of that court that the Southern Pacific, because of its control of the line from Ogden to San Francisco and other California points, was the dominating partner. The Supreme Court holds that the two systems were competing prior to the merger and on this point lays down an interesting line of reasoning.

"It is urged that this competitive traffic was infinitesimal when compared with the gross amount of the business transacted by both roads and so small as only to amount to that incidental restraint of trade which ought not to be held to be within the law; but we think the testimony amply shows that while these roads did a great deal of business for which they did not compete, and that the competitive business was a comparatively small part of the sum total of all traffic, State and interstate, carried over them, nevertheless such competing traffic was large in volume, amounting to many millions of dollars. Before the transfer of this stock this traffic was the subject of active competition between these systems, but by reason of the power arising from such transfer it has since been placed under a common control. It was by no means a negligible part, but a large and valuable part, of interstate commerce which was thus directly affected."

By this conclusion the court apparently disposes for this particular case of the question of the distinction between reasonable and unreasonable restraint of trade. It also holds that it is not necessary to acquire a majority of the stock of a corporation in order to secure a control.

Sufficient for Control.

"In any event this stock did prove sufficient to obtain the control of the Southern Pacific," say the Justices of the Supreme Court. "It may be true that in small corporations the holding of less than a majority of the stock would not amount to control, but the testimony in this case is ample to show that distributed as the stock is among many stockholders a compact, united ownership of 46 per cent. is ample to control the operations of the corporation. This is frankly admitted in the testimony of Mr. Harriman, the prime mover in the purchase of the Southern Pacific. It was purchased, he declared, for the purpose of giving a dominating interest in the Southern Pacific company and, he added, the Union Pacific did thus acquire such interest."

Justice Day, who delivered the opinion, added that the consolidation of two such great systems of transportation directly tends to less activity in furnishing the public with prompt and efficient service in carrying and handling freight and in carrying passengers and in attention to and prompt adjustment of the demands of patrons for losses and in these respects puts interstate commerce under restraint.

In the matter of the relief to be given the court says:

"In order to effectually conclude the operating force of the combination such disposition should be made subject to the approval and decree of the court, and any plan for a disposition of this stock must be such as to effectually dissolve the unlawful combination thus created. The court shall proceed upon presentation of any plan to hear the Government and defendants, and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein expressed."

In concluding the court entered practically the same order as in the Standard Oil and Tobacco cases, stating that unless a satisfactory plan of dissolution was worked out within a limited time—in this instance three months—the Supreme Court would proceed to appoint a receiver and direct a sale to accomplish the dissolution.

Justice Vandeventer, who passed on the case as a Circuit Court Judge, did not participate in to-day's decision.

Defendants Named.

The defendants in the Pacific railroad merger suit named in the Government's bill were the Union Pacific, Oregon Short Line, Oregon Railroad and Navigation; San Pedro, Los Angeles and Salt Lake; Atchison, Topeka and Santa Fé; Southern Pacific, Northern Pacific and Great Northern railroads; the Farmers Loan and Trust Company of New York, and the following individual defendants: E. H. Harriman, Jacob H. Schiff, Otto H. Kuhn of Kuhn, Loeb & Co.; James Stillman, H. H. Rogers, Henry C. Frick, ex-Senator William A. Clark and Robert S. Lovett.

The dissolution suit was filed in the United States Circuit Court at Salt Lake City, Utah, in February, 1908. After testimony had been taken and the matter submitted the Federal court by a vote of 3 to 1, Judge Hook dissenting, dismissed the Government's bill. From this judgment the Government appealed. The principal ground for the decision of the lower court was that the Union Pacific and the Southern Pacific were not competing lines and that the combination was not in violation of the Sherman law.

The merger of the Pacific railroads was the crowning achievement in the remarkable career of the late Edward H. Harriman in acquiring, readjusting and improving railroad transporation lines. Prior to the merger the Union Pacific system consisted of a line of railroad from the Missouri River at Omaha and from Kansas City to Ogden, Utah, and Portland, Ore., with branches and connections and a line of steamships from Portland to San Francisco and from Portland to the Orient.

