DESERET EVENING NEWS.

TRUTH AND LIBERTY.

VOL. XII. SALT LAKE CITY, UTAH TERRITORY, TUESDAY EVENING, OCTOBER 21, 1879. NO. 279.

THE EVENING NEWS

Published every evening except Sunday.

One copy, one year, with postage.....$10.00
" " six months " 5.25
" " three months " 2.65

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Park City, Utah, Sept. 6, 1879. 6-9-9 to 6-12-9

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BY TELEGRAPH.

EASTERN.

SUPREME COURT DECISION

Concerning the Pacific Railroads.

Dissenting Opinions.

WASHINGTON, 20.—In the Supreme Court No. 1,083, of 1878, Union Pacific Railroad Company, appellant, vs. United States, appeal from the Court of Claims, and No. 972 of 1878, Central Pacific Railroad Company et al., appellants, vs. Albert Gallatin, appeal from the Circuit Court of the United States for the District of Columbia. These cases, both of which involve the constitutionality of the Pacific Railroad act of May 7, 1878, known as the Thurman act, were decided and decisions announced on the last Monday of last term, but owing to the great pressure of business neither a majority of the court nor of the justices who dissented, were able to prepare written opinions in time to be delivered when the decisions were rendered. Opinions have since, however, been prepared and were delivered this afternoon. Chief Justice Waite read the opinion of the majority of the Court, sustaining the constitutionality of the act in question, and dissenting opinions were delivered by Associates Bradley, Strong and Field. The opinion of the Chief Justice, which deals especially with the case of the Union Pacific, is in substance as follows.

The precise point to be determined in the opinion of the Court, is whether a statute which requires the company in the management of its affairs to set aside a portion of its income as a sinking fund, to meet its subsidy bonds and other mortgage debts when they mature, deprive the company of its property without due process of law, or in any other way improperly interfere with its vested rights. The court holds that a railroad company is subject to legislative control so far as its business affects public interests; that by the reservation contained in the chartering act of 1862 and 1864, Congress retains full power to make such alterations and amendments of the charter as come within the just scope of legislative power. In so doing it cannot undo what has already been done, nor unmake contracts which have already been made.

But it may provide for what shall be done in future, and may direct what preparation shall be made for the due performance of contracts already entered into. In less than twenty years from the present time there will become due from the Union Pacific Company about $50,000,000, secured by first and subsidy mortgages, besides capital stock, representing $36,000,000 more. With the exception of the land grant, little, if anything, excepting the earnings of the company, can be depended on to meet these obligations when they mature. These earnings the company, after paying interest on its own bonds, has been dividing, from time to time among its stockholders, without laying by anything to meet the enormous debt which is so soon to become due. Thus the stockholders of the present time are receiving in the shape of dividends that which those of the future may be compelled to lose. The United States occupy towards this corporation a two-fold relation, that of sovereign and that of creditor. In their relation of sovereign it is their duty to see to it that current stockholders do not appropriate to their own use, that which in equity belongs to others. A legislative regulation, which does no more than require them to submit their just contributions towards the payment of the bonded debt, cannot in any sense be said to deprive them of their property without due process of law.

The Court holds, therefore, that the legislation complained of may be sustained as a reasonable regulation of the affairs of the corporation and promotive of the interests of the public and corporators. It is also warranted under the authority by way of amendment to change or modify the rights, privileges and immunities granted by the charter. The judgment of the lower court is affirmed.

From this decision Justices Strong, Bradley and Field dissent in long and carefully prepared opinions. Justice Strong maintains that the Thurman act is a plain transgression of legislative power; that the government in its contract with the railroad company, laid aside its sovereignty, and that the contract is no part of the charter of the Union Pacific Company, or of the acts of 1862 and 1864. It is a subsequent transaction, and the United States became a party to it, not in its sovereign character, but as a rival corporation, with the same rights and obligations as a private person, and no more. But what does the act of May 7th, 1878, attempt to do? It does not purport to be a repeal of the charter. All its provisions have in view the imposition of additional obligations upon the railroad company. Its leading purpose is to take control of the debtor and seize it for the security of a debt, which by the terms of the contract is not due and payable for years to come. To claim such a power is to claim the right to disregard the contract entirely and to substitute for it a different one without the consent of the debtor. If the United States can exact now one quarter of the net earnings of each of these companies and place it in their treasury, they can by the same power, and with the same reason, exact the whole of the earnings or any property equal to the amount of the debt. Such legislative power as this is not only not conferred by the Constitution, but in effect is expressly denied in those clauses of the fifth amendment which provides that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation.

