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THE COMPANY PLAYED ROUGH
THE HARD SIDE OF THE BIG FOUR
AND THE
CENTRAL PACIFIC R. R. CO.

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Central Pacific business practices have been a subject of lively comment over the years. The Big Four! Ruthless robber barons of the first order? Or merely "*skillful, prudent and economical men*" playing the game according to the rules of the times? Interpretations have swung back and forth between these viewpoints, as historians and writers of a particular time have followed the human bent to challenge or revise the views of their predecessors. Modifiers of the Central Pacific image, however, have not always based their own views on actual facts.

This issue of *Golden Notes* presents a selection of hitherto unused materials on the business practices of the Big Four. All items come from court records in the State Archives. Sentences not within quotation marks are by W. N. Davis, Jr. and George Hruneni of the Archives staff.

While recognizing the tremendous achievement of Stanford, Huntington, Hopkins, and Crocker in putting the railroad over the Sierra and linking California with the East at Promontory, one may at the same time look closely at the methods they employed in achieving that end. The more or less local incidents described in the pages below are representative of the local problems that the C.P.R.R. faced. It must be admitted that in meeting these problems, the Central Pacific at times was wont to act with a hard, heavy, and exceedingly rough hand.

A Farmer's Fight with the Central Pacific Railroad

IN 1864 Reuben Butterfield, a Placer County farmer, brought suit against the Central Pacific Railroad asking \$2,000 damages and costs and a permanent injunction against trespassing.

Butterfield's complaint in the 14th District Court at Auburn reads in part:

“On the first day of July, A.D. 1863, the defendant [the Pacific], with force and arms, entered upon said tract of land, broke down, destroyed and removed therefrom plaintiff’s board fence inclosing the same; dug up and destroyed plaintiff’s crops of wheat, oats, barley and hay standing and growing thereon; dug up and broke down plaintiff’s fruit trees and timber standing and growing thereon; dug up and destroyed plaintiff’s garden vegetables growing thereon, and dug up, for a space of eight rods wide and one hundred and sixty rods long, on said land, the surface of the soil; and from the time aforesaid, hitherto and until now, have continually, with force and arms, continued the same wrongs and injuries, and have kept said fence torn down and prevented plaintiff from cultivating or using said land; and also, from day to day, continuously during all of said term, have tread upon, passed over and dug up said soil.

“Plaintiff further avers, that by defendant’s said acts his said land has been kept uninclosed, so that cattle, sheep and hogs have entered on the same and eaten up and destroyed his other crops, and injured all of his said tract of land by trampling on the same and tearing up the soil thereof.

“Plaintiff further avers, that defendant threatens that they will continue hereafter, from day to day, said trespasses, and that already defendant has destroyed five acres of his said lands, so as to render it valueless; and that defendant threatens that plaintiff shall not repair or rebuild his fence, and that plaintiff will be unable to cultivate his land hereafter unless defendant is enjoined by this Court from the commission of said trespasses.”

Testifying at the trial, Butterfield stated,

“I tried to keep the fences up to keep the stock off my land, but as often as I would repair the fences they would be immediately torn down again by the men at work in grading and working upon the railroad on my land; these men not only graded the railroad track through my inclosure, but did a great deal of hauling of various materials, rock, timber, etc., over my land in various places in the vicinity of the railroad line, in and about making the road, and in consequence it became a sort of public thoroughfare through my ranch along in the vicinity of the railroad track, and in this way the fences were kept torn down for considerable distances on each side of the track; some times the

fences would be torn down within an hour after I had repaired them, generally I would not see it done, it would be done after I had left, but on one occasion it was done by Leland Stanford before my eyes; he was then President of the defendant, the Railroad Company; this was during the Winter of 1863-4, while the Legislature was in session; he had the Legislature up on the line of the railroad track on an excursion, and he was in a carriage at the head of the Legislative procession; I heard him order some men to tear the fences down on the line, which I had shortly before put up, which they did and the carriage train passed on through; I suppose I must have made repairs upon and rebuilt part of my fence so torn down as many as thirty or forty times, and perhaps more."

The company contended that the premises described in the complaint were a part of the public lands at the time of the passage of the federal Railroad Act of 1862; that the company was not liable for the negligence of the contractors who had control of the work.

The jury found for Butterfield who was awarded damages of \$1,700 and \$163.65 costs, which were later reduced to \$1,000 and costs.

Source: "Transcript on Appeal," *Reuben Butterfield vs. Central Pacific Railroad Co. of Cal*, 14th Judicial District, 1868, No. 15683, Supreme Court RG, State Archives.

