gry should issue to the company bonds of the United States, payable thirty years after date, bearing six per cent. per annum interest, payable semi-annually, to the amount of sixteen of said bonds per mile, but from the western base of the Sierra Nevada Mountains (such point to be fixed by the President of the United States), the bonds to be issued should be at the rate of $48,000 per mile for 150 miles eastwardly; and between the mountainous sections at the rate of $32,000 per mile; the Central Pacific to complete 50 miles of said railroad and telegraph line within two years of filing their consent to the provisions of this act, and 50 miles each year thereafter; the entire line between the Missouri River and the Sacramento to be completed so as to form a continuous line of railroad, and ready for use by the 1st day of July, 1876.

This act provides that the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.

That the grants of the said lands and bonds are made upon condition that said company shall pay said bonds at maturity, and shall keep its said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line and transport mails, troops, and munitions of war, supplies and public stores on said railroad for the Government whenever required to do so by any department thereof; and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid at fair and reasonable rates of compensation, not to exceed the amount paid by private parties for the same kind of service and compensation for the same rendered, for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid; and after said railroad is completed, until said bonds and interest are paid, at least five per cent. of the net earnings of said road shall be annually applied in the payment thereof.

These are the express terms of the contract on the face of the agreement. But there was an implied, if not an express understanding between the contracting parties, as developed in the various debates in both branches of Congress, that in addition to the five per cent. of the net earnings to be paid annually after the completion of the road, the Government would look only to the performance of that portion of the contract by which the railroad company undertook to do its telegraph business and transport its mails, troops, and munitions of war, and public stores, for the repayment of the principal and interest of the bonds.

HOW AID WAS THEN REGARDED.

From those debates, and especially from such portions which we have heretofore referred to, it is evident that not a single vote was cast in favor of the passage of this act with any expectation that the Government would receive from the railroad companies in reimbursement one dollar in addition to the five per cent. and the services rendered in such transportation.

Mr. Collamer said:

> The bill carries the idea, and this section provides for the repayment of the money advanced by the Government, *it is not expected that a cent of the money will ever be repaid.* If the committee intended that it should be repaid, they would have required it to be paid out of the gross earnings of the road, as is done with the roads in Maine, Illinois, Iowa, and other States, and not the net earnings. There is not, perhaps, one company in a hundred, where the roads are most prosperous, that has any net earnings at all. I do not say that not a cent of these advances will ever be repaid, nor do I think it desirable that they should be repaid. The road is to be the highway of the nation; we want it to be such; that the rates provided shall be moderate. I think, therefore, that this will turn out a mere bonus to the Pacific Railroad, as it ought to be.

The amount of bonds actually issued to the two corporations, the Union and Central Pacific, was $55,092,192, but it was stated in debate, as we have seen, that the amount required to be issued would be about $65,000,000; and that several of the speakers stated that the Government was then paying $7,300,000 per annum for the service which the Union Pacific and Central Pacific Railroad Companies were required by the act to perform; and as about one-half of that sum would pay the annual interest, there would be enough of the annual compensation remaining to pay off and discharge the principal of the bonds within twenty years from the completion of the road.

The Central Pacific Railroad Company tried in good faith to comply with the contracts it had entered into by accepting the terms of the act of 1862.

On the 8th day of January, 1863, it commenced the construction of its road at the city of Sacramento.

The city of San Francisco had been instructed by an act of the Legislature to subscribe for the 40,000 of the stock of the Central Pacific, and to issue its bonds for that amount in payment.

The city of Sacramento was authorized to subscribe for $300,000 of stock and the county of Placer for $250,000.

The State of California had enacted that it would pay the interest on $1,500,000 of the bonds issued by the Central Pacific for the period of twenty years.

The citizens of San Francisco resisted the subscription authorized by the Legislature, and the contest which resulted in the courts, in addition to the cost of the litigation besides causing embarrassing and ruinous delay, seriously affected the financial credit of the Central Pacific, and caused such a depreciation of its stock as to render it unmarketable.

FEARS OF A FAILURE.

The people of San Francisco were afraid that the city would become liable for a portion of the debt incurred by the Central Pacific in the construction and equipment of its road, and although the highest tribunal of the State sustained the validity of the legislation by which the municipality was directed to subscribe for and pay for the stock, and although various writs of mandamus were issued commanding the officers of the city to subscribe for and to issue the bonds in payment of the stock, the railroad company was unable for its interest to compromise the litigation by accepting from the city a donation of $400,000 of its bonds, and releasing it from its obligation to make the directed subscription.

This litigation, manifested by the authorities of San Francisco had its effect on those controlling the finances of the other counties and of the State of California, and until the compromise had been made with the city, the promised aid from the State and counties of Sacramento and Placer was not available.

The promoters had used their own private credit in building the thirty-one miles. They could not have the work of construction accepted by the United States until they had forty consecutive miles completed. The company was, therefore, unable to obtain the assistance, either in the way of bonds or lands, contemplated in the act of 1862. The Government then held the prior lien, and it was expected would take the property.