Comment on the decision among Senators and Representatives was sparingly made. Senator Cummins said he was very much pleased with the opinion, but that he believed the Supreme Court should review and approve the plan of dissolution before it goes into effect, or the result might be as unsatisfactory as had been the dissolution of the American Tobacco Company.

Attorney-General Wickersham expressed great satisfaction.

"The decision," he said, "merely extends the principles of the Northern Securities case to the Union Pacific-Southern Pacific merger and decides that the continued holding by the Union Pacific of its stock in the Southern Pacific is in violation of the Sherman law. The principles laid down in the Standard Oil case and in the St. Louis Terminal Association case are reaffirmed."

PLANS BURIAL AND QUITS LIFE.

Former Broker, 76, Leaves Empty Glass, and Note to Coroner.

In a furnished room at 380 St. Nicholas avenue, which he had occupied for several years, Thomas Sturgeon, 76 years old, once a cotton broker, was found dead yesterday. Near at hand was an empty glass and this letter addressed to the Coroner:

"This is not a case for an inquest. It is a plain case of quitting. I am tired, old and poor. My friend Col. W. S. Harlan will take full charge of my burial from Dargeon's, 158 East 117th street. For bills and other expenses I have left full particulers in letters addressed and stamped. Please see that they are mailed at once, and that will save time, trouble and expense to others."

The body was taken to the morgue for an inquest and to await the dead man's friend, W. S. Harlan of 751 Greene street, Brooklyn.

New Pastor for Hamilton Grange.

The Rev. Dr. Paul S. Leinbach of Easton, Pa., has accepted a call to the Hamilton Grange Reformed Church, 149th street and Convent avenue.

DECISION DOES NOT ALARM WALL STREET

Union Pacific Common Soon Recovers Early Loss—Other Securities Orderly.

JUDGE LOVETT RETICENT

Demarcation of Central Pacific Within Boundaries of U. P. Will Be Arranged.

As far as the railroad map is concerned the purport of the decision in the Union Pacific merger case was clear. In the parlance of the day it meant the autonomy of the Southern Pacific and the delimitation of the Union Pacific, with the control of the Central Pacific left to subsequent negotiations between the attorneys for the Government, the attorneys for the Union Pacific and the attorneys for the Southern Pacific. There was very little doubt that these negotiations would result in the demarcation of the Central Pacific within the Union Pacific boundaries.

It may be taken for granted that the Union Pacific will avail itself of the privilege which the Supreme Court granted of buying the Central Pacific from the Southern Pacific. As was pointed out in the decision, a route from Omaha to the Pacific coast at San Francisco was the route designed by the Government when the original franchise was awarded to the Union Pacific. From Ogden west the route was subsequently taken by the Central Pacific, which fell under the control of the Southern Pacific. That left the Union Pacific with one end in the air, and it was in that unwieldy position when Mr. Harriman took hold of it. His principal object in acquiring control of the Southern Pacific was to secure control of the Central Pacific and thereby obtain a San Francisco outlet. It is altogether improbable that the Union Pacific will surrender that control now that permission to retain it has been granted.

In the matter of route and mileage the autonomy of the Southern Pacific means that it is to be a system extending from Portland to San Francisco to Los Angeles, through Arizona, New Mexico and Texas to Galveston and thence to New Orleans, with a subsidiary company controlling 1,500 miles of line from a point in California down the western coast of Mexico. Exclusive of the Mexican line, completion of which has been delayed by the revolutions in Mexico, and excluding also the Central Pacific, the free and independent Southern Pacific will control 8,670 miles of track.

The delimitated Union Pacific system will control directly its present mileage of 7,115 and 1,532 miles of the Central Pacific, while it also will retain control of the mileage of the San Pedro, Los Angeles and Salt Lake. As thus marked out it will extend from Kansas City and Omaha on the east, on to Denver and Ogden, whence it will have three outlets to the Pacific Coast, one by way of the Oregon Short Line and the Oregon-Washington Railroad to Portland and Seattle, another by the Central Pacific to San Francisco and the third by the San Pedro, Los Angeles and Salt Lake to Los Angeles.

By the decision the Union Pacific also retains its interest and influence in the Illinois Central, which is practically a controlling interest; in the Baltimore and Ohio, the Chicago and Northwestern, the St. Paul and the New York Central.

