

LAWYERS' HORN

Opening Skirmish in the Battle Against the Railroad.

FEDERAL INTERVENTION

Government Bill Submitted and Arguments Heard in the Circuit Court.

WILL PROBABLY BE ALLOWED.

United States District Attorney Foote Defends His Position.

The legal heavy-weights in the proceedings of the Southern Pacific Company against the State Railroad Commissioners had their preliminary skirmish in the United States Circuit Court yesterday.

It was a day of intervention and contention. The railroad brought suit to enjoin the Commissioners from enforcing their resolution to reduce the freight schedule on all the lines operated in California.

Now the United States Government, through the Attorney-General and District Attorney, steps in with a petition of intervention. It is based on the ground that the proposed reduction of rates would interfere with its collection of the 25 per cent of the net earnings of the Central Pacific, which is a part of the Southern Pacific system, and the chances of a final settlement of the claims of the Government would be impaired.

The Railroad Commissioners were represented by Attorney-General Fitzgerald, Assistant Attorney-General Anderson, W. W. Foote, Robert Y. Hayne and Attorney Daily. W. T. Herrin and J. C. Martin, for the Southern Pacific, throughout the day sat silently behind a fortification of books.

In his opening statement United States District Attorney Foote established his right to appear as the legal representative of the General Government, and then read the petition of intervention which has already appeared in full in the public press. He clearly defined the position of the Southern Pacific Company and the Board of Railroad Commissioners. The Commissioners had adopted a resolution, making a horizontal reduction of 8 per cent in the freight schedule on grain and 25 per cent on all other articles of commerce, the reduction to go into effect as specified as possibly on all lines of the Southern Pacific Company and leased connections.

The Southern Pacific Company had brought suit to enjoin the Railroad Commissioners from making the proposed freight-rate reduction, and it was to this suit that the United States Government came with a bill of intervention. The District Attorney argued that as the Government held a mortgage on the Central Pacific Railroad running from San Jose, in this State, to Ogden, in the State of Utah, and under the Thurman act, passed by Congress on May 7, 1878, 25 per cent of the net earnings of the road was to be paid into a sinking fund provided for in the act, the Government had the right to intervene since the threatened reduction in freight rates would jeopardize its interests and its revenue and interfere with the final settlement of its claims against the road in question.

"Congress alone has the right," continued Mr. Foote, "by reason of the United States Government possessing a lien on the Central Pacific Railroad, to adjust rate matters, and the Railroad Commissioners, by their proposed reduction, would interfere with the collection of the 25 per cent of the net earnings of the

road which the Government is annually allowed to protect the bondholders." "Do you claim it as the right of the Government," inquired Judge McKenna, "to resist any proposed reduction of the rates or simply an unreasonable reduction?" "I claim it is our right to do both," was the reply.

Continuing in the same strain, Mr. Foote said that the Railroad Commissioners had undertaken to reduce the rates on the roads. Should they be decreased the value of the property on which the United States Government had a mortgage would be impaired.

"I state here and now, if your Honor please," declared the District Attorney, "that if the Railroad Commissioners will consent to exempt the Central Pacific lines from the operation of their proposed reduction resolutions, then I am ready to immediately advise the Attorney-General of the United States that he permit me to file a dismissal of the bill of intervention, which, in accordance with his previously issued instructions, I have filed in this proceeding. This being done, the railroad company and the commission may go on and carry out their commission unimpeded by any action of mine and of the Government which it is my honor to represent. Thus the long and expensive phase of this litigation which it will otherwise be my duty to conduct to the best of my ability may be avoided.

"I pledge my honor," concluded Mr. Foote, "to take all proper action necessary to bring about such withdrawal on the part of the Government as I have indicated immediately upon the Railroad Commissioners consenting to the exemption of the Central Pacific lines as I have suggested. Otherwise it will be my duty, and by this lamp only can my feet be guided, to go forward with the proceedings which I have instituted."

The Government therefore asked to be heard on the issue in accordance with the rights which it had as a mortgage creditor. Mr. Foote then read the bill of intervention. It was a general statement of the points which have already been explained in brief.

Attorney-General Fitzgerald consumed nearly the remainder of the day in presenting his argument on behalf of the Railroad Commissioners, and in answer to the contentions of the United States Government. He deplored the action of the General Government stepping in and interfering with the rights of the people of California when its interests—the interests of the General Government in the premises—could not possibly be impaired in the slightest degree. He said:

In connection with my associates I have carefully examined into and considered this bill of intervention and I am constrained to say that I am at a loss to understand why the Government of the United States should seek to intervene into this case when not a particle of its interests can be affected by the result, whatever it may be.

Now I understand that the District Attorney bases his claim on section 10 of the act of May 7, 1878, entitled, "An act to alter and amend the act in and to which reference is made in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of

claim to intervene on that fact. There is a general allegation in the bill that these rates are unreasonable and unjust, but there is no specific allegation where the injustice is established. But the Government comes in with its sword unsheathed and makes a stab at this body, established by the constitution of the State, and then goes further and states that two of the Railroad Commissioners were elected on a party platform pledged to a 25 per cent reduction."

