

**TESTIMONY TAKEN BEFORE THE JUDICIARY
COMMITTEE OF THE SENATE OF CALIFORNIA
IN CONSIDERING ASSEMBLY BILL NO.
10, CONCERNING THE REGULATION OF
RAILROADS, 25TH (EXTRA) SESSION OF THE
LEGISLATURE OF COLIFORNIA, APRIL, 1884**

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CALIFORNIA COMMITTEE ON JUDICIARY

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TESTIMONY

TAKEN BEFORE THE

Judiciary Committee of the Senate

OF CALIFORNIA.

IN CONSIDERING

Assembly Bill No. 10, concerning the Regulation of Railroads,

(Generally known as the Barry Bill.)

Twenty-fifth (Extra) Session of the Legislature of California, April, 1884.

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SACRAMENTO:

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1884.

REPORT.

On the fourth day of April, A. D. 1884, the Senate of California referred to the Judiciary Committee of the Senate, the following bill, which had passed the Assembly:

[AN ACT TO PREVENT DISCRIMINATIONS AND ABUSES BY RAILROAD CORPORATIONS.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. All railroads built or owned by corporations organized under the laws of the State are public highways, over which all persons are entitled to transportation for persons and property on equal and impartial terms. All roadway and right of way acquired by such companies is for public use. All persons and companies engaged in operating any such road, or in transporting freight or passengers over the same, or which shall hereafter operate or engage as aforesaid, shall forward, move, and carry impartially for all persons offering freight to be transported or moved, without discrimination, preference, or favor to one over another, in price, dispatch, speed, or accommodation of any kind, except as herein provided. All freight shall be dispatched and forwarded in the order in which it is received or tendered for transportation (except that a preference may be given to perishable articles and to express matter and fast freights), and equal and similar facilities, not inferior to any in use January first, eighteen hundred and eighty-four, shall be extended on like terms to all connecting transportation lines, whether by land or water, in the receipt and delivery of goods, exchanging cars, making connections by rail, and all other arrangements for expediting and facilitating the receipt, transfer, transportation, and delivery of freight.

SEC. 2. All persons and companies mentioned in the first section of this Act shall at all times keep posted in a conspicuous place, accessible to the public, at each of their stations and offices, a printed table or schedule, of all rates of freight and charge in force for transportation between all points and stations to or from which they carry, and shall furnish (for examination) a printed copy of such table or schedule to all persons demanding the same. Such rates shall be equally available to all persons demanding transportation for person or property over said road, or any part thereof, without discrimination or favor to any, as provided in section one hereof. All discounts, rebates, special contracts, special rates, and other devices for charging more or less than such published rates, are forbidden; *provided*, that a uniform discount (to be established and published as aforesaid) for payment in advance, or for prompt payment, may be made, and different rates may be charged for express matter, fast and slow freights, and for carload lots, and lots under a carload; all such rates and discounts to be available to all applicants on equal terms.

SEC. 3. All railroad corporations must at all times maintain all their track and other structures in good and sufficient repair and in a state of complete efficiency for the purposes for which they were constructed or adopted. Any such track or structure, decayed, destroyed, or removed must be diligently replaced or restored to as good or better condition of usefulness and efficiency as before such decay or removal.

SEC. 4. No railroad corporation organized under the laws of this State is permitted to accept any charter or corporate franchise from any other Government, State, or sovereignty; and no corporation organized under the laws of any other Government, State, or sovereignty is permitted to operate any railroad or carry by rail within this State.

SEC. 5. Section four hundred and one of the Civil Code does not apply to railroad corporations formed by the consolidation of two or more companies previously existing; but the term of the existence of corporations so formed shall not extend beyond that of any of the corporations entering into the consolidation.

SEC. 6. On the expiration or forfeiture of the charter of any railroad corporation, its road and appurtenances and right of way acquired by it, remain vested in the people of the State

for public use. Its other property shall be sold, and the proceeds, after payment of its debts and liabilities, divided among its stockholders.