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It was for the acquisition of securities in these latter roads that Mr. Harriman was most violently assailed as the "colossus of Roads." The outcome of the case leaves the Union Pacific's interest in these securities unchanged.

In the security markets, where principal interest was taken in the relation of the decision to the standing of the numerous stock and bond issues of the Union Pacific system, the decision was immediately followed by a decline of 2 points in Union Pacific common, an advance of 6½ points in Union Pacific preferred and an advance of 7 points in Southern Pacific collateral trust 4 per cent. bonds. Union Pacific common subsequently recovered its loss, while the preferred lost nearly half and the Southern Pacific bonds more than half of their gains. Otherwise the market for the securities of the companies concerned was orderly enough.

The brisk advance in Union Pacific preferred occurred when it was thought the victory of the Government would force a distribution of treasury assets in which the preferred stock might share. Speculators were not so sure of that when more of the text of the decision became known. Similarly the advance in Southern Pacific collateral trust bonds was based on the supposition that these bonds, which are secured by Central Pacific stock, must be retired in the event of purchase of Central Pacific by Union Pacific. The late decline in the bonds indicated there was doubt of this proposition also.

Neither Judge Lovett, chairman of the Union Pacific board, nor Kuhn, Loeb & Co., the bankers, would comment on the decision, pleading that they had not seen the full text of it. The first news of the decision was imparted to Judge Lovett as he was leaving his office for lunch and interfered neither with the regularity of his meal nor his appetite. A placid atmosphere pervaded the offices of the bankers.

Though nothing official was said as to what will be done in the way of reorganizing the system, it was clearly apparent what must be done and it was obvious that no such difficulties confronted the reorganizers as were involved in the reorganization of the American Tobacco Company. The principal thing and practically the only essential thing is the disposal of the Southern Pacific stock held by the Union Pacific and its auxiliary companies.

Southern Pacific has outstanding $272,675,000 stock, of which $126,650,000 is owned by the Union Pacific and auxiliary companies. Oregon Short Line, the auxiliary company which is the favorite holding company of the Harriman system, owns $108,000,000 of the stock. All of the stock of the Oregon Short Line is owned by the Union Pacific.

The $108,000,000 Southern Pacific stock owned by the Oregon Short Line is pledged under an issue of Oregon Short Line bonds, of which $45,000,000 are in the hands of the public and $55,000,000 in the treasury of the Union Pacific. Similarly all the $17,200,000 Central Pacific common and $67,275,000 Central Pacific preferred are owned by the Southern Pacific and pledged under a bond issue. The bankers must arrange for the redemption or readjustment of these security issues and there is also an indebtedness of $20,000,000 by Southern Pacific to Union Pacific and other matters not so conspicuous.

The bankers have three months from the receipt of the Supreme Court's mandate within which to arrange these matters of business.

SIX YEAR FIGHT ENDED BY COURT'S DECISION

U. P.-S. P. Dissolution Suit Based on Commerce Commission Inquiry.

GOES BACK TO ROOSEVELT

Harriman, Testifying, Didn't Remember Little Profit of $2,000,000.

The Government's attack on the so-called Harriman merger began formally on January 4, 1907, when the Interstate Commerce Commission got to work on an investigation of the operations by which it had been said E. H. Harriman sought the fulfilment of a dream of monopoly of the transcontinental transportation business.

A little more than six months later the commission filed its report, in which it described some of Mr. Harriman's operations as "indefensible financiering." The report, in spite of a finding that competition in transportation had been effectively stopped in a territory equal to one-third of the United States and that E. H. Harriman as an individual dominated the great railway consolidation, was so mild that doubts were expressed that a prosecution would follow.

It was recalled at the time that the investigation was begun about the time that Mr. Harriman and Col. Roosevelt, then President and also a "practical man," were at odds. Mr. Harriman, commenting on the report, said:

"From what I am told the report is a political document and part of a personal pursuit of me. It is deemed good politics to attack me."

