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WEATHER FORECAST

Northern California—Showers in the northern portion; warmer; northerly winds.

THE COST IN EXCESS OF THE INDEBTEDNESS.

In the matter of the action of the State Railroad Commission, in passing a sweeping reduction resolution affecting freight rates upon the California system of railroads, and which is now under examination before the United States Circuit Court at San Francisco, the basis of the claim for the reduction was that the bonded indebtedness of the railroad company exceeds the cost of the construction of the roads.

In that case the court exercised the discretion it has and permitted the Railroad Commission the widest possible latitude in drawing testimony from all possible sources to sustain its contention, and it hastened to avail of it. Among the testimonies thus put in were those embraced in the investigation of the Pacific Railways Commission some years ago.

One of the chief values of the counsel's argument, which ought to be read by all citizens, and which was reported in full in the "Examiner" of last Friday, is that laymen may read it without any confusion of thought. It is simple, clear, direct, logical and so marshaled as to address the layman's understanding, and so arranged as to simplify the propositions of law involved, and lucidly expose the principles upon which the contention rests, and the facts from which the conclusions reached are deducible.

As a matter of preface it may be stated that counsel made it clear that in considering values in such an issue as is before the court, a valuation made for assessment for taxation purposes is not only not conclusive when value for other purposes is considered, but is not a just basis for the estimation of actual values, since an assessment for taxation is made for a special purpose, and not usually at market value.

The testimony taken before the Pacific Railway Investigation Commission was all directed toward the ascertainment of the cost, not the value of the railroads under review. In examining this testimony counsel went into detail, giving, however, the reason for every detail, and illuminating his argument with citations from the testimony given, and which the California Railroad Commission has introduced in support of its proposition for a sweeping leveling and inequitable reduction of rates of freight carriage.

The investigation, however, did not include all the roads of the California system—there were four roads which it did not at all touch. From this testimony and all before the court, it appears that the funds for the construction of the original transcontinental road and subsequent parts of its system were obtained from three sources: the sale of first mortgage bonds, the sale of Government bonds under Acts of Congress, and the sale of municipal bonds, together with aid had from people as individuals.

All the money so obtained was paid out to the last dollar for construction and equipment, and even then the contractors were left some millions of dollars in debt. The profit that they did make was made upon the stock of the Central Pacific Railroad Company passed to them on the completion of the line. The testimony on this point is voluminous, in the mouths of several witnesses, and is not contradicted or even challenged.

The Central Pacific Railroad cost to the 690th mile—according to the expert accountant employed by the investigating commission—was \$32,589,117 93. The Secretary of the company found the cost to be \$32,472,135 58; the commission found that the total cost of the road from Sacramento to Ogden was in round numbers \$36,000,000. The accountant and expert of the commission testified that he found the books honestly and squarely kept. It is to be remembered that beyond the 690th mile forty-seven miles of the road to Ogden were purchased from the Union Pacific Railroad Company for the sum of \$2,130,000.

The cost of the line from Sacramento to San Jose was represented by notes and bonds of the par value of \$3,940,000, disposed of for seventy-five cents on the dollar, with \$400,000 additional derived from sale of county bonds. In addition to these aggregates of cost there must be added in the way of snow-sheds, legal and general expenses, engineering, machinery, tanks, etc., \$6,971,688. But Mr. Klink in his affidavit has stricken out unvouchered items of \$2,908,732, leaving the additional construction, \$4,062,956. The interest accruing during construction is a legitimate item, as much so as any other, and this amounted to \$1,669,332. To this must be added the cost of the American River bridge extension, retaining walls, etc., \$1,689,340 22.

The aggregate is thus reached of \$48,683,748, expended prior to June 30, 1870, for the road to a point five miles west of Ogden. But this did not complete the cost, for there are other roads involved, the California and Oregon, \$11,287,726; the San Joaquin Valley, \$4,500,000; the San Francisco, Oakland and Alameda, \$690,177; the San Francisco Bay line, \$570,000, and to these items must be added also the betterments, the definition of which Mr. Herrin gave with clearness, and as generally understood, despite the disposition of opposing counsel to confuse the term; betterments during fourteen years, that settling of terminals, the replacing of temporary with permanent structures, broadening embankments, etc., but not anything in line of mere repairs, nor of operating expenses, \$8,903,578, and also the item of necessary purchase of real estate, \$7,771,734.

The Southern Pacific Company took charge of the roads under lease in April 1885, and to April, 1895, expended in construction and betterments, which go to the road and not to the lessee, \$2,697,828 06, and in necessary equipment from 1892 to 1895, \$1,891,847 88; so that the total cost is found to be, in construction and betterments, \$87,306,530 77, or for the Central Pacific road alone more than \$27,000,000 in excess of the bonded debt of the road, while the cost of all the roads is more than \$15,000,000 in excess of the bonded indebtedness of the roads.