The delay, as shown by the testimony of Gov. Stanford, was fraught with most momentous results to the interests of the corporation, as well as to the advancement of the city of San Francisco. If the aid that had been promised by the State of California and the counties of San Francisco, Sacramento, and Placer had been cheerfully yielded, after the necessary legislative authority had been obtained, the company could, in the winter of 1863-64, have constructed several miles, of the most costly character, of its work over the Sierra Nevadas. It was an unusually fine and open winter, the temperature being mild and the fall of snow light. The cost of the work that winter, in comparison with the same work in the succeeding winter, would no doubt have been from twenty to twenty-fifty per cent. less. And at this time the Union Pacific, not being able to find means to carry out its contract formed by its acceptance of the act of 1862, had not commenced the work; and there can be no doubt that if the Central Pacific had been able to continue its construction eastward, without any delay after it arrived at Newcastle, the junction of the two roads would have been made nearly five hundred miles further east than it was.

It is needless to describe what the financial condition of the Central Pacific would have been under such circumstances, or how much better able it would have found itself to respond to the demand of the Government now made, which it did not and could not when it accepted the terms of the act of 1862.

But this contest with the State and county authorities was not limited, as we have seen, to a mere deprivation of money to the amount lost in the compromise, but, in addition to the evils of the delay, it had the effect of raising a danger signal to all who might, under other circumstances, have subscribed to the stock of the Central Pacific Railroad Company, or aided in its work of construction.

Not only the capitalists of California, but those of New York, Philadelphia, and Boston, the last being most prominent at that time in aiding the railroads, reasoned that if the city of San Francisco, whose citizens and business men were so much interested in the success of the construction of the Central Pacific Railroad, and whose future prosperity would be so much controlled by it, were not willing to subscribe to its stock, and would rather pay a forfeit of $400,000 than, by the payment of $200,000 more, becoming the owner of $500,000 worth of stock, authorized to be created by the Constitution and laws of California, and to the future exigencies and engagements of the company, it was sufficient warning for others not so interested to avoid subjecting themselves to the perils of stockholders in the corporation.

As a part of the history of the Central Pacific it will be well to note here the language used by the Legislature of California when, on April 4, 1864, it passed an act guaranteeing the interest on 1,500 bonds of the Central Pacific:

> Whereas war now exists, and is in immediate and vigorous prosecution between the Government of the United States and certain States which have rebelled against its authority; and whereas the Congress of the United States has for military and other purposes granted aid for the construction of the Central Pacific Railroad, which aid is insufficient to complete the work as speedily as is necessary; and whereas it is important, in view of the present state of war and the further (future) danger thereof, that the said railroad be constructed as soon as possible to repel invasion, suppress insurrection, and defend the State against its enemies, therefore the people of the State of California, represented in Senate and Assembly, do enact as follows, &c., &c.

III.

CHANGE OF CONTRACT BY THE ACT OF CONGRESS OF 1864.

The Union Pacific found itself unable to construct any portion of its road under the act of 1862, and did not commence building until some time in the spring of 1865, and in that year completed forty miles. It numbered among its corporators the most wealthy men of the nation, but the terms offered by the act of 1862 were not sufficiently inviting. The Central Pacific, although attempting to comply with the act of 1862, found that in the tone and temper of capitalists it was impossible to build their road, even with the aid as therein granted; and, therefore, their contract was changed by the passage of the act of 1864, which permitted the railroad companies to issue their first mortgage bonds on the respective railroad and telegraph lines to an amount not exceeding the amount of the bonds to be issued by the United States, and of even tenor, date, time of maturity, rate and charge upon the same road, and that the lien of the United States bonds should be subordinate to that of the bonds of said companies authorized to be issued on their respective roads, property, and equipments, *except as to that provision of the act of 1862, relating to the transmission of despatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States;* and that the aid provided to be granted by the act of 1862 should be given upon the completion of twenty consecutive miles instead of forty, and that the Government should retain only one-half of the compensation for services rendered to it by the company to be applied in payment of the bonds issued instead of the whole; and that the Central Pacific should be required to complete only twenty miles in one year in place of fifty.

With this increased aid, and the improved credit of its promoters, the Central Pacific was enabled to move out from Newcastle, eastward, and to build its road to Promontory Point, where it made a connection with the Union Pacific, on May 10, 1869, nearly seven years and two months less than the time of the contract.

IV.

THE DIFFICULTY OF CONSTRUCTION AND THE GREAT COST OF THE CENTRAL PACIFIC ROAD.

The manner in which this construction was performed, the difficulty of its performance over and through the Sierra Nevada Mountains, the obstacles encountered in its construction in the winter months, the great cost of the work, the difficulty of obtaining supplies of men and machinery, and of water on the desert lands in Nevada, is graphically told in the evidence of Mr. Stanford, the President of the road; Mr. J. H. Strobridge, the Superintendent of Construction; Mr. Arthur Brown, the Superintendent of Bridges and Buildings; Mr. L. L. M. Clement, the Assistant Chief Engineer in charge of the work, and of Mr. Alfred E. Davis—all of which was taken before the United States Pacific Railway Commission at San Francisco.