If this was a prophecy that the Government would make the report the basis of a prosecution it was fulfilled when a suit in equity to enjoin the continuance of the control of the Southern Pacific by the Union Pacific was filed in the United States Circuit Court in Salt Lake City on February 1, 1911. The court handed down its decision on June 25, 1911, finding that the Union and Southern Pacific were not competing lines, and in dismissing the suit denied every one of the Government's contentions. The vote of the court was 3 to 1, Judge Hook of Kansas writing a dissenting opinion, in which he held that the Government's petition was well founded. It was the first suit that the Government had lost since it began putting the Sherman anti-trust law into action.

As the suit under the expedition acts of Congress had been tried in the United States Circuit Court appeal was at once taken directly to the United States Supreme Court.

Up to that point hearings in connection with the case had been held over a large part of the country, Mr. Harriman and Henry H. Rogers, among the defendants, had died and most of the Government officials in charge of the prosecution had retired from office.

Going back to the Interstate Commerce Commission's investigation upon which the prosecution was founded, the results showed, so the Government attorneys declared, that the Union Pacific and Oregon Short Line, which they regarded as virtually one concern, were no longer railroads but a tremendous banking system. An idea of the size to which this banking system had grown was to be had from the evidence that since 1898 the system had purchased $183,000,000 more securities than it had sold up to 1907, the date of the investigation, and that it then had outstanding more than $183,000,000 of obligations.

The suit which the Government founded upon this investigation sought to dissolve the alleged merger of the Union Pacific, the Southern Pacific and the San Pedro, Los Angeles and Salt Lake roads. It also sought to have declared illegal the ownership by the Union Pacific or Oregon Short Line of stock in the Sante Fé, the Great Northern and the Northern Pacific roads.

The bill charged conspiracy and the formation of a combination in violation of the Sherman anti-trust act. Besides the railroads the defendants named were the Farmers Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick and William A. Clark.

Mr. Bonaparte, then Attorney-General, in a statement issued before the suit was begun said that the testimony showed that "a combination was formed about the beginning of the year 1901 by Mr. E. H. Harriman, the president and chairman of the Union Pacific, and certain of his associates for the purpose of obtaining a monopoly of all transcontinental transportation business."

The Attorney-General charged that the first move was the acquisition by Mr. Harriman and his associates of stock control in the Southern Pacific and the "elimination" of competition between that line and the Union Pacific. In this connection it was alleged that Mr. Harriman bought 475,000 shares of Southern Pacific in 1901 from Edwin Hawley and the heirs of Collis P. Huntington, "father of the Southern Pacific," through Kuhn, Loeb & Co.

On February 4, 1901, Kuhn, Loeb & Co. sold 750,000 shares of the "S. P." stock, including Mr. Harriman's block, to the Union Pacific, which at once issued $100,000,000 worth of bonds to pay for the stock. It was said that the brokers received $2,000,000 in commissions.

The "grab" of the San Pedro, Los Angeles and Salt Lake road, built by Senator W. A. Clark to run from San Pedro on tidewater in California through Los Angeles to Salt Lake City, was thus described by Attorney-General Bonaparte:

"After the work of construction was in progress the parties in control of the Union Pacific, by means of harassing litigation * * * and by threats of paralleling the line, induced Clark and his associates to abandon the scheme of an independent road and to join with the Oregon Short Line, giving the Oregon Short Line an equal stock interest in the San Pedro, Los Angeles and Salt Lake road with that held by Clark and his associates."

The control of the Sante Fé came in 1904, when Mr. Harriman and his associates became the possessors of a large block of stock and Mr. Frick and Mr. Rodgers were placed on the board of directors.

The Northern Pacific and Great Northern roads were merely nominal defendants in the case, the Government alleging that Mr. Harriman and his associates had tried to get control of those roads by buying a majority of stock and getting hold of the Burlington "feeder." The Northern Pacific deal had been held illegal in the Northern Securities decision of the Supreme Court.

The results of Mr. Harriman's overlordship of the Western transportation lines, the Government contended, had resulted in increased rates and the blocking of construction of new lines, thus halting the development of many Western and Pacific coast States. A "sensible" deterioration of service was also complained of, and it was predicted that the Panama Canal trade would be monopolized through the Pacific coast and gulf shipping lines controlled by the Harriman interests.

