Valley Railroad.....	.....	Oct. 1, 1870	6,080,000	6,080,000	Oct. 1, 1900	6 per cent.	April and October...	Sinking-fund commencing 1880; \$50,000 yearly.
Laud-grant.....	.....	Oct. 1, 1870	10,000,000	9,276,000	Oct. 1, 1890	do do	do do	
			62,430,000	55,457,000				

NOTE.—One hundred and twelve Western Pacific bonds, "A," are reserved by the company unsold, to take up or exchange for the one hundred and twelve bonds of issue of December 1, 1865, still outstanding.

E. H. MILLER, JR., Secretary.

The gross earnings of the road, less the operating expenses, for the years 1872 to 1876, both inclusive, as stated in the reports of the directors to the stockholders, were as follows :

1872 .....	\$6,952,361 73
1873 .....	7,594,681 46
1874 .....	8,342,898 76
1875 .....	9,177,882 09
1876 .....	9,137,004 73
Total for five years .....	<u>41,504,823 77</u>
Average annual net receipts .....	<u>8,300,965 75</u>

If we deduct the interest upon the first-mortgage bonds, as well as the operating expenses, from the gross receipts, the account for said five years would stand as follows :

Gross receipts, less operating expenses .....	\$41,504,823 77
Deduct 5 years' interest on first-mortgage bonds, \$1,671,340.80 × 5 .....	<u>8,356,704 00</u>
Net earnings for 5 years .....	<u>33,148,124 77</u>
Average annual net earnings .....	<u>\$6,629,624 95</u>

5 per cent. on which is \$331,481.

We think that the net earnings of the road in the future will not be less than they were in the five years above named. In our opinion they will be much greater. We may therefore expect that, if the bill we report shall become a law, and it be held that the earnings of the non-subsidized as well as the subsidized portions of the road are to be taken into account (which is, as we understand, one of the questions now in litigation), the 5 per cent. to be paid to the government in the future, and immediately applicable to reimburse the government, will not be less than the sum aforesaid, \$331,481 annually. If the earnings of the non-subsidized portions of the road be omitted, it may not exceed \$250,000

#### HALF TRANSPORTATION ACCOUNT.

We think that the half transportation account of this company, in the future, immediately applicable to reimburse the government, may be safely estimated at \$200,000 per annum. The account in the past warrants this estimate. It is more probable that this estimate is too low than that it is too high.

Estimating the 5 per cent. of net earnings and half the transportation account, in the future, at \$500,000, in round numbers, we propose that the other half of the transportation account, say \$200,000, shall be paid into the sinking-fund, and that the company be required to pay into the same the further sum of \$1,200,000 annually. This would require an annual payment to the government and sinking-fund, according to the foregoing estimates, about as follows :

5 per cent. of net earnings, payable under existing law, say .....	\$300,000
One-half transportation account, payable under existing law, say .....	<u>200,000</u>
	500,000
Into the sinking-fund :	
One-half transportation account, say .....	\$200,000
Cash .....	<u>1,200,000</u>
	1,400,000
Total .....	<u>1,900,000</u>



Being about the same amount that the bill we report requires of the Union Pacific.

That the company can make these payments and have a surplus sufficient for handsome dividends to its shareholders is easily demonstrated from the facts already stated. But the same thing is shown more concisely by its statements of profit and loss in the directors' reports for 1875 and 1876 to the stockholders.

By the report for 1875 it appears that, after paying all expenses and interest, the company paid to its shareholders dividends amounting to 10 per cent. on the nominal amount of their stock; amount paid, \$5,427,550, and it had a surplus of \$10,305,953 left.

In 1876, after paying all expenses and interest, it paid dividends amounting to 8 per cent. on the nominal amount of the stock; amount paid, \$4,342,040, and had a surplus of \$10,265,589.27 left. If we take these two years as a guide for the future—and we think that we may safely do so—the annual amount that will be divided among the shareholders, should no sinking-fund be created, will be 9 per cent. on the nominal value of the stock, \$4,883,795.

If the bill we report become a law this amount would be diminished by the amount required to be paid into the sinking-fund, say \$1,400,000, leaving \$3,483,795, after the payment of all expenses and interest, and the payments into the sinking-fund, to be divided among the shareholders, being  $6\frac{4}{10}$  per cent. on the nominal value of their stock.