For convenience and by way of illustration we copy here a portion of the testimony of these witnesses.

Mr. L. M. Clement, the engineer in charge of the work, said, in a sworn statement:

> At the beginning of the construction, the company knew that the political and commercial exigencies demanding the rapid completion of the railroad, determined that nothing which was in their power to prevent should be left undone which would arrest the work; this determination in view, all energies were bent, notwithstanding the physical obstacles and financial difficulties to be overcome.
>
> The financial difficulties were not lessened by the opinions then prevailing to the effect that the obstacles were insurmountable; that the railroads then constructed were the exception and not the rule; that the difficulties to be met in constructing the Central Pacific Railroad; that not only was it impossible to construct a railroad across the Sierra Nevada Mountains, owing to the great depth of snow, it would be impracticable to operate, and, if built, must be closed to traffic in the winter.
>
> As illustrating the difficulties in the use of American rails the prices raised 80 per cent., from $41 to $76 per ton. The average prices during the building of the road were $91.70 per ton at the Eastern rolling mills. The rails had to be transported to San Francisco via Cape Horn or the Isthmus, thence by schooners to Sacramento, the initial point of the road. Shipments via Panama at least two years; the freight and commission $51.97 per ton, making the cost at Sacramento $143.67, not including the cost of transfer from San Francisco. Delays and the losses of ships made it necessary to use the Isthmus route, and for locomotives transported by that route the company paid as freight as high as $8,100 for one locomotive; and for a shipment of eleven locomotives the transportation charges were $84,666.80, or $4,692.50 each. The company paid for two engines $70,752. The payment was necessary to avoid delay. The first ten engines purchased cost upward of $193,000, the second ten upward of $215,000. The demand for power was great to overcome the high mountain grades. Labor shared in the advance in prices. California's laborers were mostly miners accustomed to work in placer mines, which was more to their liking than the discipline of railroad work. They were indifferent, independent, and the excitement of the discovery of the Comstock lode was upon them, when a well-paying mine could command four or more dollars per diem. There was not sufficient labor then on the Pacific coast to construct the Central Pacific, and such as could be obtained could not be depended on. The first mining excitement meant the complete stampede of every man and the abandonment of the work.
>
> Each day brought up propositions which must be solved without delay, so that the construction might advance.
>
> As the snow line was reached the depth of snow increased toward the summit, from a few inches to over fifteen feet on a level from actual measurement. The ground was kept bare for the graders by shoveling, upward of one-half of the labor of the entire grading force being expended in removing snow. Not only was this necessary, but to make excavations the space to be occupied by the embankments was cleared and kept clear of snow; otherwise the melting of the snow under the broad bases of the high embankments would have caused serious settlements, which, on ascending gradients, actually took place. At 150 and 116 feet perpendicular, in some cases, increase the gradient beyond the tractive power of the engine. It required an army of men to clear away and keep clear after a storm for a small piece of grading. Rock cutting could not be carried on under snow drifts, varying in depth from twenty to 100 feet. It was decided, no matter what the cost, that the remaining tunnels should be bored during the winter. To reach the faces of the tunnels the snow drifts were tunnelled, and through these all rock was removed.
>
> Retaining walls in the cañons were built in domes excavated in the snow, the wall stones raised or lowered to their places in the dome through a shaft in the snow. The force, numbering thousands, could not be worked in the tunnels and in the retaining walls; the surplus men, with their tools, luggage, &c., were hauled beyond the summit, skipping the line now covered with deep snow, and active work begun in the cañons of the Truckee River. That no delay, even here, should result from the unfinished gap, twenty miles of rails, with their fastenings, a locomotive and cars sufficient for working were, by oxen and horses, hauled over the summit and down into the canon of the Truckee River.
>
> It was deemed wise to do some of the work in the lower montana, crossed by the railroad in Utah, so that when the track reached those points there should be no delay. About one car load of tools and material was sent forward to Wadsworth to the Humboldt Mountains, at a cost of $5,400. Everything was expensive; barley and oats ranged from $200 to $280 per ton; hay, $120; all other supplies in Utah in the same ratio.
>