The defence offered was that the Union Pacific sought control of the Southern Pacific to keep from being "bottled up" at Ogden, Utah, its Western terminus, and that there was no intention of stifling competition. It was asserted that in 1902 a Wall Street "pool" had tried to oust the Union Pacific directors from the Southern Pacific board and that it was in the fight for control that the Union Pacific's holdings were increased to 45 per cent.

The defendants invoked the "rule of reason," asserting that the Union Pacific never controlled a majority of Southern Pacific stock, that it owned only 46 per cent. of the stock and that, as it bought the Huntington shares in open market, the courts could not well hold the purchase to be illegal.

The most interesting part of the long drawn out case was the appearance of Mr. Harriman before the Interstate Commerce Commission in the early part of the investigation. Mr. Harriman was on the witness stand all day. One of the things brought out was the enormous increase in the capitalizatiln of the Chicago and Alton road after Mr. Harriman and his associates bought it in 1898 and the subsequent dealings with its securities by which the four men who bought the road issued to themselves $32,000,000 Alton bonds at 65 and sold them in a few months at from 85 to 96, which was the price paid by the New York Life Insurance Company for $10,000,000 of them.

Mr. Harriman was ready to answer questions, but when he was asked if he was the owner of some of the 103,431 shares of Alton ostensibly sold by Kuhn, Loeb & Co. to the Union Pacific, of which Mr. Harriman was at the time president, his lawyers urged him not to answer and he didn't. The argument that it was an invasion of the rights of the individual, even if the case was that of a man selling stock to his own company, was carried to the United States Supreme Court, which decided that Mr. Harriman and Otto H. Kahn, who had also declined the same information, could not be forced to answer.

Mr. Harriman didn't half fill the witness chair that day, he was so little. But figures that the ordinary man would have had to go to the books for he had at his finger tips. When it came to his own profit on Alton bonds, however, he didn't remember, didn't keep any books, and regarded the profit to himself of $2,000,000 as too small a matter to keep in mind.

As has been said, Mr. Harriman and Mr. Rogers have died since the suit was filed. Judge R. S. Lovett, who succeeded Mr. Harriman as president of the Union Pacific, was by stipulation made a defendant. Attorney-General Bonaparte, who signed the Government's petition, and Assistant Attorney-General Purdy, who assisted at the beginning of the prosecution, have since retired from office.

The Government's case in the Circuit Court was argued by Frank B. Kellogg and C. A. Severance, while among the array of counsel for the defence were John G. Milburn, Paul D. Cravath, John C. Spooner, who appeared for Mr. Frick; Judge P. F. Dunne of California, who was retained by the Southern Pacific; N. H. Loomis of Omaha for the Union Pacific and David T. Watson of Pittsburg, who submitted a special brief for all the defendants.

Hearings in the Interstate Commerce Commission's investigation were held in New York, Chicago, Seattle, Portland, San Francisco and Los Angeles. Much of the testimony on which arguments before the Circuit Court were based was taken here before Special Examiner Williams.

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ANOTHER MAN ACCUSED IN SWINDLE DE LUXE IS HELD

E. J. Marr Surrenders After Indictment—Boston Hit Hard in Book Deals.

Following the example of a majority of the men who have been indicted with James J. Farmer and the latter's son, Glenn Farmer, in the alleged $5,000,000 book swindle, Edward J. Marr of this city surrendered himself to the Federal authorities yesterday and was held in $2,500 bail by Commissioner Shields.

Marr, according to the post office inspectors, is supposed to have been one of the most energetic agents of the Anglo-American Authors Association and to have turned a number of large sales.

In the meantime the alleged swindle, according to the Federal authorities, is assuming unbelievable magnitude. Post Office Inspector Swain returned from New England with the names of seven more victims who say they have been mulcted to the extent of $350,000. Three are of Boston, two live in the suburbs of Boston, one in Fall River and another in Vermont.

This, however, does not conclude the list of New Englanders who have had extensive dealings with the Farmers. The post office inspectors say that there are sixteen others of whom they know.

It is predicted that when all are heard from it will be found that New England has lost more than $1,000,000 on editions de luxe.

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NEW HAVEN'S TRAFFIC DEAL BEFORE CONGRESS

Inquiry Asked Into Reputed Agreement With the Grand Trunk.