SEC. 7. Any railroad corporation violating the provisions of sections one, three, or four of this Act, shall forfeit its charter and corporate privileges, and shall be adjudged to have incurred such forfeiture and to be dissolved, in an action on behalf of the people of this State, to be instituted by the Attorney-General. Any officer, agent, or servant of any railroad company, who shall take part in the making, carrying out, or enforcing of any contract or agreement for railroad transportation in violation of the provisions of this Act, or in collecting charges, or paying, or allowing discounts or rebates forbidden thereby, or who shall directly or indirectly enter into any agreement or undertaking, or give any orders or directions for, or consent or ratification to the carrying of freight on terms in any respect different from those prescribed in this Act, or further making of any discount or rebate hereby forbidden, or for violating the provisions of this Act in any particular, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not less than thirty days nor more than six months.

SEC. 8. Rates of freight or fare adopted by the Board of Railroad Commissioners, if not put in force and complied with by the railroad companies affected, may be enforced by writ of mandate on behalf of the people, to be sued out by the Attorney-General. Any company failing or refusing to comply with a peremptory mandate issued in such action, shall forfeit its charter and be dissolved. On appeal from judgment awarding a peremptory mandate, in such cases there shall be no stay of proceedings on appeal.

The Senate Judiciary Committee, having said bill under consideration, passed the following resolution:

Resolved, That producers, shippers, and merchants be invited to appear before this committee and make any statements of facts pertinent to the matters involved in said bill, and that any member of the committee may furnish to the clerk of the committee names of any persons whom he may desire to have appear before the committee.

Notices were sent to such witnesses in the following form:

ROOM OF JUDICIARY COMMITTEE, STATE CAPITOL, CAL. }
Sacramento, —, 1884.

DEAR SIR: By request of the Judiciary Committee of the Senate of California, you are hereby invited to appear before said committee, at your earliest convenience, to make statements to the committee concerning the matters involved in the Barry Bill (so called), now pending before said committee. Very respectfully,

SUMNER T. DIBBLE, Secretary.

By order: C. W. CROSS, Chairman.

All witnesses who appeared for examination were examined by the committee, each Senator being permitted to ask questions. The evidence was taken down by a shorthand reporter, and, by resolution of the Senate, duly passed April 14, was printed.

The evidence taken was as follows:

STATEMENT OF MR. HARRISON,

Of the firm of Richards & Harrison, San Francisco, before the Judiciary Committee of the Senate of the State of California.

MR. CHAIRMAN AND GENTLEMEN: I am really unprepared for this opportunity, of which, with a little preparation, I should have been very happy to have availed myself; yet the worthy Senator from San Francisco having introduced me, if I am allowed to show you the action of the special contract system, and how it has affected the

merchants of our State, if that is germane to the subject, I should like to make a few remarks, inasmuch as our firm have been personal sufferers, and we have been endeavoring through the Railroad Commission to obtain relief from the oppression of the special contract system. I suppose you are aware that there are four provisions, which, stripped of their verbiage, may be expressed in a few words.

The special contract system, such as the Central Pacific Railroad and the Southern Pacific Railroad have adopted, exacts that the signer shall not patronize sailing vessels or steamers, nor import their goods into this State in that manner. That he shall not buy from or sell to a man who is not a contractor. That they shall have the right to examine our goods and see that the classification of all the goods is conformed to. That they shall have the right to examine our books, and if necessary break into our safe and examine it to see that we do not buy from or sell any freight to a man who is not a contractor. Now, gentlemen, I admired the Chairman of this committee to-day when he offered a resolution indorsing the action of our Minister to Berlin; because he made a fine and a strong effort to prevent the German Empire from discriminating against the American hog. Gentlemen, you needn't go to Germany to make your discriminative fight. Your discriminative fight is with the railroad company, as discriminating against the merchants, and if our Ministers are to be extolled for protecting the American hog, the California merchants will thank the Legislature for protecting the American merchants. Now this bill of Mr. Barry's, as far as it is apparent, is intended, and it occurs to me to say, that the desire of our community is that this discriminative action should be abolished, and in order to do that it will be necessary to adopt the extreme measures of penalty as they appear in the bill.