> Along the Humboldt River much of the line was constructed during the winter; earthy material that could ordinarily be excavated by the pick and shovel was frozen to such a depth as to require blasting. This frozen material made expensive embankments, requiring constant attention during the frost, was heavy to maintain the roadway in condition for the transportation of material to the front.
>
> As early as it was possible in the following year to again attempt work in the heavy snow belt region, the forces were returned to the granite cliffs and cañons. This army of men shovelled off snow to gain time; miles of time were thus made ready for the drill and powder; $67,500 worth of powder in a single month being used, a sum sufficient to construct and equip three miles of ordinary road in the present times.
>
> During the winter months there was constant danger from avalanches, and many laborers lost their lives.
>
> When the forces were concentrated, the progress in the solid granite ridges was slow but certain. The track was kept close up to the grading forces, and never lagged when it was possible to provide track material, power, or rolling stock, either by stampede or sailing vessels.
>
> For many days, owing to the hardness of the rock in the vicinity of Cisco, it seemed impossible to drill into it a sufficient depth for blasting purposes, shot after shot fired as if from a cannon, perseverance alone conquered.
>
> That was before the powerful explosives were invented, and the many other improvements made for railroad construction in the last twenty years.
>
> The company, at the summit of the Sierras, Donner Pass, manufactured nitro-glycerine, but it was too dangerous for general use.
>
> Transportation of material, tools, etc., was then an important factor in construction. There were then no such powerful engines as of the present day, which can haul two of the *then* most powerful ones and their loads; no cars to carry 30,000 pounds of load.
>
> All material for construction, excepting timber, had to come from the Atlantic States, via the Isthmus or Cape Horn to San Francisco, there lightered for ascending the Sacramento River to Sacramento, and then hauled over the Central Pacific so far as completed, and when needed wagoned beyond the end of the track. Trains returned empty of work, but with substantial to the contractors between the east crossing of the Truckee River and Bear River in Utah.
>
> With the exception of a few cords of stunted pine and juniper trees, all the fuel was hauled from the Sierra Nevada Mountains. Not a coal bed on the line of the Central was then known, and the only one yet discovered is a poor quality of brown lignite.
>
> Water was scarce after leaving the Truckee and Humboldt Rivers, and during the entire construction was hauled for steam and general use of the grading forces.
>
> Thousands of dollars were expended in well boring. Tunnels were bored into the mountains east of Wadsworth to develop small springs, and where water was found it was carefully protected, so very precious was it, and conveyed in some cases over eight miles in pipes to the line of the road.
>
> There was not a tree that would make a board on over 500 miles of the route, nor satisfactory quality of building stone. The country afforded nothing entering into the construction of the superstructure of a railroad which could be made available.
>
> The maximum haul for ties was 600 miles, and of rails and other material and supplies the entire length of the Central Pacific Railroad, or 740 miles.
>
> Cars were transported on ships, in pieces, to San Francisco, and lightered for Sacramento, and there put together.
>
> California had no means of manufacturing for railroad building. Only fourteen years prior to the beginning of the construction of this railroad was there any considerable emigration directed to this coast.
>
> A quarter of a century has made great changes. Once the practicability of constructing a railroad across the mountain ranges and deserts proven, and emigration started west, capital was less timid of the probable future of railroad enterprise, and means were available for constructing other transcontinental roads; and by the aid of machinery, powerful explosives, and experience, they can now be constructed at comparatively light cost. It is probable that had the roads been constructed during the five years preceding, it would not have cost more than 60 per cent. of what it actually did cost.
>
> The principal elements, materials, transportation, and labor, were very much cheaper. Rails averaged 51 per cent. less; transportation, 63 per cent. less. All elements excepting labor was a larger percentage less.
>
> If constructed five years subsequent, it would have cost about 75 per cent. of the actual cost. Had the whole time allowed for construction of the Central Pacific Railroad been used, it is not an easy problem to determine for how much less the road could have been built. Advantages of the markets could then have been taken, contractors would have been willing to undertake the work, if a reasonable time for completion were allowed, so that they could not be compelled to perform any of the work during the winter months, where mercury freezes, and in deep snows; in fact, all the advantages of seven additional years.

