

LANDS GRANTED TO THE SOUTHERN PACIFIC RAILROAD
COMPANY.

FEBRUARY 24, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. W. J. STONE, of Missouri, from the Committee on the Public Lands,
submitted the following

REPORT:

[To accompany bill H. R. 5883.]

The Southern Pacific Railroad Company was incorporated under the laws of the State of California December 2, 1865. It subsequently entered into articles of consolidation with other companies similarly incorporated, with the object and purpose of constructing and operating a line of railroad from San Francisco to a point on the Colorado River near the southeastern boundary of California.

On July 27, 1866, Congress passed an act incorporating the Atlantic and Pacific Railroad Company, and authorized it to construct a line of railroad beginning at Springfield, in Southwestern Missouri, and running through Western Missouri, the Indian Territory, the Pan Handle of Texas, and the Territories of New Mexico and Arizona, so as to intercept the Colorado River, as near as practicable, at the point where it crosses the thirty-fifth parallel of latitude, and thence through the State of California to the Pacific Ocean, and to aid in the construction of the road made certain conditional grants of lands to said company (14 Stat., p. 292).

The eighteenth section of that act is as follows:

SEC. 18. *And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

Thus it will be seen that the Southern Pacific, coming down from San Francisco, was authorized to connect with the Atlantic and Pacific at some point near where the latter should cross the Colorado River and enter the State of California; and that the provisions in the act granting lands to the Atlantic and Pacific were extended to the Southern Pacific, subject to the same conditions and limitations.

The map of the main line of the Southern Pacific, from San Francisco to the Colorado River, was filed in the General Land Office January 3, 1867. Stated in a general way, the route runs from San Francisco to San José; thence southward, a distance of 50 miles, to Tres Pinos; thence eastward, across the Coast Range of mountains, a distance of about 85 miles, to Huron; thence eastward to Goshen, and southeast-

erly to Mojave, a distance of 182 miles; thence easterly to the Colorado River, at a point known as The Needles, a distance of about 242 miles, where connection is made with the Atlantic and Pacific.

The lands involved in this forfeiture lie along that route. By the second section of the act of July 27, 1866, the right of way along its route to the extent of 100 feet in width, where it passes through the public domain, including all necessary grounds for station-buildings, work-shops, depots, machine-shops, switches, side-tracks, turn tables, and water-stations, was granted to the Southern Pacific Railroad Company.

By the third section of said act there was granted to said company ten alternate, odd-numbered sections of land per mile on each side of its railroad, with right to indemnity by selecting certain other lands within given limits in cases where any of the lands granted had been previously sold or otherwise disposed of by the United States. The amount of land thus granted is estimated at 7,526,400 acres. Of these lands, 1,040,430.03 acres have been patented to the company and a good part thereof since sold by the company to innocent purchasers, who have more or less improved them.

Your committee recommend the forfeiture of all the lands granted to the Southern Pacific Railroad Company by the third section of the act of 1866, except such parts thereof as may be included within the limits of any village, town, or city site, and such as may have been heretofore sold by the company, and now in the possession of actual settlers, to the extent of 160 acres to each settler. The reasons for the exceptions are so self-evident it is not thought necessary to elaborate them. Aside from the exceptions, should the recommendations of your committee be followed by Congress, nearly 7,000,000 acres would be restored to the public domain and opened to entry and settlement under the public-land laws of the country.

Able and distinguished counsel appeared before your committee, and maintained that Congress has no power to make this forfeiture, and that any act passed for that purpose would be unconstitutional and ineffective, because it would be an interference with vested rights and a confiscation of private property. It is contended for the company that the title to all these lands, with one small and insignificant exception hereafter noted, has passed absolutely and irrevocably to the company, relieved of all the conditions imposed by the grant. A majority of your committee think otherwise. They are of the opinion that the Government has the right and power to retake the lands for a breach of the conditions of the grant, and that that right and power extends to all the lands embraced in the grant, whether now patented or not.

That is the legal issue between the attorneys of the corporation and the majority of your committee.

The *grant* is made by section 3 of the act, which is as follows:

Sec. 3. And be it further enacted, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land-Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved,

occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

The eighth and ninth sections, which impose certain *conditions* on the grant made by the section just quoted, are as follows:

SEC. 8. *And be it further enacted*, That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

SEC. 9. *And be it further enacted*, That the United States make the several conditional herein, and that the said Atlantic and Pacific Railroad Company accept the same, grants upon the further condition that if said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure the speedy completion of the said road.

These are the grant and the conditions, and those sections contain substantially all there is in the act affecting the lands in question, except section 4, which relates to the issuing of patents.

Section 4 is as follows:

SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

Here, then, is a grant made to the railroad company of certain lands, upon condition that the work of construction begin within a limited time, and be wholly completed by the 4th day of July, 1878, with a further provision that patents should issue for lands lying adjacent to completed sections of the road as the work of construction progressed along the line from one stated distance to another.

It is not claimed by the company that the road was built in conformity to the conditions of the grant as to time. Prior to July 4, 1878, the company had completed the road from San José to Tres Pinos, 50

miles, and from Huron, by way of Goshen, to Mojave, 182 miles, as appears by the reports of the commissioners appointed to inspect the road, and now on file at the Interior Department. As a matter of fact, *since* July 4, 1878, the road has been completed from Mojave to The Needles, on the Colorado River, 242 miles, and notice filed to that effect, though there has been no official acceptance of the work. Between Huron on the east and Tres Pinos on the west of the coast range, a distance of 85 miles, no work has ever been done; nor has the road been built between San Francisco and San José, though it is understood that at the latter place a connection for San Francisco is made with another road over practically the same route. A part of the road was completed within time, a part completed out of time, and a part remains uncompleted still.