Even were the earnings of the non-subsidized roads omitted—which in our opinion ought not to be done in estimating the ability of the company to comply with the requirements of the bill—it would still be able to divide from  $4\frac{1}{2}$  per cent. to 5 per cent. among its stockholders—a dividend that comparatively few roads in the United States are able to make.

On this subject, see report for 1877 of the Secretary of the Interior, pp. xxxi, xxxii, and xxxiii.

#### OTHER ROADS.

The condition of the Central Branch Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, and the Kansas Pacific Railroad Company, is so different from that of the Union Pacific and Central Pacific, and there being questions peculiar to each of those three companies, we think it advisable to strike the provisions relating to them out of the bill, with a view to report hereafter a bill or bills adapted to their circumstances and the rights of the government.

#### THE POWER OF CONGRESS OVER THE SUBJECT.

The bill (S. 15) referred to this committee is the same in its provisions as Senate bill 984, reported by this committee on July 12, 1876. In the report accompanying that bill (44th Cong., 1st Sess., Report No. 459) your committee said:

Your committee entertain no doubt of the power of Congress to pass this bill.

By the eighteenth section of said act of July 1, 1862, it is declared that—

“The better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.”

It has been said that this is a very limited power to alter or amend the act, and that

the act only authorizes the alteration or amendment in order to promote the construction of the railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (and particularly in time of war) the use and benefits of the same for postal, military, and other purposes. Were this limited interpretation placed on the reservation, it would not, in the opinion of your committee, defeat the bill they report. For, although said roads and telegraph lines have been constructed, yet it is manifest, having reference to their pecuniary condition, that some such measure as that now recommended is necessary in order to keep them in working order and to secure to the government at all times the use and benefits of the same. It needs no argument to prove that insolvent railroad corporations, or corporations in danger of insolvency, cannot be relied upon to furnish the government the benefits contemplated by said act. In view of the liberal aid afforded by the government to said companies, the objects to be attained by the construction of said railroad and telegraph lines, and the general principles of interpretation of corporate grants of power, your committee are of the opinion that the reservation of a right to add to, alter, or amend said act ought to be liberally construed for the public benefit.

But whatever may be thought of the reserved right to alter, amend, or repeal in the act of 1862, it cannot be denied that the right reserved in the amendatory act of July 2, 1864, is as broad as words can make it.

Section 22 of this act is as follows:

*"And be it further enacted, That Congress may at any time alter, amend, or repeal this act."*

It has been argued that this right applies only to the act of 1864, and does not authorize any alteration or amendment of the act of 1862. Were this so, it would not defeat the bill of your committee, for it might well be sustained as an amendment to the act of 1864. But when the circumstances of the case are considered, when it is remembered that nothing had been done toward actual construction of said railroads under the act of 1862 and before the act of 1864, that the grants to the railroad companies named in the first act were greatly enlarged by the latter act, that the roads and telegraph-lines have been constructed under the provisions of the two acts, and that those provisions were almost inseparably interwoven, it seems to your committee that said acts should be considered as *in pari materia*—as constituting for purposes of interpretation but one act, and that, consequently, the power to alter, amend, or repeal, reserved in the act of 1864, which is the last expression of the legislative will, applies to both said acts.

What, then, is the power thus reserved, that is to say, the general power to alter, amend, or repeal the charter?

It was defined by the Supreme Court of the United States in the case of *Tomlinson vs. Jessup* (15 Wallace, p. 458), as follows:

*"The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the legislature.*

*"The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable, and protected from any measures affecting its obligation."*

This decision places the reservation upon its true ground. It gives to the legislature the right to interfere when the public interests require interference. It preserves to the State control over its contract with the corporators, and the latter, by accepting the charter, agree in advance that such control shall exist. No one will deny that if the bill now reported should become a law and be assented to by said railroad corporations, it would thenceforth be binding upon them. But their acceptance of their charter, containing the reservations aforesaid, is an assent beforehand to the bill now proposed, or to any similar measure that Congress in its discretion shall deem necessary for the protection of the government or the creditors of said corporations. (Pa. College cases, 13 Wallace, pp. 213 and 214.) In this latter case the court spoke of the reserved right to alter or amend a charter as a "reservation to the State to make any alterations in the charter which the legislature in its wisdom may deem fit, just, and expedient to enact."