Mr. Strobridge, the Superintendent of Construction, stated on oath:

> The work was pushed with the utmost vigor; all the men were hired that could be found, and no effort spared to push the work through as fast as possible. In this way it was finished and in operation from Sacramento, California, to Ogden, Utah, about seven months sooner than was required by act of Congress.
>
> Very high prices were paid for powder, and all tools and supplies used on the work, and nothing was spared that would hasten its completion, and the work was pushed regardless of the season.
>
> The winter of 1865-66 was a very wet one, making the roads on the clay soils of the foothills nearly impassable for vehicles. Large numbers of pack animals had to be brought into use, and on them were carried nearly all supplies, even hay and grain, over steep mountain trails in the construction camps.
>
> As illustrating the impassability of the roads, the stage running from end of track to Virginia City was stuck in the mud, and was abandoned in the canon of Truckee for weeks, the passengers being carried in the mean time by saddle train, from the railroad at Colfax to Dutch Flat.
>
> The force on the Central Pacific line was then represented with energy, but at much greater cost than would have been in the dry season. During the winter of 1866-67, and 1867-68, there were unusually heavy snowfalls in the upper Sierra Nevada, where the road was then under construction.
>
> In many instances our camps were carried away by snow slides, men, teams, and stores buried, and many of them were not found until the snow melted, the next summer.
>
> In the spring of each year the men were taken back from the foothills, and, in some instances, had an average depth of ten or twelve feet of snow was cleared away before grading could be commenced. The total snowfall of the winter season was about forty feet, and the depth of hard, settled snow in midwinter was eighteen feet on a level in Summit Valley and Donner Pass, over which the heavy freight had to be transported, for the tubes of railroad, three locomotives and forty cars, from Cisco to Donner Lake, where all was reloaded on wagons and hauled over dirty roads to Truckee, a total distance of twenty eight miles, at enormous cost, in this way the road was forced to the east slope of the Sierra Nevadas.
>
> In crossing the deserts east of the Truckee River, water for the locomotives and men was hauled at forty miles. It was necessary to have the heavy work in the Palisade Cañon done in advance of the main force; and 300 men were employed at one time in this work to that point, a distance of 300 miles, in advance of the track. Hay, grain, and all supplies for these men and horses had to be transported, and water reserved for that great distance, there being no supplies to be obtained on the entire route.
>
> The winter of 1868-9 was one of severe cold. The construction was in progress in the upper Humboldt Valley, where the ground was often frozen to a depth of two and three feet, and material required blasting and treatment like rock, which could have been cheaply moved in a more favorable time.
>
> The entire cost of the railroad, had it been built with less speed, and the railroads as a mere act constructed, would have been fully seventy per cent. less than its actual cost, as it was built with rapidity of construction the main consideration, and without regard to any outlay that could hasten its completion.
>
> The railroad from Newcastle on the west slope of the Sierras, to Wadsworth, at the beginning of the Nevada deserts, on the Humboldt, was built from February, 1868, and July, 1868, more than three years, with a force averaging 11,000 and at times reaching 15,000 men.
>
> The road from Wadsworth to Ogden, about 555 miles, was built between July, 1868, and May, 1869, about ten months, with a force averaging 5,000 men. If the century from Newcastle and Wadsworth had been of the same average difficulty as that between Wadsworth and Ogden and between Ogden and Omaha, the labor that was expended upon the Central Pacific Railroad would have built it to a point far east of Omaha in the same time, the work from the east slope of the Sierra Nevadas to Ogden being more than an average of that from Ogden to Omaha.

UNDERTAKING UNPRECEDENTED.

Without undertaking in any way to detract from or underrate the services performed by the Union Pacific in the accomplishment of its contract, it will be remembered that the Central Pacific labored under great disadvantages which were not shared by the Union Pacific, and that the work of its construction was much more costly. At the time that the Union Pacific had reached the one hundredth mile post west of Omaha, it was in direct railway communication with the rail mills and manufactories of the Eastern States. Before that time its supplies were shipped by rail from Chicago to Saint Joseph, and thence by the Missouri River to Omaha. It could, and did, ship supplies daily, if it wished, and in such quantities as it desired. But the Central Pacific was separated by two oceans and 20,000 miles from the source of the materials required for the construction of its road. It could not predict with any certainty when the time would come when the rails it had ordered from the Eastern rolling mills would reach the western end of its track; and in addition, it was subjected to the receipt of its supplies to the chances of shipwreck, of vessels putting into way ports on the South American coast, and of long delays. Its work of construction was attended with drawbacks and disappointments, and great expenses that were not shared by the Union Pacific Company. It had to pay war rates of insurance, ranging from 3 to 5 per cent., from which tax the Union Pacific was free. And when pressed for time, or to remedy a loss of material that had occurred in the transit around Cape Horn from New York, it was compelled to send rails or locomotives across the Isthmus of Panama, and was subjected to burdens from which the Union Pacific was totally free, as is shown by the testimony of Mr. Clement, Mr. Strobridge, and Mr. Brown, heretofore noticed.

Being at such a distance from its base of supplies, it was compelled to keep material for nearly a year's construction constantly in transit. It had upon the ocean for the greater part of the time it was engaged in the construction of its road, materials valued at from one to three million dollars, and to leave the balance incurring an interest account ranging for most of the time from 12 to 15 per cent. per annum. We have it in evidence before the Commission, that the rails used in this work cost at the point of production from $74 to $115 in cash per ton. The sleepers used in ties were purchased at $262 in Central Pacific stock, with $5 additional added for delivery in New York or Boston; and that the average price paid in New York during the entire work was $80 a ton. The freight from New York to San Francisco, around Cape Horn, averaged $17.50 per ton; insurance was from 5½ to 17 per cent. It will therefore be seen that the cost to the Central Pacific of rails in San Francisco, at the lowest rate of insurance, without interest, was $101.50 per ton. To this add the cost of the transportation from San Francisco to the western end of the Central Pacific, which averaged $2 per ton; and the cost of moving to the point of construction being added, makes the entire cost of the rails used on the Central Pacific was not less than $125 per ton laid in the track.