With the facts thus stated and understood, the legal question is, whether the lands are subject to forfeiture, or whether they have gone beyond the reach of Congress. The lands may be divided into three classes :

(1) That part between Mojave and San José, over which the road was constructed prior to July 4, 1878, and to which the company became entitled to patents under the provisions of section 4, and to 1,040,430.03 acres of which it has actually received patents.

(2) That part between Mojave and The Needles over which the road was constructed after July 4, 1878.

(3) The mountain lands between Tres Pinos and Huron, and the lands between San Francisco and San José, over which no part of the road has been constructed.

The company admits that the lands embraced in class 3 are subject to forfeiture; but beyond that it holds Congress cannot go.

As to the lands embraced in class 1—those “earned,” as the company expresses it, within time—the claim of the company, as made by its attorneys, may be stated as follows: They claim that the granting act of 1866 passed to and vested in the company a present estate in fee, subject to certain conditions subsequent; and that whenever twenty-five miles of the road was completed according to the requirements of the act, the conditions were discharged and lifted from the lands lying along that section of completed road, and the title of the company became complete, perfect, and indefeasible, and that the company became entitled to patents for such lands, though they hold that the issuing of patents is in no sense essential to the title, it being just as complete without them as with them, the patents being nothing more than an acknowledgment on the part of the Government that the conditions have been performed as to the lands patented. Hence they conclude that on July 4, 1878, the company owned an unconditional, indefeasible fee-simple estate in all the lands lying along every section of twenty-five miles of road completed at that time.

As to the lands embraced in class 2—those “earned” out of time—the claim of the counsel for the company may be stated as follows: That any time after July 4, 1878, Congress had the *right* to forfeit all lands where the road remained unconstructed, but that while that right *existed* it was one that might be *waived*, and until *exercised* the estate granted to and vested in the company by the act remained, and that the right of the company to go on with the work and perfect its title by performing the conditions continued until interrupted by an *actual declaration of forfeiture*. One of the learned counsel states it thus:

I hold this to be a grant of lands *in presenti*, with a condition that the road shall be constructed, qualified by this: that as the road is constructed, in its divisions, and is

accepted by the Government, that construction and acceptance terminates the condition in reference to the lands embraced by the constructed portions of the road. Here was an estate that had vested for the whole grant, subject to a condition subsequent. An estate upon condition subsequent is not lost because the condition is not performed, and is only determinable by the act of the grantor. On that point I quote the exact language of Chancellor Kent:

"A condition does not defeat the estate, although it be broken, until entry by the grantor or his heirs; and when the grantor enters he is in as of his former estate."

In this case the grant was a grant *in presenti*, and therefore it created an estate in fee—not in fee simple, but in fee—in the grantee, and the subsequent conditions to be performed tended to the destruction of an estate created, and the law does not favor that. Although the condition may be broken, and although the grantee may be subject to the right of re entry and liable to be dispossessed, yet, so long as the grantor does not exercise that right, the estate continues.

And while the estate continues, he further held, the company could go on with the work of construction and thereby unfetter and free the estate from the conditions.

According to this theory of the company—and that is the view taken by the attorneys representing all these railroad grants—the title of the company is just as good to the lands adjacent to the road constructed after July 4, 1878, as to the lands adjacent to the road constructed before that time. Hence it will follow that the right of forfeiture, if it exists at all, applies as well to one class as the other. Such is the view insisted upon by the attorneys representing the corporation.

As already stated, a majority of your committee are of the opinion that the right of forfeiture does exist and applies to the whole grant. They hold this grant to be a grant of lands upon condition.

Now, there are two kinds of conditions—conditions precedent and conditions subsequent. Where the condition is precedent, no right, title, interest, possession, or estate passes from the grantor to the grantee until the condition is performed. The whole estate remains with the grantor until the condition is performed, and then it passes to the grantee. In other words, the grant is inoperative until the condition is complied with. Where the condition is subsequent, the rule is the other way, and the right, title, interest, possession, and estate passes at once from the grantor to the grantee, subject to be defeated by non-performance of the condition. The grant operates to transfer the estate *in presenti* to the grantee, but if the grantee fails to perform the condition of the grant, the grantor may terminate the estate by re-entering and taking possession.

Such is the general rule. The exceptions are immaterial to the present consideration. It is sometimes difficult to determine whether a condition is precedent or subsequent. The character of the conditions in this and other similar grants has been the subject of careful consideration by your committee, and the conclusion reached is that the conditions are conditions subsequent. Indeed, similar grants with like conditions have repeatedly received judicial construction, and are uniformly held to be grants *in presenti* upon condition subsequent. (*Nicoll vs. N. Y. & E. R. R. Co.*, 2 Kern., 121; *Leavenworth, &c., vs. U. S.*, 92 U. S., 733; *M. K. & T. Ry. vs. K. P. Ry.*, 97 U. S., 496.)

