

**IN THE MATTER OF THE APPLICATION OF THE
PACIFIC RAILWAY COMMISSION FOR AN
ORDER UPON A WITNESS BEFORE IT TO
ANSWER CERTAIN INTERROGATORIES
PROPOUNDED TO HIM;
OPINIONS OF MR. JUSTICE FIELD AND JUDGES
SAWYER AND SABIN**

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In the Matter of the application of the pacific railway commission for an order upon a witness before it to answer certain interrogatories propounded to him; Opinions of mr. Justice Field and judges sawyer and sabin by Various

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VARIOUS

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PACIFIC RAILWAY COMMISSION FOR AN
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FIELD AND JUDGES SAWYER AND SABIN**

The Courts of the United States cannot be made Mere Aids
to a Commission of Inquiry Created by Congress.

In the Matter

OF THE

APPLICATION OF THE PACIFIC RAILWAY COM-
MISSION FOR AN ORDER UPON A WITNESS
BEFORE IT TO ANSWER CERTAIN INTER-
ROGATORIES PROPOUNDED TO HIM.

Opinions

OF

MR. JUSTICE FIELD,

AND JUDGES SAWYER AND SABIN,

DELIVERED

IN THE U. S. CIRCUIT COURT AT SAN FRANCISCO,
AUGUST 29th, 1887.

T. I. BERGIN,
L. D. MCKISICK,
For Leland Stanford.

JOHN T. CAREY,
U. S. District Attorney;
HENRY C. McPIKE,
Asst. U. S. Dist. Attorney,
For the Railway Commission.

IN THE
Circuit Court of the United States,
Ninth Circuit,
NORTHERN DISTRICT OF CALIFORNIA.

In the Matter
OF THE
APPLICATION OF THE PACIFIC RAIL-
WAY COMMISSION FOR AN ORDER
UPON A WITNESS BEFORE IT TO
ANSWER CERTAIN INTERROGA-
TORIES PROPOUNDED TO HIM.

1. THE PACIFIC RAILWAY COMMISSION is not a judicial body and possesses no judicial powers under the Act of Congress of March 3, 1887, creating it, and can determine no rights of the Government or of the corporations whose affairs it is appointed to investigate.
2. CONGRESS CANNOT COMPEL the production of private books and papers of citizens for its inspection, except in the course of judicial proceedings, or in suits instituted for that purpose, and then only upon averments that its rights in some way depend upon evidence therein contained.

3. **THE COURTS ARE OPEN** to the United States as to private parties to secure protection for their legal rights and interests, by regular proceedings.
4. **CONGRESS CANNOT EMPOWER** a commission to investigate the private affairs, books and papers of the officers and employés of corporations indebted to the Government, as to their relations to other companies with which such corporations have had dealings, except so far as such officers and employés are willing to submit the same for inspection; and the investigation of the Pacific Railway Commission into the affairs of officers and employés of the Pacific Railway Companies under the Act of March 3, 1887, is limited to that extent.
5. **THE UNITED STATES** have no interest in expenditures of the Central Pacific Railroad Company under vouchers which have not been charged against the Government in the accounts between them; and the Pacific Railway Commission under the Act of Congress of March 3, 1887, has no power to investigate such expenditures against the will of the company and its officers.
6. **THE JUDICIAL POWER** of the United States is limited to "cases," and "controversies" enumerated in Article III, Section 1, of the Constitution as modified by the eleventh amendment, and to petitions on habeas corpus and cannot be extended by Congress; and by such "cases" and "controversies" are meant the claims of litigants brought for determination by regular judicial proceedings established by law or custom.
7. **THE JUDICIAL DEPARTMENT** is independent of the legislative, in the Federal Government, and Congress cannot make the Courts its instruments in conducting mere legislative investigations.
8. **THE POWER OF UNITED STATES COURTS** to authorize the taking of depositions on letters rogatory from Courts of foreign jurisdictions, exists by international comity; but no comity of any kind can be invoked by a mere investigating committee appointed by Congress.
9. **THE CENTRAL PACIFIC RAILROAD COMPANY** is a State corporation not subject to Federal control, any further than a natural person similarly situated would be. Per Sawyer, J.

10. THE CENTRAL PACIFIC RAILROAD COMPANY is absolute owner of the lands and bonds granted to it by the Government, having complied with the act making the grant, subject to the lien of the Government to secure its advances, in the same way, and to the same extent as a natural person in like situation. Per Sawyer, J.
11. THE RELATION OF CREDITOR AND DEBTOR exists between the United States and the Central Pacific Railroad Company, under the act granting aid to the latter, with like force and effect as if both were natural persons, the relation being private, and having nothing to do with the power of the Government as sovereign. Per Sawyer, J.
12. THE UNITED STATES, AS CREDITOR, cannot institute a compulsory investigation into the private affairs of the Central Pacific Railroad Company, or require it to exhibit its books and papers for inspection in any other way, or to any greater extent, than would be lawful in the case of private creditors and debtors. Per Sawyer, J.
13. THE UNITED STATES, AS CREDITOR, have the same remedy as a private creditor, and no other, to compel payment of any moneys due it from the Central Pacific Railroad Company, as their debtor, or to prevent the latter from wasting its assets before the debt matures, and that remedy, if any, must be by a regular judicial proceeding in due course of law, and Congress has no power to institute a roving, legislative inquisition into the affairs of the company to ascertain what it has done, or is doing with its money. Per Sawyer, J.

STATEMENT OF FACTS.

This is an application of the Pacific Railway Commission, created under the Act of Congress of March 3d, 1887, "Authorizing an Investigation of the Books, Accounts and Methods of Railroads which have received Aid from the United States, and for other purposes," for an order requiring a witness before it to answer certain interrogatories propounded to him. That act authorizes the President to appoint three Commissioners to examine the books, papers and methods of all railroad companies which have received aid in bonds from the Government, and in terms invests them with power to make a searching investigation into the working and financial management, business and affairs of the aided companies, and also to ascertain and report, "whether any of the directors, officers or employés of said companies respectively have been, or are now directly or indirectly interested, and to what amount or extent, in any other railroad, steamship, telegraph, express, mining, construction, or other business company or corporation, and with which any agreements, undertakings, or leases have been made or entered into; what amounts of money or credit have been loaned by any of said companies to any person or corporation; what amounts of money or credit have been or are now borrowed by any of said companies, giving names of lenders and the

purposes for which said sums have been or are now required ; what amounts of money or other valuable consideration, such as stocks, bonds, passes and so forth, have been expended or paid out by said companies, whether for lawful or unlawful purposes, but for which sufficient and detailed vouchers have not been given or filed with the records of said company ; and further to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration, or done any other act or thing for the purpose of influencing legislation."

It is difficult to express in general terms the extent to which the Commissioners are required to go in their inquisition into the business and affairs of the aided companies ; or the extent to which they may not go into other business and affairs of its Directors, officers and employés. The act itself must be read to form any conception of the all-pervading character of the scrutiny it exacts of them.

And it provides that the Commissioners, or either of them, shall have the power "to require the attendance and testimony of witnesses and the production of all books, papers, contracts, agreements, and documents relating to the matter under investigation, and to administer oaths ; and to that end may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers and documents."