These enormous prices and expenses, added to the general character of the country through which the Central Pacific was built, and the difficulty of obtaining fuel and water, and the distance over which water was transported for the use of the engines engaged in construction and of men employed, is one of the reasons why, joined to others discussed hereafter, this company has exhausted the proceeds of all the aid granted to it in bonds by the United States, and such portion of the lands as it had sold at the completion of the road to Promontory, and the proceeds of the first mortgage bonds which it had issued, and all the aid which it received from the counties of California, and the proceeds of its bonds, the interest on which for twenty years was guaranteed by the State of California, and the moneys received from the sale of the stock of the Central Pacific in the construction and equipment of the aided road between Sacramento and Promontory Point, and the purchase from the Union Pacific of the road between Promontory and Ogden, so as to comply with the act of Congress, that the common terminus and point of junction should be fixed at Ogden, and that at the completion of such connection and purchase it was several millions of dollars in debt.

DANGER OF BANKRUPTCY TO PROJECTORS.

The charge, so often made, that the promoters of the Central Pacific made great profits in the construction of the road is utterly refuted. *When it was finished they could not have paid their debts from the assets then remaining.* The Secretary of the company has shown the faithful expenditure of every dollar received prior to the completion of the road—that it was all consumed in construction and equipment.

No one who reads the evidence given before the United States Pacific Railway Commission will deny that the promoters of the Central Pacific enterprise entered earnestly and manfully not only to fulfil their contract with the Government, but to comply with its wishes for an earlier completion of the road; and they did it without regard to their own pecuniary advantage, believing that the Government would treat them with liberality in return.

The Government and the people were very anxious for the fruition of the scheme that had so long held a prominent place in the public mind. The early events of the war had shown how vital was the rapid, frequent and rapid communication between the Atlantic and Pacific States; and the companies having the work in charge did all that lay in their power to gratify the popular desire for its early completion, without regard to the cost to themselves.

Before the road was completed the Government commenced to realize benefits from the partial fulfilment of the contract, in its facilities for transportation of mails, and of troops and munitions of war to its various forts, and in the opportunity of communicating with the commanding officers by telegraph.

These benefits and advantages to the Government increased with the further progress of the road until it was finished.

When the Union and Central Pacific connected they had each performed all their part of the contract to the best of their ability. They had accomplished the great work that had filled so large a space in the public thought, and they put the casements and facilities which their lines afforded at the disposition of the Government, for the benefit and advantage of the nation, and the protection of its territory.

In July, 1864, on the very day the contract between the Government and the Union and Central Pacific was amended, Congress passed an act subsidizing the Northern Pacific road, the effect of which was necessarily to take from the Central Pacific the business north of California. And in July, 1866, while the constructors of the Central Pacific were bending all their energies, as we have heretofore shown, and seeking every aid within human reach to tunnel the rocks of the Sierra Nevada Mountains, to remove the masses of compact snow, to cut down the timber and clear a suitable bed for their rails, the Government subsidized still another road, the Southern Pacific, the building of which could only result in taking away from the Central a large portion of the transcontinental traffic intended for California, and which the construction of the Union and Central was intended to control, and to compel the Central Pacific, for its own protection, to purchase it, and to limit its ability to respond to the demands of the Government, and to decrease the amount of the net earnings which, under its contract, it was obligated to render to the Government.

It will not, of course, be contended that if Congress, acting for the best interests of the nation, thought it wise to subsidize these roads, it should have refrained, because of the contract it had made with the Central and Union Pacific; but its action in this respect certainly does raise many equitable considerations, which should be considered and determined in the settlement of the questions now existing between it and these companies.

After the lapse of time we are apt to underrate the obstacles that attended air effort successfully accomplished.

Even seven years after the road was completed, the embarrassments of its constructors had partially faded from the public mind, as we learn from the following extract from the letter of Mr. Huntington, dated April 3, 1876, to Senator Edmunds, which was printed by order of the Senate:

> The relations between the Government and the Pacific Railroad Companies growing out of the acts of 1862 and 1864, whereby the United States, in time of war, advanced its bonds, in order to insure and hasten the construction of a railroad and telegraph line between certain points on the Missouri River and the Pacific Ocean, and especially the pecuniary obligations created thereby, have again been presented upon the attention of Congress and of your committee.
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> The spirit and aim of those acts, it is well known, was to establish, without the direct agency of the nation, railroad communication across the continent, and this object has been attained under the terms and conditions then made, but years ahead of the allotted time. *Conditions as the aid extended may seem now, at the time of its inception it was deemed a work so need, so bold, and vast, that but few believed in its success, which there was a general apprehension, both in the public mind and among their representatives, that it might be long delayed or fail altogether.*
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> The physical and financial energy and ability so auspiciously displayed to overcome the impediments encountered can scarcely be well considered or determined under the dome of the Capitol.

V.

OBSERVANCE BY THE CENTRAL PACIFIC OF ITS OBLIGATIONS TO THE GOVERNMENT.