The railroad has affected everything. We have from day to day submitted our case to the Railroad Commission, and have been met with the information that they have no authority and no power to reach this matter; that it is beyond their jurisdiction. What is the use of referring anything to the Railroad Commission if they have no jurisdiction and claim none? Although members of the legal profession say that they have jurisdiction, they turn round and say that they have not, and the result is that the matter is thrown back into your teeth, and I can see no help for it now but to pass a specific law that will reach it. As far as its being a party measure, I think it ought to be put down as one of the few measures outside of party. I may be put down as one of the few merchants that have contended with the railroad. The result of this discrimination has so enslaved our community that they will not appear before you. Our Board of Trade and our Chamber of Commerce have railroad agents in their bodies and there is not a man that dare put his head up without being marked. The Central Pacific Railroad Company do what the United States Government do not dare to do. In the Custom House the Republican and the Democrat, the Chinaman and the Greek, are all classed alike—every man knows his tariff. The grade is gradual, and there is no distinction and no discrimination. Now, I do not pretend to be a lawyer; I do not pretend to be able to qualify

this bill with any legal aspect; but as far as its spirit is concerned, it appears to us as the proper expression. We have got to have relief. We must have relief. Discrimination cannot exist in any civilized community. You do not dare to do it in your own family, nor to discriminate against one of your children, without seeing how quick he will take offense. You must prevent it and give us relief, and this bill, as I understand it, will do so. Unless you make the penalty severe they will escape it again as they have continued to escape others.

Beyond this I have nothing to say. If you are desirous of knowing about the system the railroad has adopted with the merchants, I am here to answer any questions. Few merchants dare to do so, because they have become their slaves. If you shut out our shipping vessels and steamers, you might as well shut up the Golden Gate as far as the merchant doing business in San Francisco is concerned. He might as well be in the heart of Arizona. The same contract extends to other places besides San Francisco, and they import their goods in the interior towns. What would New York do without protection from things of that kind? Here we have the opening of the Pacific closed up. Do you suppose that the merchants went voluntarily into this system of serfdom? No, sir; the first man was beguiled through Stubbs and Vining, their oily agents. They beguiled the first few; intimidated some, and coerced the balance. We are now fighting for the beautiful harbor of San Francisco. We are no better off than the merchants of Arizona. With the Golden Gate closed up we might just as well emigrate. What is California without the Golden Gate and the bay? Nothing. We are closed up with our fine harbor and our facilities. I will be very happy to answer any questions.

MR. SULLIVAN—What is the ground upon which the Railroad Commission stated its opinion that they had no jurisdiction in your case? Answer—They claimed that these contracts had been made mainly in Omaha, some two thousand miles from here, by Mr. Vining, the agent of the Union Pacific Railroad Company, and that they had no control over such contracts made out of this State. In other words, that the merchants of San Francisco are bound by a contract made two thousand miles from San Francisco, alongside of the Missouri River, where they had never seen a ship.

Q. Out of the proceeds received from freight, what is the percentage of the Central Pacific Railroad? A. They get forty-six per cent, and the Union Pacific Railroad gets fifty-four, and, although the counsel for the railroad admitted that they were responsible only for what was collected in this State, that proportion belonging to the Central Pacific Railroad Company, our worthy Railroad Commissioners claimed that they had no jurisdiction over that either, and that they had no jurisdiction at all.

Q. Upon the ground that the contract was made outside of this State? A. Yes, sir.

Q. That they could not segregate it? A. They could not segregate it. It was segregated and admitted in Court that they had segregated it, and that they had collected forty-six per cent—that, it

was claimed, was the portion of the Central Pacific Railroad Company. They took the ground that no more contracts should be made with the Union Pacific Railroad Company. That, they knew would break up the special contract system.

Q. Do I understand you that they discriminated against your firm, in favor of merchants in San Francisco? A. They have open rates, and contract rates. By signing a contract they get contract rates; if you don't you have to pay open rates. We were the largest importers in our line of goods—do more than all the rest—and we saw that we could not do justice to our business, our customers, and ourselves, and sign a special contract, and the rates on the goods compelled us to get our goods around the Horn, by sea. We had to sign a contract, by the custom of the road, or pay open rates, and as soon as they made us do that we commenced suit against them.