When the act of July 27, 1866, was passed and approved it operated at once, and had the effect of transferring from the United States to the Southern Pacific Railroad Company whatever interest the United States had in the lands granted, subject to the condition that the company would construct and complete its road along its line of definite location from one end to the other by July 4, 1878. Put section 3, making the grant, and section 8, imposing the condition, in juxtaposition; and read them together, *without reference for the time being to*

section 4, and there ought to be no difficulty in construing the grant to be one *entire grant* upon one *entire condition*; indeed, the grant cannot be otherwise interpreted, in the light of repeated judicial construction, if section 4 be eliminated from consideration. Section 3 says:

That there be, and hereby is, granted to the Southern Pacific Railroad Company, its successors and assigns, * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections of land per mile on each side of said railroad, &c.

That is a conveyance—the highest and best character of conveyance. A direct legislative grant is the highest muniment of title. It passed an immediate estate in fee to the company to all the lands described—to the whole and every part. In the language of the Supreme Court:

The grant imports a grant *in presenti*, and not *in futuro*, or the promise of a grant. (*Vide Mo., &c., R. R. vs. Kans., &c., R. R., 97 U. S., 496.*)

Again:

It creates an *immediate interest*, and does not indicate a purpose to give in future. (*Vide Leavenworth, &c., vs. United States, 92 U. S., 733.*)

Again:

The granting words are sufficiently comprehensive to pass whatever interest the United States possessed in the lands. *Supra.*

Section 3, then, passed a complete estate to the company, for it passed every interest the United States had, and the United States had everything as the original and exclusive owner. But the estate so granted is fettered by conditions imposed by section 8. Those conditions are as follows:

That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than 50 miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the *whole* road by the 4th day of July, A. D. 1878.

The central idea in these conditions is, that the *whole* road must be completed within the time limited. The company holds its estate in the lands granted upon that condition. If performed, the condition is satisfied and disappears; if broken, the United States may re-enter and recover their title and estate. Recover it for what purpose? It has been contended that sections 8 and 9 must be construed together, as parts of one condition, and an effort has been made to create some confusion by the peculiar phraseology of section 9—that if any condition remains broken for the space of one year, the United States may do anything which may be needful and necessary to insure a speedy completion of the road. That is interpreted by the friends of the corporation to mean that these lands are set apart by Congress and irrevocably dedicated to the purpose of building that road, and so limits the right of the Government to re-enter for condition broken that it cannot take and divert them to any other use. Your committee do not think the two sections are necessarily connected with, or dependent upon, each other. But, in their view, that is immaterial.

Section 8 raises three conditions: (1) The work of construction must be commenced within a certain time; (2) a certain amount of work must be done each year; (3) the whole work must be completed within a given time. If any of those conditions are broken, and so remain for one year, the United States may do any and all things necessary to insure a speedy completion of the road. The United States *may* incorporate another company, and, instead of granting lands, may grant a subsidy in money, guarantee the company's bonds, or do whatever may be

thought best. The committee are unable to see how all that can in any way affect the right of the Government to retake the lands; and if that right exists and is exercised, it cannot be a matter of concern to this railroad company what the Government may do, or can do, with the lands. Certainly the lands were not irrevocably and unconditionally dedicated to this particular company. The estate of this company is upon conditions, which, being broken, gives the Government a right to re-enter and take possession of the lands, and what may be, or can be, afterwards done with them cannot be of interest to the present grantee. In Greenleaf's *Cruise on Real Property* (vol. 2, pp. 44, 52) it is stated:

Where a person enters for a condition broken the estate becomes void *ab initio*; the person who enters is again seized of his original estate in the same manner as if he had never conveyed it away.

And that is the sum of the law as stated in all the books. These lands were granted to this company upon conditions, which have been broken, and now the Government proposes to re-enter and take possession. The company may deny the right of the United States to divert the lands to any use other than the construction of the road; but the United States may reply that they were the original owners of the land; they made the grant and created the conditions, are now in of their original estate, and that there is no person or power behind them to question or direct.

So far the argument has proceeded without reference to section 4, and the conclusion reached that the grant is a grant of so much land as an entirety, and that the condition as to the completion of the whole road is a simple condition covering the whole grant, and for a breach of which the grant may be forfeited. But it is claimed by the grantee that section 4 modifies and restricts the condition so that it does not necessarily apply as one entire, indivisible condition to the whole grant, but that whenever twenty-five miles of road are completed the condition is satisfied and discharged to that extent. If section 4 was not a part of the act—if it could be eliminated—there would be no room for doubt that the construction given the act by your committee is correct. According to the view of your committee section 4 in no wise affects that construction. Section 4 does not enlarge the estate granted, nor restrict the conditions upon which it depends. Neither the estate granted nor the conditions are affected by the provisions of that section. That section simply provides that whenever the commissioners appointed by the President shall report that twenty-five miles of road have been completed, patents "shall be issued to said company *confirming* to said company the right and title to the lands situate opposite to and coterminous with said completed section of said road." And afterwards, from time to time, whenever twenty-five additional consecutive miles shall be constructed, "patents shall be issued to said company *conveying* the additional sections of land as aforesaid," &c.