INSPECTION OF ROADBED

Representative O'Shaughnessy Wants to Know About Bond Issues Too.

WASHINGTON, Dec. 2.—A Congress inquiry into the reported agreement between the Grand Trunk system and the New York, New Haven and Hartford Railroad Company is proposed in a resolution introduced in the House to-day by Representative O'Shaunessy of Rhode Island. The resolution was referred to the Committee on Rules.

The measure sets forth that it has been reported that the two railroads named are working in combination in violation of law, and that the combination controls, in addition to the two lines, certain steamship companies. The Southern New England Railway Company is also mentioned as a part of the combination.

One of the objects of the inquiry, it is set forth, is to determine whether any of the companies named have issued bonds or stocks in excess of the actual value of the property involved. It is also proposed that the inquiry shall embrace a thorough inspection of the roadbed and rolling stock of the New York, New Haven and Hartford. It provides that the inquiry shall be conducted by a special committee of seven members.

"I am of the opinion that the resolution will be reported favorably," said Representative O'Shaunessy. "Certain facts concerning the New England roads have been given publicity and we want to ascertain the truth. The matter has already been given some attention by the Attorney-General."

Mr. O'Shaunessy intimated that if the Administration should proceed against the reputed combination under the Sherman anti-trust law his resolution might be withdrawn.

Mr. O'Shaunessy has discussed his resolution with Representative Robert L. Henry, chairman of the Committee on Rules. Both agree that if an investigation is ordered by the House it should be conducted by a special committee, as was done in the case of the United States Steel Corporation and the so-called money trust.

It is altogether probable that the O'Shaunessy resolution will have consideration in the Rules Committee before the holidays. This is dependent somewhat, it is understood, on the course that is followed by the Attorney-General.

FOSS WILL ASK TAFT'S HELP.

Governor Wants Inquiry of New Haven-Grand Trunk Agreement.

BOSTON, Dec. 2.—Announcement was made at the State House to-day that Gov. Foss would discuss the Grand Trunk-New Haven situation as far as it concerned this State, with President Taft at the White House on Saturday of this week.

The President has invited the Governors who will attend the annual Conference of the Governors of the United States at Richmond, Va., beginning tomorrow, to be his guests Saturday. Gov. Foss will make use of this meeting to urge the President to assist the State in a thorough investigation of the situation by the Federal legal machinery.

JARED FLAGG IN COURT AGAIN.

Demurrer to Indictment Charging Use of the Mails in Stock Swindle.

Jared Flagg of get rich quick fame bobbed up again in the United States District Court yesterday when his attorney, Wade H. Ellis, interposed a demurrer to the indictment charging Flagg with use of the mails in the furtherance of a stock swindle. Incidentally Mr. Ellis tried to tell Judge Hough what a "50 per cent profit" really means among margin brokers. He said:

"For instance, if I buy a house for $20,000 and sell it for $21,000, how do I figure my profit? If I only put up a $2,000 deposit and make $1,000, why, my percentage of profit is 50 per cent. That is the situation in Flagg's case."

The Government's answer was indefinitely postponed at the request of Assistant United States Attorney Claude E. Thompson, who had only been served with the brief at the opening of the argument.