Ejection of Passenger who tendered Greenbacks for Fare

IN the morning of January 29, 1867 D. C. Tarbell boarded the Central Pacific regular passenger train at Auburn bound for Colfax. As he later described events,

"I got on the hind car of the train; there were from twenty to twenty-five passengers in the car, some ladies and men; cars left very shortly, perhaps in half a minute after I got on; I did not have time to procure a ticket before the cars left the station; I remained in that car, took a seat, rested, and said nothing to

anyone; my seat was five or six from the hind end of the car; was duly sober; had drank nothing that morning; I behaved myself with entire propriety until I was ejected from the cars; the train went on; saw Denison, who was Conductor on defendants' train of cars, enter the car at the forward end; knew him; he was Conductor; I could not tell how far train had run from Auburn before Denison came in; I should judge two or three miles; he commenced to collect fares from the front end of the cars; cannot state how many fares he had collected;

He said to me, '*Your fare, sir.*'

I said, '*I want to go to Colfax.*'

He said, '*Two dollars.*'

I had greenbacks; I held them out to him; he turned them over with his fingers;

He said, '*We don't take that kind of money.*'

I said, '*I had nothing else to pay him.*'

He said, '*He would have to stop the cars and let me off.*'

I told him, '*I should not get off unless he put me off.*'

He touched the bell rope and the cars stopped; he took hold of my collar and kept hold until he got me to the back end of the car and shoved me off; Fogarty [the Roadmaster for the operational length of the road] was on the back end of the car; Denison gave me a jerk two or three times going to the door; I held on to the seats to prevent being put off; after the cars started I jumped on to the lower step of the hind car, and asked Fogarty not to say anything; Fogarty called Denison, and he came back and took hold of my hand and put me off again; I did not fall down; it was a pretty rough place [a fill on the road about ten feet high]; I grabbed for a rock and made a demonstration to throw it, but did not; I cannot judge how far I had been; I think four or five miles; I footed it back to Auburn."

Tarbell brought suit in the 14th District Court for \$5,000 in

damages for the ejection.

The Central Pacific contended that U. S. Treasury notes were not legal tender and that the company was not obliged to take such notes.

In a jury trial, Tarbell was awarded \$1,000 damages and \$82.80 costs.

A motion for a new trial on grounds of alleged errors in law and an excessive verdict, was denied by District Judge T. B. McFarland who declared,

“To stop a train of cars, and in the presence of the other passengers to forcibly and wrongfully eject a man therefrom, and leave him in a lonely spot by the wayside, is certainly to do him an injury which cannot be compensated by paying him what it will cost him to hire a carriage at the nearest town he can get to to take him home. ”

The Railroad appealed the judgment. Pronouncing the verdict “*greatly disproportionate to the injury proved,*” the Supreme Court held that a new trial must be granted unless Tarbell elected, within fifteen days, to take judgment for \$100.

Source:

“Transcript on Appeal,” *D. C. Tarbell vs. The Central Pacific R.R. Co.*, 14th Judicial District, Placer County, 1867, No. 16822, Supreme Court RG, State Archives.

Railroad Challenges County Tax Assessments

IN the summer of 1866 the Board of Equalization of Placer County re-valued the 40-1/2 miles of Central Pacific roadbed lying within Placer County. The valuation of the railroad’s property was increased from the \$243,000 to \$607,500. A tax of \$15,491.25 for both state and county purposes was assessed thereon, collectible by the county.

The railroad refused to pay the tax increase and the county brought suit for collection. In the trial the Railroad argued that the

Board of Equalization of Placer County had no jurisdiction over the subject matter and that therefore the additional tax was illegal. The county, however, won a judgment for the \$15,491.25 tax, plus \$2,323.68 in District Attorney's fees.

The railroad appealed the case to the State Supreme Court but was unsuccessful in its efforts to have the judgment reversed.

Because the valuation of the 40-1/2 miles of roadbed in Placer County was in issue, the testimony of the trial dealt with construction costs in considerable detail. The complex realities of railroad building in that day may be glimpsed from the trial record. Stanford, Hopkins and Crocker as witnesses of course played down the value of the roadbed.

"Wm. J. Lewis being duly sworn, says:--I reside at San Francisco; have been a civil engineer for thirty-eight years, and for eight years in California; I have been connected with the survey and construction of railroads in Pennsylvania, New Jersey, New York, and South Carolina; I know the Central Pacific Railroad; I have examined the road at several points; it is well laid and constructed; the rails are of superior quality; the superstructure is of good quality. . . .

"Q. What is the cost of the superstructure of this road?

A. The rails are 94,28-100 tons per mile, which at \$75 per ton would make the cost per mile \$7.071; chairs and spikes cost per mile about \$500; about 2,200 ties per mile cost \$250; transportation and laying down per mile, about \$750; total cost, \$9,571--including side tracks, say \$10,000 per mile.

. . .

Q. Have you examined, and can you estimate the cost of grading, bridging, masonry, etc., from Roseville to Colfax?

A. I only saw the line passing in on the train, and cannot make even an approximate estimate--but I can say, generally, that the work is heavy and very expensive. I should think the graduation, bridging and masonry could not have cost less than an average of \$50,000 per mile. This opinion is formed by hastily riding over the road.

Q. Have you seen similar roads, over similar countries, of the cost of which you have knowledge, with similar features as to cost of graduation, bridging and mason work, and if so, do you base your statement upon such knowledge and observation?