Those provisions are a stumbling-block in the way of some gentlemen. But it should be remembered that the "right and title" of the company to the lands do not depend on the patents, but on the grant. The attorneys for the corporation do not claim that the estate was in abeyance until patents were issued or "earned." They agree with the committee that the third section of the granting act conveyed the whole title and estate of the Government to the company, and that the patents, when issued, add nothing to the estate. The company cares nothing for the patents. It has never even applied for them to the greater part of the lands "earned" prior to 1878, and to which it was entitled to patents under the provisions of section 4. If the condition is performed the

title is just as good without patents as with them. Though section 4 speaks of "confirming" and "conveying" the land by patents, it is a misuse of terms. The patents do not "confirm" or "convey" the lands. The Supreme Court has repeatedly held that the words of the granting act passed every interest the Government had, and if that be so there was nothing to convey by patent. In *Whitney vs. Morrow*, 112 U. S., 693, the Supreme Court say:

If by a legislative declaration a specific tract is confirmed to any one, his title is not strengthened by a subsequent patent from the Government. That instrument may be of great service to him in proving his title, if contested, and the extent of his land, especially when proof of its boundaries would otherwise rest in the uncertain recollection of witnesses. It would thus be an instrument of quiet and security to him, but it could not add to the validity and completeness of the title confirmed by act of Congress.

Again, in *Langdon v. Hanes* (21 Wallace, 521) the Supreme Court uses this language:

In the legislation of Congress a patent has a double operation. It is a conveyance by the Government *when the Government has any interest to convey*, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights, because it also embodies words of release or transfer from the Government. In the present case the patent would have been * * * an instrument of quiet and security. But it would have added nothing to the force of the (Congressional) confirmation.

In the sense of being a convenient and customary evidence of title, the patents might be of value, but not in the sense of adding anything to the estate granted. To that extent your committee and the company are agreed.

But while it is admitted that the patents have only the value indicated, and is further admitted that section 3 passed the *whole* estate of the Government to the company, subject to certain conditions, it is contended that section 4 reaches over to the conditions raised by section 8, and changes what would otherwise be one entire condition (as to final completion), requiring entire performance, into a condition which may be performed in part. That construction, however, is not sound. First, comes section 3, which granted the estate; then comes section 4, which provides for issuing patents, not to convey title—for that has been already done—but as an evidence of title, or, if you please, as evidence of the fact that so far the work of construction has been completed; and then follows section 8, which declares—

*That each and every grant, right, and privilege herein are made, and given to, and accepted by said Southern Pacific Railroad Company, upon and subject to the following condition, namely: That the said company shall * * * * complete the main line of the whole road by the 4th day of July, 1878.*

It would seem there was very little room for construction here. This broad and sweeping condition was put into the act after the rights, whatever they are, conferred by section 4 had been granted; and, though conditions subsequent are strictly construed, there can be no logical rule of interpretation which can so enlarge the scope and meaning of section 4 as to entirely change the manifest purpose and effect of the condition.

In the view here taken of this grant that it is one entire grant upon one entire condition, the question of waiving the breach is not important, since it stands admitted that the road is not even yet completed.

If the views here expressed as to the legal aspect of this case are well founded, then the right to make this forfeiture exists. The only remaining question is whether the right ought to be exercised. That is

a broad question of policy, which your committee do not feel inclined, nor consider it necessary, to discuss at this time. Private right, whether corporate or personal, should be upheld with jealous care, for therein lies the safety of the state. But it is not thought by your committee that the restoration of this great domain to the people who were unwisely if not wrongfully deprived of it in the first instance would be in derogation of any honest private right.

Your committee recommend the passage of the following bill as a substitute for the bills referred to the committee:

A BILL forfeiting certain lands granted to the Southern Pacific Railroad Company (of California) by section eighteen of the act of Congress approved January twenty-seventh, anno Domini eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands granted to the Southern Pacific Railroad Company (a corporation organized under the laws of the State of California) by an act of Congress approved January twenty-seventh, anno Domini eighteen hundred and sixty-six, be, and the same hereby are, forfeited to the United States and restored to the public domain, except the right of way through the public lands and all necessary grounds for station-buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, and also all lands included within the limits of any village, town, or city site, and also, except any lands sold by the said Southern Pacific Railroad Company to and now in the possession of actual settlers, to an amount not exceeding one hundred and sixty acres to each settler, the land to be selected by the settler within one year, in case he shall have purchased in excess of one hundred and sixty acres, by filing a description of such selection at the proper land-office or with the Commissioner of the General Land Office.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following

VIEWS OF THE MINORITY:

The undersigned, members of the Committee on the Public Lands ling to agree with the report made by the majority on the bill (H. R. No. 148) to declare forfeited certain lands granted to the Southern Pacific Railroad Company by the act of Congress approved July 27, 1866, and amendments thereto, suggested by the committee, beg leave to submit to the House the following statement:

In December, 1865, the Southern Pacific Railroad Company was organized under the laws of California to construct, own, and maintain a railroad from some point on the Bay of San Francisco, &c., to the eastern line of the State of California, there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

At that time no grant of land had been made for a railroad up or near the thirty-second or thirty-fifth parallels of latitude. It was believed that such road or roads would be authorized and built, and it was the intention of the Southern Pacific Company to connect with such road or roads at the eastern boundary of the State, at whatever point it or they might enter California.

July 27, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast." (14 Stat., 292.)

The following are the sections of the act material to this inquiry:

SEC. 3. *And be it further enacted,* That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of

aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad or telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company confirming to said company the right and title to said lands situated opposite to, and coterminous with, said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness, as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on, as fast as every twenty-five miles of said road is completed as aforesaid.

SEC. 5. *And be it further enacted*, That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turn-outs, stations, and watering-places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron; and a uniform gauge shall be established throughout the entire length of the road; and there shall be constructed a telegraph line of the most substantial and approved description, to be operated along the entire line: *Provided*, That the said company shall not charge the Government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Atlantic and Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the legislature of any Territory or State in which the same may be situated, to form running connections with it, on fair and equitable terms.

SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad, and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereto, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two,

shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

SEC. 8. *And be it further enacted*, That each and every grant, right, and privilege herein are so made and given to, and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year, after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

Section 18 of said act, making a grant to the Southern Pacific Railroad Company, is as follows:

SEC. 18. *And be it further enacted*, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

In December, 1866, the Southern Pacific Railroad Company filed with the Secretary of the Interior its acceptance of said act. In January, 1867, the company filed with the Commissioner of the General Land Office a map of the line of its proposed road, commencing near the southern end of the Bay of San Francisco and ending at a point on the Colorado River near the 35th parallel of north latitude.

In March, 1867, the lands within the limits of the grant were withdrawn for its benefit by order of the Secretary of the Interior.

On the 25th of July, 1868, Congress passed an act (15 Stat., 187) extending the time for the construction of the first section of its road, &c., as follows:

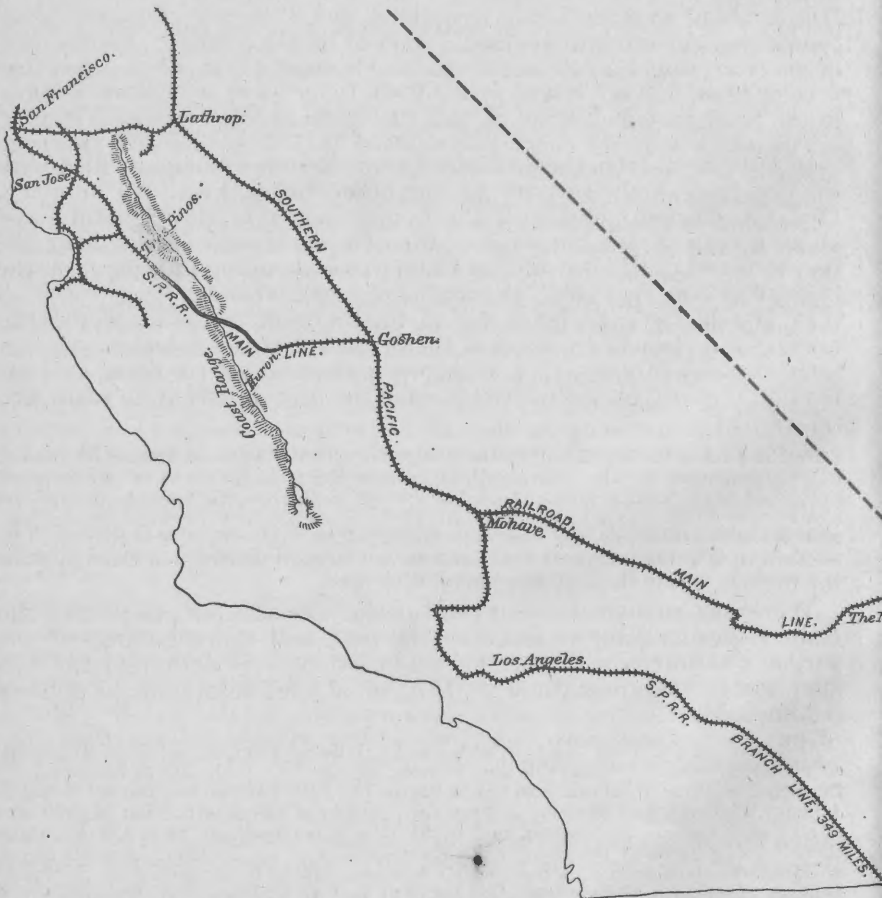
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Pacific Railroad Company of the State of California shall, instead of the times now fixed by law for the construction of the first section of its road and telegraph line, have until the first day of July, eighteen hundred and seventy, for the construction of the first thirty miles, and they shall be required to construct at least twenty miles every year thereafter, and the whole line of their road within the time now provided by law.

There was some question at the Interior Department concerning the map of the company's road, filed in 1867, and the regularity of the withdrawal ordered thereon; but all questions were determined by the adoption by Congress, June 28, 1870, of a joint resolution, as follows (16 Stat., 382):

Be it resolved, &c., That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior, on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners, to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said

Secretary of the Interior to cause patents to be issued to said company for the sections of lands coterminous to each constructed section reported on as aforesaid to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.

The company, complying with the law, each year constructed the required portion of its road. On July 4, 1878, the time fixed for the final completion, the road was completed and accepted from San José to Tres Pinos, 50 miles, and Huron to Goshen and Mojave, 182 miles; in all, 232 miles. From Tres Pinos to Huron, about 85 miles, it was not then, and is not now, constructed. This unconstructed portion crosses the Coast Range, over very high mountains, through which no practicable pass can be found, and where it would be next to impossible to construct a road. Around this gap, however, the company has such connections as make its line continuous, and the few people interested are perhaps as well served as they would be by a road over the mountains.



From Mojave to the Colorado River (the Needles), about 240 miles, the road was not built "in time." Under the law the road was required to be so constructed as to connect with the Atlantic and Pacific Road near the eastern boundary of California. The construction of the latter road had ceased at a point 1,200 miles east of the California line, and its further construction was apparently abandoned. In the absence of some prospect of a connection from the east, the construction of the road from Mojave to the Colorado River, crossing a desert, without population or material for traffic, would have been without object, a needless expenditure of money, without return to the investors, and without advantage to the people or to the United States. As soon as it became apparent that the Atlantic and Pacific Road would be built, the Southern Pacific Company commenced the construction of the road from Mojave, and it was completed to the Colorado River (the Needles) before the Atlantic and Pacific Railroad reached that point.