But it may be said that the Central Pacific Railroad Company has not been mindful of the obligations imposed upon it by the laws of the United States under which it received aid for the construction of its road.

No matter what a thing cost, no matter what amount could be saved by delay, they pushed along, in season and out of season (as the testimony before the Commission shows), to secure the finishing of the work and to open it for the public use as soon as human aid could render it possible.

If they had kept to the rigid terms of their contract and had opened the road, as its letter required them to do, on the 1st day of July, 1876, instead of on the 10th of May, 1869; if they had availed themselves of their opportunities of buying in the cheapest market at a favorable time, instead of exhausting all their resources, as they did, and when the first through train was run over the Central Pacific without a dollar of debt they could not have met if they had been pressed to pay it, they would, out of the sum of more than fifty millions in gold which they expended in the construction of the road from San José to Point Promontory, have saved at least twenty millions.

In what other respect have these companies failed in their obligations to the Government?

Have not the United States all that they bargained for?

It was avowed in the debates prior to the passage of the bill of 1862, and declared in the bill itself, that the aid granted to the companies was made upon condition:

> That the said railroad and telegraph line shall be kept in repair and in use, and the said company shall at all times transmit despatches over said telegraph line, and transport mails, troops, munitions of war, supplies and public stores upon said railroad for the Government, whenever required to do so by any department thereof; and that the Government shall, at all times, have preference in the use of the same for the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

Has not the Government the benefit of this condition to the fullest extent whenever it chooses to use the railroad, instead of seeking for a cheaper mode of transit around Cape Horn or over the Isthmus of Panama? Has there been any failure of the company in its obligations in this respect?

The purpose stated in the title of the bill is:

> To secure to the Government the use of the same for postal, military, and other purposes.

The road and all its equipment has been at all times open to the use of the Government whenever its sense of economy would enable it to prefer it to the compensation paid to private citizens for the same services, instead of sending its business around Cape Horn, or through foreign countries, in defiance of the terms of its contract with the company.

It stipulated for the payment of 5 per cent. of its net earnings to the company for its service. When the last section of the road was provisionally accepted by the Government this debt ridden corporation, the Central Pacific, asked for the bonds and lands that were due to it, in accordance with the terms of the contract. The answer came two years after the road was completed. We have a report of the Board of Civil Engineers that we have appointed, who say you must spend nearly $5,000,000 to finish the road in the manner we require; and until it is so completed you can retain the balance of the aid that is promised; and, in addition to that, we insist, as security, that the road will be completed to the entire satisfaction of the Government, that you deposit with the Secretary of the Treasury $4,000,000 of your first mortgage bonds, and we will retain, in addition, as further security, all the lands which you are entitled to under the act of 1864. But, nevertheless, in the mean time, although your road is not completed so as to entitle the corporation to the entire distance to us five per cent. on the net earnings from the time that you run the first train over the road, from the time we have the full use of it in every respect.

The Central and Union Pacific demurred to this arrangement. But when the Supreme Court of the United States, differing as it did from the views expressed by the Court of Claims, and by the Circuit Court for the Northern District of California, reversed the judgment, and held that the United States had adjudged correctly, and could, if it chose, persist in its inequitable demand, the Central Pacific at once obeyed the law and paid to the Government the amount which it claimed as five per cent. upon the net earnings from the time the last spike was driven.

And so when the contract was changed by the passage of the so-called Thurman act, which the Central Pacific believed violated every principle of the law of contracts, it being advised and believing that the alteration of the original contract by the legislative department was beyond its authority, and that the act was invalid, submitted the matter to the courts, and when, against what might be said to have been the indignant protest of Mr. Justice Strong, Mr. Justice Bradley, and Mr. Justice Field, the Court sustained the validity of the act, the Central Pacific complied with it, and is still complying with it, although to the great detriment of the corporation and the Government, whose anticipations of benefit have not been realized, because the change was not based on sound principles.

Where is the evidence that the Central Pacific corporation has not kept its part of the contract, or that it has in any way failed to comply with any of its obligations to the Government? It has rendered to the Government all that was demanded in the contract—the building of the road, and in about one-half the time that the law allotted.

Whenever the rights of the United States have been ascertained, the Central Pacific has accorded those rights, and has cheerfully and promptly yielded to the demands of the Treasury upon it.

It is the merest perversion of language to say that this company has in any way failed in its obligations toward the Government.

There is not the slightest pretext to sustain such a charge against the Central Pacific Railroad Company or its officers, we find abundant evidence in the executive departments of the Government to refute it.