In the case of *Sherman vs. Smith* (1st Black, 593), the Supreme Court of the United States seem to recognize a right in the legislature, when the power to alter or amend a charter is reserved, to add to the liabilities of the stockholders. They said:

*"Another view of this question, even assuming that the stipulation of the stockholders in the article of association amounted to a contract, is equally conclusive against the stockholders.*

*"According to the fifteenth section the association was authorized to establish a*

bank of discount, deposit, and circulation, upon the terms and conditions, and subject to the liabilities prescribed in this act. It was not competent for the association to organize their bank upon any other terms or conditions, or subject to any other liabilities, than those prescribed in the general charter. Now, the thirty-second section, which reserved to the legislature the power to alter or repeal the act, by necessary construction reserved the power to alter or repeal all or any one of these terms and conditions, or rules of liability, prescribed in the act. The articles of association are dependent upon, and become a part of, the law under which the bank was organized, and subject to alteration and repeal, the same as any other part of the general system."

In *Miller vs. The State* (15 Wallace, p. 498), the Supreme Court said:

"Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter, and which by a legitimate use of the powers granted have become vested in the corporation, but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets."

In *Holyoke vs. Lyman* (15 Wallace, p. 500) the court held that—

"The provision of the Revised Statutes of Massachusetts, chapter 44, section 23, and General Statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal at the pleasure of the legislature, reserves to the legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the legislature may deem necessary to secure either that object or other public or private rights."

Many decisions of the State courts might be referred to to the same effect, but it is unnecessary to cite them here. A number of them are cited in Report No. 440 of the Committee on the Judiciary of the House of Representatives at the present session. Your committee would also refer to that report for many important and valuable facts and tables relating to the subject under consideration.

If there was any room for doubt as to the power of Congress when that report was made, it has been completely removed by decisions of the Supreme Court since made in the following cases:

*Munn v. Illinois*, 4 Otto, 113.

*C. B. & Q. R. R. Co. v. Iowa*, ib., 155.

*Peik v. C. & N. W. R. R.*, ib., 164.

*C. M. & St. P. R. R. Co. v. Ackley*, ib., 179.

*Winona and St. Peter R. R. Co. v. Blake*, ib., 180.

*Stone v. Wisconsin*, ib., 181.

Being fully satisfied that Congress, under the reserved right to alter, amend, or repeal the charter of these companies, possesses the right to pass this bill, we do not consider it necessary to say what would be the case were that reservation not in the charter. Had it been omitted, it might still be argued with much force that the power to alter, amend, or repeal legally existed. No State can make a law impairing the obligation of a contract, because that is prohibited by the Federal Constitution.

But there is no such prohibition upon Congress; and as it is a fundamental principle that one Congress cannot limit the constitutional powers of a subsequent Congress, it may be argued that no mere corporate franchise can be granted by one Congress that a subsequent Congress may not alter, amend, or repeal. This is a very different proposition from an assertion that Congress may, at its pleasure, destroy vested rights of property. It may be argued that, except by a bankrupt act, Congress cannot impair the obligation of a contract, for want of a delegation of power to do so. But to impair the obligation of a contract is one thing and to alter, amend, or repeal a corporate franchise granted by Congress is another and a different thing, especially when the corporation is public or quasi public. A railroad corporation is a quasi-public corporation, exercising the right of eminent domain, maintaining and operating a highway and taking tolls, in virtue of its quasi-public character.

It is chartered for public purposes, and not mere private gain; and as its existence springs from public considerations, it is subject, perhaps, to control or regulation, or even to a repeal of its charter, when the public interest shall require it, and no constitutional provision stands in the way. But, as we have said, we do not deem it necessary to express a definite opinion upon this point. It is sufficient that in this case the power to alter, amend, or repeal is expressly reserved; and the effect of this reservation is, in the language of the Supreme Court (15 Wallace, 458), "to preserve to the State control over its contract with the corporators."