We here call attention to the accompanying map the better to show the lines of the Southern Pacific. It will be seen, as heretofore stated, that that part of the road across the mountain, from Tres Pinos to Huron, about 85 miles, is not completed, and it is proper to add that, owing to engineering difficulties, it had to be abandoned. All the rest of the road, from San Francisco to the Colorado River, at the Needles, is completed, and all was completed "in time," save only from Mojave to the Needles, some 242 miles, and the whole of it is being operated.

The majority of the committee reached the conclusion that this is a grant *in presenti*, with conditions subsequent, for the breach of which the grantor would have a right to declare a forfeiture.

Section 8 of the granting act provides that the grant is made and given to and accepted by the company upon certain conditions, viz, that it shall commence the work within two years, complete a certain number of miles per year, and construct, equip, furnish, and complete the main line of the whole road by July 4, 1878. And section 9 prescribes, as a further condition made by the United States and accepted by the company, that upon a breach of the conditions, the same continuing for more than one year, "then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

The majority report contends that section 9 is in no way repugnant to section 8, but while embracing all that is included therein, and to that extent cumulative, is also, in connection with implied conditions in section 5, a declaration of further and additional conditions subsequent, for breach of which Congress may interfere.

We do not so view it. It is clear, from a careful reading of sections 8 and 9, that they are to be taken together, and without reference, for further conditions, to other portions of the act. Section 8 for the first time names conditions prescribed and accepted, and section 9 names as a "further condition" prescribed and accepted, that if there be a breach of any of the conditions (in section 8) Congress may do that which will insure a speedy completion of the road. These two sections must be read together. Section 9 must refer to the conditions named in section 8, which relate altogether to the completion of the road, because, in the latter, Congress reserved the right to insure the completion of the road if the conditions were not complied with—that is, constructed within a certain time, as prescribed by section 8. If section 8 stood alone, it might be safely admitted that Congress might declare a forfeiture in a bill providing for a judicial ascertainment of the facts and determination of the law. But, notwithstanding the views expressed by the majority,

we hold that section 9 is a direct and absolute qualification of the inherent powers of Congress in relation to forfeiture. It does not say that the land shall revert; it does not provide for forfeiture; it only provides that Congress may insure a speedy completion. This language is not meaningless. In previous grants the condition was clearly set forth, as well as the penalty for a breach.

This construction of the sections under consideration seems not only strengthened, but confirmed, by the language of section 20, evidently applying to the road and grant under consideration as well, and as much, as to the Atlantic and Pacific, namely:

SEC. 20. *And be it further enacted*, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, amend, add to, alter, or repeal this act.

Thus the "object of the act" was not to make a gift or confer a favor, as is sometimes contended, but, in plain language and in terms, it was "to promote the public interest and welfare, by the construction of said railroad and telegraph line," &c.; and to that end Congress might "at any time add to, alter, amend, or repeal this act," but in so doing, should have "a due regard for the rights of said * * * railroad company." The railroad and telegraph line were in any event to be built, "to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes," if not by the company, then by the Government. Thus the "object of the act" was to be effected, and if Congress should find it necessary and proper to intervene, it should be with a "due regard to the rights of the company."

In this connection we here quote and adopt the language of the minority in their report to the Forty-eighth Congress, first session, on the subject of the forfeiture of the land grant to the Northern Pacific Railroad Company (Report 1256):

If, however, we concede—which we do not—that the grant was of an estate on condition, for the breach of which a forfeiture could have been declared, does that fact justify the report of the committee? We hold that it does not, for the reason that, on well-settled principles both of law and equity, the Government has waived the right of forfeiture, if it ever existed. The thing which remains with and resides in the grantor of an estate *in present*, with condition subsequent, is in no sense property or estate, and is not the subject of sale or transfer. It is a thing in action, dependent upon a contingency, the happening of which, the breach of the condition, is necessary to raise it to the dignity of a right, while the grantor takes an estate which he may sell or mortgage, and which will pass as an inheritance, subject only to the condition. If, therefore, the grantor does an act inconsistent with that right, while in either the inchoate or perfect state, it is thereby waived or lost. Mere silence or inaction, when it is not the duty of the grantor to speak or act, is not a bar, but, *eo converso*, when conduct or silence is misleading. (*Nicoll vs. New York and Erie Railroad Company*, 12 N. Y. Rep., 137; *Marks vs. Marks*, 10 Modern; *Brooks vs. Martin*, 43 Ala., 360.)

We concede that this Government has the physical power to disregard the right and to do anything it pleases, but such never has been its course in dealing with its citizens, and so long as just men and enlightened statesmen control its councils and tribunals, it never will be administered in any of its departments upon the monarchical principle that, like the king, it can do no wrong, and is bound by no obligation but its own sovereign will. This, then, being a Government of law, it will ever set a good example and bind the citizens more strongly to it by itself obeying the law.

The position of the minority is this:

Where a company has constructed a road, or any section of it, in manner required by the granting act, at any time before proceedings are commenced for forfeiture, or

to annul the grant, that such company is entitled to the amount of land that such constructed section would entitle the company to, had the whole road been constructed in accordance with the terms of the grant, and this is what we mean by earned lands.