"Your Honor propounded certain questions to me this morning," began Attorney-General Fitzgerald after the noon recess, "and I want your Honor to fully understand our position."

The speaker then restated the position of the Government as mortgagee of the Central Pacific from San Jose to Ogden. He laid particular stress upon the fact that the Central Pacific had only 261 miles of line in California, while the other lines connected with the Central Pacific in the Southern Pacific system had covered 758 miles in California. He contended that the bill of intervention did not show that a pound of grain had been hauled over the 261 miles of the Central Pacific from San Jose to the State line.

"Suppose that the bill of intervention does not show that grain has been transported over the 261 miles of road," said the court, "and the original complaint shows that it had gone over this line, then the bill could be easily amended."

"The proposed bill of intervention must stand or fall by itself," declared the Attorney-General.

"The Government well knew that there was an original bill and based its bill of intervention on it," said the United States Attorney.

The Attorney-General then went on to say that there was not an allegation in the

bill to show that this proposed reduction of rates in any way affected the Government's interests. There was nothing to show that a pound of freight had been transported over the Central Pacific, and he held that the bill of intervention was incomplete and the grounds insufficient on which to base a cause of action.

The judge stated that the court would not shut out the Government from intervening in the case if its grounds otherwise were sufficiently established, as the bill could be amended to show that freight had been carried over the 261 miles of the Central Pacific in California. Attorney-General Fitzgerald here rested his argument. Before taking his seat, however, he threw bouquets at United States District Attorney Foote, with whom he had played as a barefooted boy in his youth, and whom he called no one, he held, would accuse him of having any other interest in the case than as an officer of the United States Government.

W. W. Foote delivered the closing argument for the State.

I arise to present my personal protest to the United States Government in regard to this case as the tail to the railroad kite. If the order for intervention is defective, and it unquestionably is, the rights on the records of this court, it should be ruled out as defective, and then the United States Government may file another order, but its application at this time is premature.

For sixteen years the Board of Railroad Commissioners of California has been fixing freight rates on lines of railroad in this State, and at no time before has its power or authority been questioned. Now the Government, the United States Government, comes to the aid of this railroad corporation, which has never paid its honest obligations to the Government, and the United States Government, the Pacific Company sit silently here and do as if they were not there in or out of the case.

The United States Government holds a worthless second mortgage on the property of the Central Pacific, and that is all it has for the mortgage of the Central Pacific. Therefore, boundless generosity. It held a first mortgage, but returned it to the corporation.

Judge McKenna here inquired of Mr. Foote if the United States Government did not have an interest in the revenue of the Central Pacific under the provisions of the Thurman act, which provided for the payment of 25 per cent of the earnings of the railroad in question into the treasury of the United States, and, if so, if its interests would not be impaired by the proposed reduction in freight rates.

Attorney Foote contended that it could not be shown that a reduction of 8 per cent on grain and 25 per cent on other articles of commerce would result in a loss to the Government of the amount derived from the Central Pacific.

Anyway, it had no more right in fixing and determining the schedule of fares and rates than the banker who held a mortgage on a house of a citizen. Its position was that of a mortgagee. Mr. Foote closed by strongly denouncing the action of the Government.

United States District Attorney Foote then made a spirited address to the court in which he indignantly repudiated the charges of the attorneys for the opposition that the United States was unwarrantably interfering in the case. He spoke of the magnanimity of the General Government in spanning this great continent with an iron highway and opening up the Golden State to civilization and the world.

The court has struck the keynote of the Government's right to intervene," said the United States Attorney, "when it based that right on the Thurman act. That act has been upheld by the United States as constitutional, and it comes with bad taste for the gentlemen here to cast slurs on the Government's intervention in this matter. It is the Government's shield of incorporation, but simply the representative of my duty to my God and my country, without regard to the provisions of the act, that if the Railroad Commissioners will consent to exempt the Central Pacific line in California from the reduced freight rate which they propose to make, I am ready to withdraw from the contest and allow the railroad corporation and the Commissioners to fight it out between themselves."

The District Attorney was quite angry in refuting the implications made by attorneys on the opposite side against the spirit of the Government in taking a hand in the fight, and where Attorney-General Fitzgerald threw flowers at him he responded with hot shot.

The Attorney-General said that it would be impossible for them to accept the proposition of the Government's representative, and the court took the question under advisement until this morning.



ATTORNEY-GENERAL FITZGERALD MAKING HIS ARGUMENT FOR THE STATE. [Sketched by a 'Call' artist.]

THE SAME FOR POSTAL, MILITARY AND OTHER PURPOSES. These acts of 1862-64 were amended by the act of May 7, 1878, relative to the consolidation, which took in all other connecting lines under the head of the Central Pacific Railroad Company. This act is generally known as the Thurman act. It provides that there must be paid annually into the treasury of the United States an amount aggregating 25 per cent of the net earnings of the road.

Now the District Attorney must know that he cannot intervene except against the parties bringing the suit. The railroad company is the moving party in this case. If it is on this section that the District Attorney intervenes he is mistaken. This bill of intervention in some particulars is incorrect and in others irregular.