Q. What is the difference between the contract and the open rates? A. From fifteen to fifty per cent.

Q. Did they take the position that there was no discrimination because these were open contracts that everybody could sign? A. We had the privilege of signing them.

Q. Did not two of the Commissioners say that it was not discrimination within the purview of the Constitution? A. They said that we could sign the contract just as we could in the retail business. That it was just the same thing.

Q. What would be the effect of the Barry bill upon this discrimination that you speak of? A. As I understand it here, merchants against whom discrimination was had might appeal to the Attorney-General to have the charter of the road forfeited.

Q. How could you prove that they discriminated? A. It is merely a matter requiring evidence. Their admissions are on file, and a special contract is easily obtained, and the open rates can be easily obtained; so that any one can see that there is a plain discrimination. A matter of figures between fifteen and fifty per cent.

Q. Is there any truth in what is said about the railroad company, that they charge according to the value of the material? A. Yes, they do. In one case that I will quote: Ruled paper pays sixty per cent more than unruled paper. The ruling alone making a difference of sixty per cent. In plain English, they take the oyster and leave the merchant the shell.

Q. Do you know of any instance where they have examined the books of the merchant for the purpose of finding out whether he has stood by the special contract made with the railroad? A. Yes, sir; I presume they have nullified contracts, and the parties have commenced suits for damages where they had a special contract, where a man dared to buy goods from a party who carried them around the Horn. They have a system of rebate by which they exact open rates, and they remain for a period of from one to three months, and then repay the difference between the open and the special rates, thus always keeping the merchant in debt and slavery.

Q. What is meant by the term "expense bill"? A. It means a freight bill where the amount is intended to be refunded, notifying the agent to collect and to pay the difference within a period of two or three months.

Q. You mean to say that they charge the open contract rate, and then return it? A. They used to do that, but I understand that they found that it was not necessary, and they discontinued it, and now they collect their contract rates.

Q. What is the position of the merchants of San Francisco in regard to this railroad company, if they were called upon by this committee to give testimony here? Will they testify in regard to these matters? Will they dare tell the truth here? A. I never knew them to tell the truth yet.

Q. Are you acquainted with the mercantile community of San Francisco? A. Yes, sir.

Q. How long have you resided in San Francisco and been engaged in business there? A. Fifteen or sixteen years.

Q. Do you know the most of the importing houses there? A. I do, sir. I believe I have collected from the wholesale houses of San Francisco for the last fifteen years, twice a month regularly.

Q. You have a large personal acquaintance? A. Yes, sir, and with the Board of Trade.

Q. Have you talked with the merchants there sufficiently to speak advisedly as to whether or not they would be willing to come here and give testimony concerning any discrimination that might be made against them, or concerning the question of discrimination at all? A. I have talked with them frequently. When I subpoenaed them in my case to testify they came to me with tears in their eyes and begged off.

Q. What was their excuse? A. That their business pursuits were so closely allied to the railroad business that they didn't dare to go; that their contracts might be broken again, as they had been, upon that pretense.

Q. They all wished you success? A. Certainly; they pat me on the back behind-hand, and tell me I am the champion.

Mr. Brooks—Do I understand you that you have no fault to find with any other company than the Central Pacific Railroad? A. And the Southern Pacific Railroad Company.

Q. They do not allow you to buy from parties that ship around the Horn? A. No, sir.

Mr. Cross—Have you ever found a lawyer who advised you that a special contract that limited you to whom you should buy from was not valid in law? A. I have heard them say it all along, but it is a very difficult thing to prove without consulting with the merchants.

Q. I would like to know whether the importers, as a class, are dissatisfied with the present system? A. I can tell you as a fact, that out of the hundred and odd merchants in San Francisco, there are five who approve of the special contract system.

Q. Could you give us an idea as to whether or not that system increases the cost of goods in the general markets of this State? A. It does.

Q. Could you give us some idea as to what per cent? A. The fact is just this: Certain goods will come around the Horn by sailing vessels—heavy goods—hardware, nails, and things of that class, and