And more particularly is this so where the granting act contains a provision or provisions similar to those found in section 4 of the act under consideration.

The majority of the committee in their report evidently find much difficulty with this fourth section, and labor hard, and, as we think, vainly to overcome it, and seem to find the solution of their troubles in section 8. The intimation is, that because section 8 comes after section 4, it must be held to construe it, and limit what would, but for section 8, be its obvious meaning.

It is familiar law, that of two acts relating to the same subject the last is held to govern, to be the latest expression of the legislative will; but, in considering different sections of the same act, if there is argument or doubt as to the legislative meaning, that is to be gathered from the whole act. Now read sections 4, 8, 9, and 20, and are we not forced to the conclusion that the prime object in the legislative mind was the building of the road, and that section 4 was inserted to forward this object, directly to aid the company, by enabling them to obtain money by a sale of the lands as the road progressed, and to that end that they should have absolutely the granted lands coterminous with every completed section of twenty-five miles. Courts will always, when possible, construe statutes so as to give them effect and make them operative.

Now, if the fourth section is not to have the force and effect contended for by the minority, then it has no business in the act. As further strengthening these views we refer to joint resolution of June 28, 1870 (16 Stat., 382), quoted above, in which the language of the fourth section is substantially repeated, and four years after the original grant was made.

In the case of *Van Wyck vs. Knevals* (16 Otto, p. 368), the Supreme Court, in construing a land grant containing a section, similar to this fourth section, used the following language:

Assuming * * * that the company's proposed road was not entirely completed, the fact remains that the company constructed a portion of the proposed road, and that portion was accepted as completed in the manner required by act of Congress.

Patents for some of the adjoining sections were accordingly issued to the company, and a right to all of them, not specially reserved by the condition of the grant, vested in it.

So far as that portion of the road which was completed and accepted is concerned, the contract of the company was executed, and as to the lands patented the transaction on the part of the Government was closed, and the title of the company perfected. The right of the company to the remaining odd-numbered sections adjoining the road completed and accepted, not reserved, is equally clear.

If the whole of the proposed road has not been completed, any forfeiture consequent thereon can be asserted only by the grantor, the United States, through judicial proceedings, or through the action of Congress. (*Schulenberg et al. vs. Harriman*, 21 Wall., 44.)

The bill reported by the committee proposes to forfeit the entire grant, as well the lands adjacent to such portions of the road as were completed in time, as those adjacent to portions completed out of time, or never completed at all, saving only so far as the railroad is concerned, the right of way and its incidents, through public lands, and city, town, or village sites, and allowing to actual settlers 160 acres of any lands bought from the railroad company. All acreage in excess of that bought of the railroad company and honestly paid for by actual settlers, and every acre bought by persons other than actual settlers, is to be forfeited, regardless of the rights of persons or corporations. Surely

such a provision will not be upheld by the courts as to such of these lands as are coterminous with such portions of the road as were completed "in time;" neither do we believe it would be as to lands next the road, completed and accepted "out of time."

We hold this to be a grant of lands *in presenti*, with a condition that the road shall be constructed, qualified by this: that as the road is constructed, in its divisions, and is accepted by the Government, that construction and acceptance terminates the condition in reference to the lands embraced by the constructed portions of the road.

This condition is lifted over each division of this road as the Government commissioners report thereon, for the law requires that patents shall issue to assure its title. Now, how could the Government issue patents to the lands earned upon each twenty-five miles division of the road for the purpose of assuring the title, and yet insist if the entire road was not finished from end to end, the whole grant was still subject to forfeiture.

Under the terms of this grant the road was to be completed in sections and to be received in sections, and patents were to be issued for the sections thus completed and received.

How, then, can it be held that the grant is upon the condition "that if the whole of the road is not completed by the 4th day of July, 1878, that the entire grant became forfeited, and that the Government may have re-entry or declare a forfeiture as to the whole grant and recover the original estate"?

This separation of the work and of the grant into sections of twenty-five miles completely severed the contract and destroyed its entirety. The company was not to await completion of its road before receiving patents, but they were to be issued in installments as the road progressed.

In *Packet Co. vs. Sickles*, 10 Howard, 419, Grier, J., says:

If the defendants had agreed to pay by installments at the end of every week or every twenty-seven weeks, doubtless the plaintiffs could have sustained an action for the breach of each promise as the breaches successively occurred.

The same principle governs here.

But mark the language used in section 4: "That whenever said * * * railroad company shall have twenty-five consecutive miles of *any portion* of said railroad and telegraph line ready for use," then the President was to appoint three Commissioners, and if upon their report the law was found to have been complied with for that twenty-five miles, patents should be issued to said company "*confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road,*" and so on from time to time, whenever twenty-five additional consecutive miles should be completed.

For what purpose were patents to issue? For the purpose of "*confirming to said company*" the right and title to each twenty-five miles, as completed, of "*any portion*" of said road. Now, when all this has been done, and done in time, the lands patented to the company, and by the company deeded to individuals, and by these individuals resold, and now, in many cases, in the hands of third and fourth parties, on which are farms in a high state of cultivation, in many cases valuable improvements, nevertheless the majority propose to forfeit (confiscate, we think, would be a better word) every acre, regardless of the rights of individuals or of the company, allowing, as a mere matter of grace and favor to the actual settler, 160 acres. This settler may have been a provident man, and from small beginnings may now own a thousand acres, which he fondly regards as an investment for his old age and the means of provision for his children. "No matter," say the majority;

"select out the 160 acres which we graciously allow you, and be thankful that we do not take all!" In case this third or fourth party is not an actual settler, why take all any way; he shall have nothing.