There are two grounds on which the Government intervenes. First, by the act of 1862, commonly known as the Pacific Coast Railroad act, by which the Government reserves to itself the right to fix fares and rates. The other is based on its having a mortgage of some \$45,000,000 on the Central Pacific.

And now, is it not remarkable that this great Government for sixteen long years has allowed this State Board of Railroad Commissioners to exercise its right to establish these rates and fares; and not until to-day, and when the interests of the Government are nearly insignificant, and when only a few hundred miles of the line in this State are involved, does it assume to intervene. The Government has not recognized its rights to establish rates

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The brothers and sisters of Vicente think Joe has no claim. They will not contest the will of Jose Maria, Joe's father, but they will fight the boy's claim to get a fourth of the \$500,000 left in Vicente's estate on the ground that, even though he was treated as a legitimate child and is publicly acknowledged as such by Jose Maria de Laveaga, the legitimacy was not completed by the marriage of the father and mother.

The Rancho Las Aguilas, which was inherited by Vicente from his mother, was yesterday sold to A. B. McCreery for \$98,000. It was put up for open competition and McCreery bid \$86,000 for the land. Then it was taken into court and McCreery raised his bid to \$90,000 to keep out other prospective purchasers. Then Julian C. Reis raised the last bid of \$90,000, and McCreery raised again. Then Reis made the price \$97,500, and then McCreery bid \$98,000. The sale was made to him and Judge Coffey signed the order.

The Rancho was assessed at \$150,000.

PIGEONS WILL FLY. An Excellent Feature to Be Connected With the Poultry Show.

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200 varieties and represent all parts of the State. Every kind of fowl capable of domestication will be on exhibition, and the exhibition will exceed in numbers and general advancement any other show of a like kind ever held on this coast.

One of the best features of the exhibition will be the presentation of several homing pigeons that will be sent out Sunday morning from Tres Pinos. The birds will be taken up to Tres Pinos by Wells, Fargo & Co.'s agent and liberated in the following order: The first lot will be released at 9 A. M., the second at 9:30 and the third at 9:45. These will be young birds. At 10 A. M. the old birds will be released, and all are expected to arrive in this City and Alameda before sundown, after which they will be placed on exhibition at the Pavilion, with the time made affixed to each bird.

The gentlemen who will start pigeons in this race are I. W. Slydecker, Alameda; Ed Koenig, 2225 Jackson street; G. I. Marsh, Twelfth avenue and Chestnut street; Otto Brewitt, Alameda. At these roosts there will be timers, and the Hydrographic Office of the United States will figure out the direct air line from here to Tres Pinos, it being 101 miles by railroad.

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By the will in question Mr. de Laveaga particularly acknowledged A. J. M. de Laveaga as his only son. This, however, is but one portion of the material that will be employed to prove the legitimation of the boy. And this legitimation is to be employed by J. J. Dwyer, young Joe de Laveaga's attorney, to gain for Mr. de Laveaga a share as one of the four remaining heirs of Jose Vicente de Laveaga in a half-million dollars left in the latter's estate.

Young A. J. M. de Laveaga, who is better known as Joe, is now 27 years old. His history reads like a novel. He was born at Mazatlan, Mexico, but was brought to California while a little boy by his father and put in the care of Dr. William Dohrmann of 535 Bryant street. His father acknowledged him openly as his son and paid Dr. Dohrmann for the board and education of his son.

Mr. de Laveaga met business reverses in 1879. He transferred the Rancho Las Aguilas, an estate of 24,000 acres in San Benito County, to his mother, Dolores de Laveaga, and went to Colorado, where he died the next year.

Mr. de Laveaga had a brother, Jose Vicente de Laveaga, of whom he was very fond. This brother went to Colorado and took charge of Mr. de Laveaga's effects, among them being the will completing the legitimation of young Joe. This will, it is said, was secreted by Vicente, who at the same time assumed the expense of his nephew's education.

When Vicente de Laveaga died in August, 1894, he left \$1 to each of his two sisters and his brother. To 'Joe' de Laveaga he left \$20,000. But what was of more importance, he also left behind the will of Jose Maria de Laveaga, which was found among other of Vicente's papers in a safety deposit box by Daniel Rogers, one of the executors of Vicente's will.

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The club was organized by Mrs. Charles Aull, Mrs. G. J. Bucknall, Mrs. William B. Carr, Mrs. John Chretien, Mrs. John Connors Jr., Mrs. J. A. de Greayer, Mrs. Guy Earl, Mrs. E. Llewellyn, Mrs. F. G. Sanborn, Mrs. Irving M. Scott, Mrs. George Law Smith, Mrs. J. C. Stubbs, and the following-named ladies signed the charter roll: Mrs. C. Aull, Mrs. E. A. Belcher, Mrs. I. S. Belcher, Mrs. Orlov Black, Miss Geraldine Bonner, Mrs. G. J. Bucknall, Mrs. A. B. Butler, Mrs. George B. Carr, Mrs. William B. Carr, Mrs. Remi Chabot, Mrs.

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