In further examination of the fact that the cost of the bond-aided railroads exceeded the bonded indebtedness, Mr. Herrin in his argument before the United States Circuit Court went into details drawn from the testimony introduced by the Railroad Commission itself, as well as from other proofs made before the court. The engineer in charge of the construction of the Central Pacific Railway, he showed, estimated the cost of the line seven miles east from Sacramento to be \$38,500 a mile without any equipment; the next 150 miles he put at \$84,000 a mile, and the next section, to within five miles of Ogden, at \$56,000 a mile, and he put the cost of rolling stock at \$3,000 a mile, which gives a total of \$47,500,500. Add the cost of the Western Pacific road, which it was shown amounted to \$3,355,420, and on the basis of the testimony of the engineer, we have a total cost of the road from San Jose to Ogden, \$50,915,920.

The testimony of Governor Stanford was referred to in which he said that there was actually put into the construction of the road, as the proceeds of the sale of bonds, and State and county aid, \$46,062,000, leaving the line then in debt \$1,827,000, making an aggregate of \$47,889,000 of cost.

Counsel at this point debated with clearness and in answer to interruptions the question of the conditions under which the road was built, the phenomenal conditions of haste, high cost of materials and labor, etc., to show that there was not only no extravagance, but that the road was built with economy, and that there was no profit to the contractors on the price paid. It would be exceedingly interesting to set forth these arguments, but that is obviously impracticable within the compass of a single article of this character. It may be stated, however, that the exposition shows that under normal conditions in comparatively recent times the construction of the Oregon line through mountain chains similar to the Sierra crossed by the Central Pacific Road, the cost, with everything vastly cheaper than in the other case, was an average of \$40,564 a mile. Taking what the opposition claim to be exaggerated cost of the Central Pacific, \$70,000 a mile, and conceding that 25 per cent. of that cost may be eliminated, namely, \$11,309,552, deducting that amount from the present cost of the Central Pacific Road, and the roads owned by that company, which aggregates, as shown, \$87,306,530 77, and we have \$75,986,948 77, or in excess of \$15,000,000 over the bonded debt of these roads according to the allegations of the bill before the court.

As to the equitable benefits not calculable in dollars and cents to California, by reason of the hastened construction and the consequent existence of the transcontinental road and the internal railway system that resulted from that construction, Mr. Herrin gave a rapid but very graphic sketch, which excited the opposing counsel to inquire if it was proposed to ask credit for these benefits. Which may indeed be wit, but in the sunlight of equity appears to us to possess no humor whatever.

There was, however, one witty passage, which the opposition can scarcely consider a happy stroke for it. The counsel for the railroad made the calculations given above and stated that if it is granted, that there was 25 per cent. of extravagance in the construction of the road—for argument's sake—the deduction of that, which is \$11,000,000, from the full cost of the road, proved that there had been expended in building the line, including everything referred to in detail in the argument, \$15,000,000 more than the amount of bonds on the road, as has been already set out. At this one of the lawyers for the Railroad Commission exclaimed, "I should like to buy the road at those figures, if that is correct" and

counsel for the railroad, Mr. Herrin, instantly replied: "You can have it at those figures. I think it can be bought for that," and the court clinched the "bargain" with the remark: "Then, gentlemen, if you agree, the sale is consummated."

The question was then taken up of the operation of the road, its income and the cost of operation, and the deficit disclosed upon its books was by the allegations of the bill shown to have been for 1894, under existing rates, which it is proposed to cut down one-fourth, \$276,262 70, and that for the first six months of 1895 the deficit of the Pacific system under existing rates was \$1,476,176 39. But a surplus is shown for 1894 of \$424,497 05, by considering lines only within the State. For the first half of 1895, however, restricting the calculation to lines wholly within the State, there was a deficit of \$863,622 20. From this point the able counsel proceeded to argue the proposition that to diminish the revenue as proposed by \$1,700,000, would be rank invasion of the rights of the roads; that there can be in justice no such separation of a system as suggested, all the parts of which are mutually dependent in considering rate effects, and he cited numerous decisions of courts from the supreme tribunal of the United States down, to show that this segregation is not permissible; that any attempt to set off a part of the system in that manner is inequitable and intolerable, but that the property must be dealt with as it is found, with its debts, its mortgages, its income, and its system of revenues as a whole, and that enough must, under the most extreme view of regulation, be allowed the investor to meet his liabilities if he can, and a fair and reasonable return from his investment; that it was never intended that the owners of railroad properties should not make reasonably large profits; that it was no more intended that such companies should not pay dividends than that the banks of the land shall not make profits and divide them among the investors.

A CASE TO EXCITE PITY.

The San Francisco "Chronicle" tells of an instance of wrong done to a poor miner by the issue of patents to the railroad company in Siskiyou County. It says that the wrong to the miners is illustrated by an instance in which a citizen of Michigan claimed 10,743 acres of placer lands in Siskiyou County. A citizen of Michigan with a mine comprising 10,743 acres of land, to which he had no other title than that he made claim to it, is a spectacle for gods and men.