But if the purchaser or third or fourth party happens to own town, city, or village property, *he* is all right; under the bill reported by the majority *he* is to be protected to his last cent. He may have speculated and made his thousands—he may keep all his gains; but if he has bought lands in the country, "away from city, town, or village site," that shall be taken away, and the honest settler who has been thoughtless enough to invest his hard earnings in the enlargement of his farm beyond 160 acres shall lose all such enlargement or increase.

Usually these "city, town, and village sites" along great railroad lines are located by the companies—"placed where they will do the most good"—swell the corporate gains, and add to their profits. Largely the companies own these sites and control them. The majority, therefore, favor the railroads and the speculators at the expense of the poor settler and hard-working farmer!

It will be borne in mind the bill reported by the majority makes no distinction as to forfeiture of lands situated "opposite to and coterminous with" such sections of the road as were completed "in time" and those "completed out of time;" and in this, we think, they are consistent, for if one class of the lands should be forfeited, so should the other; the minority hold that as to the right of forfeiture (if one exists, which in its technical sense we deny) lands coterminous with any portion of the road completed in sections, according to law, before action on the part of the Government looking to resumption or reclamation (of the lands), are in the same condition as to the power of the Government over them, whether the portions of the road to which they are adjacent were completed "in" or "out of time," always observing that good faith has been maintained and no fault is imputed to the road, save only that some portions were not completed in time and others not completed at all, the more especially when, as in this case, the whole connection between the termini has been made and the road operated from point to point substantially as contemplated by the granting act. This argument, of course, refers only to lands coterminous with sections of the road completed as above. As to the incomplete portion, when Congress comes to act, there can be no question; no one can contend for an instant that the road can have the benefit of a land grant along portions of the line where no road has been built by the grantee, corporation, or its assignee.

So far as the road has been completed, whether before or after July 4, 1878, there is no breach of which the Government can take advantage at this late day. It is well known to Congress and to the Land Department that the entire road was not completed at the date fixed by the eighth section of the act. As to the portion then incomplete the company was in the power of Congress, which might have conferred the grant upon some other company, or done some other thing which would have resulted in the completion of the road. But Congress did nothing. Having permitted the company to go on and practically complete the road without any action whatever looking to a resumption of the grant or enforcement of the conditions, it is too late for the proposed action.

In the familiar case of *Schulenberg vs. Harriman* (21 Wall., 44), the court was dealing with a grant containing a condition subsequent in these words:

If the road is not completed within ten years, no further sales of the lands granted shall be made, and the lands unsold shall revert to the United States.

And in that case, construing that language, the court held, notwithstanding the road was not built within ten years, that the title to the lands granted remained in the State until some legislative assertion of ownership of the property or breach of condition was made by the United States. It must follow as to the grant to the Southern Pacific Railroad Company, which provided for no forfeiture and for no reversion of the lands to the United States, and to the extent to which the road is now constructed, that the title remains in the company. The only breach of condition to justify any interference by the United States was the failure to complete the whole road by July 4, 1878, and the only action that could have been taken under the terms of the grant would have been to insure the completion of the road. So far as built the road has been constructed by the company without interference, and to that extent its title is complete and beyond the reach of legislation or executive action.

And this is the only consistent conclusion in view of the other provisions of section 4 of the granting act, heretofore quoted and discussed.

As we have seen, the whole road from San José to the Colorado River (except from Tres Pinos to Huron) has been completed. From San José to Mojave (except as above) it has been examined by commissioners, reported to and accepted by the President, and patents have been ordered to issue. From Mojave to the Colorado River it has been examined by the commissioners duly appointed and reported to the President, whose acceptance thereof is only withheld because of this proposed legislation.

We conclude that to the extent indicated there is neither reason nor right in attempting legislation interfering with this grant. The road has been built without intervention by Congress, the courts, or the Executive. The company has thereby acquired rights which cannot be set aside if we would, and should not if we could. The road is constructed; its trains are running; the purpose of the grant is fulfilled; patents have been issued, and the granted lands are in possession of not less than 100,000 inhabitants; and good faith and public policy alike dictate that patents should be issued for such tracts remaining as come within the grant.

So far as the road is now constructed the lands have been earned. The proposition to attempt, by legislation, to take from the company that to which it has a vested right seems to us unjust and unwarranted. Such action is not demanded by any considerable number of people anywhere, and its effect would be to stimulate and encourage the few, who, in the spirit of communism, would destroy alike individual and corporate rights.

In accordance with these views, and in consonance with what we regard as both the law and the equity of the case, we report the accompanying bill, and ask that it be printed, as we shall offer it as a substitute for the bill of the committee.

H. S. VAN EATON.
H. B. STRAIT.
ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to the Southern Pacific Railroad Company, and to repeal in part section 18 of the act approved July 27, 1866.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in consequence of the failure of the Southern Pacific Railroad Company to construct its road from Tres Pinos to Huron, in the State of California, a distance of eighty-five miles, the United States resumes the title to the lands granted to said company coterminous with said eighty-five miles, and so much of the act making the grant of lands to said Southern Pacific Railroad Company as applies between Tres Pinos and Huron is hereby repealed, and the said land is resumed as a part of the public domain.