When the act of May 7, 1878, was before the Senate, the act known as the "Thurman bill," by which the contracts between the Government and the Union and Central Pacific Railroad companies were changed without the consent and against the protest of the contracting parties, we find that, in good faith of the Government, had built this national highway, Mr. Bogy, the Senator from Missouri, who favored this violation of the rights of the railroad companies, was compelled to yield the following tribute. He said:

> *I look upon one of the cars of our empire from the waters of the Atlantic to the Pacific ocean, at the time particularly in which it was built, during the war, as perhaps the greatest achievement of the human race on the earth. I am old enough to remember when the scheme of a railroad from the waters of the Missouri to the Pacific Ocean was looked upon as a wild dream, as a thing nearly impossible, if not entirely impossible of accomplishment. Yet it was undertaken, and, in truth and in fact, it was accomplished at a comparatively small cost to the Government. The lands donated to the road were not worth a cent without a road. The Government had an empire lying west, between the waters of the Missouri and the Pacific Ocean—an empire which has sprung into great States and Territories from that day—and a country which has become of great advantage, and which would have been utterly worthless without the railroad. It has bound to this portion of the confederacy the Pacific Coast with bands of iron, and no one can tell what might have been the destiny of that section during the war if it had not been for the railroad. * * I give to the men who originated and carried through this great enterprise all possible credit for doing a great thing, at the critical moment, in a very short space of time.*

Senator Stanford, the President of the Central Pacific Railroad Company, in the testimony given before the Commission, says, in substance, that during his administration as President of the Central Pacific Railroad Company, from its incorporation to the present time, there has never been any desire or intention, or any act done, permitted, or suffered, with his knowledge, by which it has been intended to disregard the rights of the United States as a contracting party with the Central Pacific, and that in his judgment no such result has obtained from any act done by the company which could in the ordinary course of business have been anticipated.

Mr. Miller, Secretary of the company, and connected with its affairs from 1862, says:

> Not in any single instance during my twenty-five years' connection with the Central Pacific has its business been so conducted as to give the slightest color to the intent on the part of its directors or officers to infringe or impair the interests of the United States.

And Mr. Crocker and Mr. Huntington have testified to the same effect.

When the act of 1862 was passed it was the expectation of both parties to the contract that the business which the Government would give to the companies would be sufficient, not only to discharge the interest upon the bonds, but to create a sinking fund for the discharge of the principal within twenty years. And when the amendment to the contract was passed in 1864 one-half the compensation was to be used, so far as would suffice, for the same purpose.

HOW THE LOAN WAS TO BE REPAID.

It was part of the contract, as formed by the passage of the act of 1864, that the Central Pacific should receive in cash one-half of the compensation for work done for the Government; that it should not be required to surrender any portion of its earnings, other than the five per cent. of the net receipts, until the maturity of the bonds, if at all.

But from a reading of the act of 1862, although perhaps it is somewhat immaterial to state the proposition at this time, the Government may be expected to demand any payment from the company for the discharge of either principal or interest of the bonds, excepting the performance of the services described in that act. There was not the slightest expectation on the part of the Government or of the company that any portion of the earnings of the companies would be rendered to the Government, excepting the compensation for the transportation done for it.

But it would seem, from the evidence taken before the Commission, that the Government has withheld the transportation which, by the act of 1862, and the act of 1864, it contracted to employ the Central and Union Pacific to do.

Disregarding its obligations to those companies, it has given the business, in part, often paying more for the service in cash. As is shown in the evidence of Mr. Gray, the general freight agent, and of Mr. Miller, the secretary, it has sent the public stores and supplies around Cape Horn and across the Isthmus of Panama, and the business of the Pacific States between points in the Atlantic States and points in the Pacific States has been done by a foreign corporation, the Canadian Pacific Railroad.

Not only has the Government refused to perform its contract, by giving the business of transportation to the Central Pacific, as that contract required it to do, at the same price that it paid to other and competing lines, but it has absolutely refused to send it by the Central Pacific, an aided line, when its rates were the lower and it could obtain.

On this subject the United States Auditor of Railway Accounts says:

> The Government has taken away business across the State of Nevada, and has also given transportation to the Northern Pacific, the Southern Pacific, the Atchison, Topeka and Santa Fe, the Atlantic and Pacific, and the Canadian Pacific, all rival roads, and is paying them full rates, when they could get it done for less rates by the aided Central Pacific.

The effect of this departure by the Government from the plain terms of the contract may be best understood when it is stated that the action of the Government in the subsidizing of rival lines and transferring the business of the Government to them has resulted to the present time in decreasing the receipts of the Central Pacific over seventeen millions of dollars, within three million dollars of the entire amount of aid derived by the company from the loan of the bonds of the Government; and this consequence is an equity to be considered and allowed in stating the account between the Government and the company.

It is shown by the books of the Central Pacific that all the business done for the Government by that company, in the transportation of freight, for the sixteen years between 1870 and 1885, inclusive, amounts to but $1,098,047; that the cost for the same service which would have been paid, at the rates charged to the United States prior to the completion of the Central Pacific Railroad, would have been $10,721,218.

And by a table annexed to the deposition of Mr. Miller, the Secretary of the Central Pacific, it appears that in addition to the $1,098,047 paid to the Central Pacific, the total amount paid to the Union Pacific for the same sixteen years was $4,642,706, making the payment to both companies $5,740,753. That, at the r