We have heretofore pointed out that there are placer mines in this State covering from 3,000 to 4,000 acres. That they are glaring frauds nobody will deny. That they were bodied up for the purpose of acquiring title to timber lands fraudulently is also undeniable. But this is the first instance we have found of a placer claim of over 10,000 acres, and all owned by a gentleman in Michigan under a possessory title on file in Siskiyou County. A possessory title

on file in Siskiyou County of course would repeal a railroad grant, violate homestead and pre-emption laws, break down the policy of the Government in the direction of distributing the ownership of land to small holders; and in all respects this case of 10,000 acres of placer mines is one to excite the pity of mankind. This poor gentleman who resides in Michigan and writes to the Recorder of Siskiyou County that he lays claim to a body of 10,743 acres of land, all a placer mine, should of course have immediate redress.

The "Chronicle" goes on to state that when the railroad company laid claim to the land, notice of the fact was published in the Yreka "Union" for sixty days, but that the poor owner of 10,000 acres of gold knew nothing of this notice until it was too late, and the lands had passed from his possession. He has consulted lawyers in San Francisco and has been told that he has no hope of recovery except by bringing an action to have the patents which were issued to his splendid estate set aside on the ground of fraud. What a tremendous fraud it must have been to have invaded a gold mine covering 10,743 acres, alleged to be owned by a gentleman in Michigan, and what kind of a title did this gentleman obtain to the 10,743 acres of land, all gold? According to the "Chronicle," he had a possessory title. Then how was he in possession, living in Michigan? What had he done on this 10,000 acres? Was he raising cattle on it, and was it under fence? Was he employing a large number of Chinese to take the gold out? Nothing of the kind. It was a mere assertion of title, and if a gentleman living in Michigan can assert title to 10,743 acres, what law prevents him from asserting title to 100,000 acres, or 200,000 acres, and calling it all a gold mine?

In the vicinity of Georgetown, El Dorado County, claim has been made to a strip of territory thirteen miles long by a mile and a half wide, practically covering nineteen square miles. This claim is made by individuals who have assigned their right to another individual, and who by this means is to obtain nineteen square miles of land which he proposes to call a gold mine. It must be offensive to the pure white soul of this anti-monopolist that anyone in the world should have the temerity to object to his bodying up nineteen square miles of mineral land. But in very truth, there is no such body of mineral land in the world. The land monopolists, by reason of legislation adverse to their purposes, have lost the power of bodying up land for agricultural purposes. They are now resorting to the miserable trick of claiming land as mineral, because there appears to be no limitation to the extent to which a man may own land if it is mineral. The poor agriculturist is limited to the acquisition of 160 acres, but a gentleman in Michigan may simply allege claim to 10,743 acres of land in Siskiyou County, and the State Miners' Association weeps sympathetic tears over his misfortune when he finds that there was no law to support his claim.

Hotel Arrivals. Arrivals at the Golden Eagle Hotel yesterday: Albert Searl, Los Angeles; I. Elsler, Frank P. Winne, New York; Sig Harris, Seattle, Wash.; J. W. Patterson, Marion, Ia.; G. A. Plances and wife, Wheeling, W. Va.; C. J. Blaisdell, A. Hornberger, I. Miller, James F. Stevens, San Francisco; J. H. Maggard, wife and children, city.

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NOTICE TO CONTRACTORS. SEALED PROPOSALS WILL BE RECEIVED by the Secretary of State up to 12 o'clock noon, of the 24TH DAY OF MARCH, for furnishing all necessary material and labor for laying "tile flooring" in the State Capitol building at Sacramento. Each bidder must submit samples of the material to be furnished, and no bid will be considered unless accompanied with same, and a certified check for 10 per cent. of the amount of bid, made payable to the Secretary of State. Plans and specifications may be seen at the office of the Secretary of State. The right to reject any or all bids is reserved. L. H. BROWN, Secretary of State, Sacramento, Cal., February 21, 1896. 1624-41M

NOTICE TO CREDITORS—ESTATE OF JOHN PRIOR, deceased. Notice is hereby given by the undersigned, W. B. Miller, administrator of the will annexed, of the estate of John Prior, deceased, to the creditors of and all persons having claims against said deceased, to exhibit them, with the necessary vouchers, within four months after the first publication of this notice, to the said administrator at the law office of Isaac Joseph, No. 501 K street, Sacramento, California, the same being the place for the transaction of the business of the said estate in the county of Sacramento, State of California. W. B. MILLER, Administrator with the will annexed of the estate of John Prior, deceased. Dated at Sacramento, Cal., February 17, 1896. 1617-51M THE WEEKLY UNION—THE BEST weekly on the coast.

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