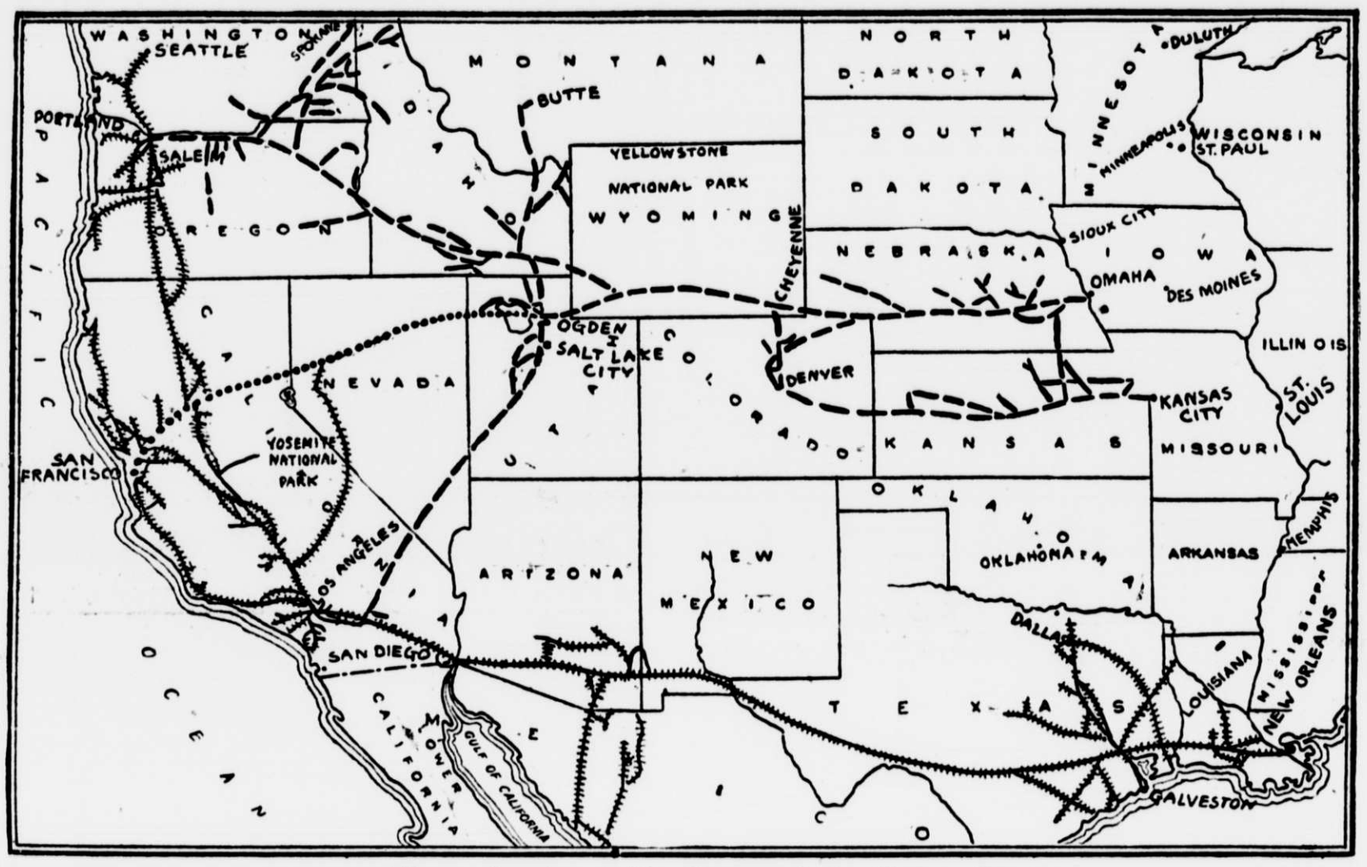
French Bazaar for Charity Held.

In the new ballroom of the Ritz-Carlton from 2 until 6 o'clock yesterday afternoon was held a French bazaar in aid of the Convalescent Home for Babies in Sea Cliff, L. I. Many persons prominent in society who are interested in the hospital visited the sale and purchased articles at the tables, which were in charge of Mrs. J. Searle Barclay, Jr., Mrs. George B. Eustis, Mrs. Orme Wilson, Jr., Mrs. M. V. R. Johnson, Mrs. Douglas Robinson, Mrs. Henry Parish, Jr., and Mrs. Arthur Scott Burden. A vaudeville and dance in aid of the home will be given at Sherry's on December 10.

Xmas Sale at Delmonico's.

A Christmas sale in aid of the New York Foundling Association was held in the green room at Delmonico's yesterday under the auspices of the Ladies Association of that institution. Among the officers of the association who assisted at the tables were Mrs. John V. Bouvier, the president, who was at the table containing imported articles, and Mrs. Charles May Oelrichs, Mrs. J. Rich Steers, Mrs. Stephen Farrelly, Mrs. Louis Duhain, Mrs. John C. Bowron, Mrs. Joseph M. Sammis, Mrs. William J. de Rivera, and Mrs. P. Gilbert Thebaud.

MAP OF HARRIMAN LINES DIVORCED BY SUPREME COURT



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