A. I have never seen any other road on which there was a continuous length of such work for so many miles, involving so

heavy a cost for graduation, masonry and bridging; I am familiar with the cost and character of railroad work, and I base my opinion by comparing, as near as I could by the hasty view I had, the character of the work on the road as compared with heavy work on other roads. I have stated all I know about the surroundings of this work.”

“Leland Stanford, being sworn, says the superstructure and road bed of this road is worth about \$6,000 per mile, taking the cost of the materials and their depreciation into consideration.

Cross—Examined by complainant: I am President of the company; the superstructure consists of the iron, ties, chairs and spikes; the road bed is a bed of broken rocks, gravel, or other materials, in which the ties are imbedded; it is made after the grading is completed, and is about the length of the ties in width, and about a foot deep; the cost of the superstructure and laying it down is about \$10,000 per mile; the cost of the grading, masonry, bridging material, etc., is about \$75,000 per mile; it cost \$200 to \$300 per mile to make the road bed; the road bed is not as wide as the grading; it is thrown up after the grading is done; the cost of grading does not add to the value; the franchise is worth as much less as the cost of grading amounts to; the value of the franchise diminishes according to the cost of construction; the part of the road on the plains is most valuable—as it is nearer Sacramento—is nearer level and has less grading; an ungraded line of railroad would not sell for much; in giving the value of the superstructure, I did not include the franchises—that is the right to operate a railroad, and other rights, such as its being a Government road and the right to form a part of the Pacific railroad, connecting at its eastern end with the other part of the Pacific railroad, that part of the road between Sacramento and Roseville is most valuable, because it has more business.”

“Mark Hopkins sworn, says:—I know the road in question; its road bed and superstructure, and their value; I estimate them at about \$6,000 per mile.

Cross—Examined: By superstructure I mean the iron, ties, chairs and spikes; the road bed is the bed on which the track is laid, which has cost from \$200 to \$400 per mile; I am the Treasurer and a Director of the Company, and have been since its organization; this 40-1/2 miles cost below \$75,000 per mile for graduation, masonry, etc. the superstructure cost between \$9,000

and \$10,000 per mile; disconnected from the rights, privileges, and franchises, I should not value the road at more than \$6,000 per mile; these franchises, arise under the Pacific Railroad Acts of Congress and the laws of this State; the Acts of Congress give the Company the right of way over the public lands, and certain lands and timber; if I had not the subsidies and the means to extend the road, I would sell it quickly for \$6,000 per mile if it was mine; if the road was mine and there were no liens on the road, and I had not the money to extend it, I would not consider it of much value; if I had the means to extend it I would consider it valuable, but I could not estimate its value; any estimate I could make would be purely speculative.”

“E. B. Crocker sworn, says:—I am acquainted with the Central Pacific Railroad; known it since the formation of the Company; I think Mr. Lewis’ statement of the cost of the material used in the construction of the road is correct, except, perhaps as to ties, which I think should be about \$1,100 instead of \$1,250; the land on which the road is built belongs to the United States, or nearly all of it; the Bear River Company have patents for several tracts of land over which, about two miles of the road passes at the head of Auburn Ravine; the title to all the rest, I believe still remains in the United States, or the State; the United States sells its public lands at \$1.25 per acre, in greenbacks, which would be about ninety cents in gold; the earnings of the railroad have not paid expenses any year—that is it has not paid the interest on bonded debt, taxes, repairs, and operating expenses of the road; 34-1/2 miles of the road in this county is incumbered with a seven per cent gold bond, at the rate of \$30,000 per mile; the interest on which is \$210 on each mile annually; then there is on this 40-1/2 miles in this county a bonded debt of \$48,000 per mile six per cent gold bonds; there is also \$1,500,000 of seven percent gold bonds on the whole road in the State, which would be about \$10,714 per mile, and which for the 40-1/2 miles would be \$433,917; the State pays the interest on these last bonds; then there is under the Pacific Railroad Act, a lien which the Government holds for \$48,000 per mile, six percent currency bonds; the Company sets apart annually \$50,000 as a sinking fund to pay the principal of the State aid bonds when due, and another \$50,000 to pay the principal of the \$1,500,000, seven percent bonds; I don’t consider the cost of construction has anything to do

with the valuation; the Company does not own the land on which the road is built, but merely a franchise or right of way for two hundred feet on each side of the track; I think this land might be worth \$1.00 an acre as land; the superstructure is worth just what the material can be sold for when taken up; the value of the material—that is the rails, ties, chairs and spikes, are diminished twenty percent below cost in putting down; the rails have to be bent and curved, and the spikes are bent and ties injured in putting down; then the material is continually wearing out and giving way, and this depreciation is estimated at about ten percent per annum—that is, it wears out in about ten years, and has to be rebuilt from time to time as it gives out; so that in about five years from the time the road is built, the material is not worth more than fifty percent of its original cost.”

Source: “Transcript on Appeal,” *The People, etc., vs. The C.P.R.R. Co., et. al.*, 14th District Court, Placer County, 1867, No. 17220, Supreme Court RG, State Archives.

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