Furthermore, it may well be doubted whether the act of 1878 is then an attempted exercise of legislative power. Any statute undertaking to take property of A and transfer it to B is not legislation; it would not be a law. It would be a decree or sentence, the right to declare which, if it exists at all, is in the judicial department of the government. Congress would in such a case be trying to perform functions of a court. The creditor becomes the custodian of the debtor's property, and acquires the right to hold and manage it, as if it were his own. It is absurd that this is not practically a radical change of the relations between the parties established by contract, and it is equally impossible to maintain that it is not depriving debtors of their property without due process of law. Justice Strong concludes, therefore, that the act of 1878 is not only unauthorized by any power existing in Congress, but is an infraction of the prohibition in the Fifth Amendment to the Constitution.

The dissenting opinion of Justice Field begins as follows.

I also dissent from the judgment of the court in these cases. The doctrines announced will, in my opinion, create great insecurity in the title to all corporate property. They in fact declare that the general government is under no legal obligation to fulfill its contracts and whether it shall do so in any case or not, is a question of policy and not of duty. They also recognize it as a right to appropriate by legislative decree, the earnings of a corporation with which it deals without judicial inquiry, and determination as to its claim as to such earnings, thus sanctioning the exercise of judicial functions in its own cases; and finally, they assert a supremacy of Federal over State Government in the control of corporations of the latter, utterly subversive of the rights of the State.

After reciting the organization of the Central Pacific Railroad Company as a corporation of the State of California, the resolutions of power made in the company's charter, the construction of the road and its full compliance in all respects with its engagements, and the passage of the Thurman act requiring the establishment of a sinking fund, Justice Field continues: It is not material in the view I take of the subject whether the deposit in the treasury of a creditor of this large sum be termed payment, or by jugglery of words it be called something else. It is the exaction from the company of money belonging to it, for which the original contract did not stipulate, that constitutes the objectionable feature. The act of 1878 makes a complete change in the rights and liabilities of the company. The purpose, however disguised by specious protests, is to coerce by legislative decree the payment of moneys years in advance of time prescribed by the original contract. That it is unconstitutional in its character, as it is unjust in the operation, I have no doubt whatever, and I have yet to hear any reasons, which seem to me even plausible for its maintenance. I do not understand or appreciate that doctrine which would ascribe to the federal government a sovereign right to treat as it may choose corporations with which it deals, and would exempt it from that great law of morality which should bind all governments as it binds all individuals, to do justice and keep faith.

With regard to the invasion of law upon the rights of the State of California, Justice Field concludes as follows: The Central Pacific Railroad Company is a State corporation, and in creating it the State reserved the same control over it which it possesses over other railroad and telegraph companies created by it. It undertakes to manage it in all particulars regarded for public service.

THE INDIAN WAR.

Dispatches to and from General Sherman.

WASHINGTON, 20.—A telegram from General Sheridan, dated Chicago, October 19, has been received by General Sherman, which says: I received your dispatch of yesterday last night. Your suggestions in reference to the columns at Pagosa and Alamosa have to some extent been anticipated by General Pope. General Hatch is at Pagosa and beyond is a column of eight companies of infantry and four of cavalry. There is now being organized at Garland, which is a better point than at Alamosa, a column of six companies of infantry to which can be added two more companies of cavalry now at Rawlins, making a force of nineteen companies, aggregating at least 900 men.

General Merritt had followed the hostiles in the direction of Uncompahgre Agency, as he has notified me, but turned back on receiving your dispatch of the 13th. Had he gone on it was my intention to have supplied him from the south by his own request, so that there need have been no fears on the part of the Interior Department regarding his supplies. My telegram related to the pass between Rawlins and White River Agency. We now understand this affair in all its bearings, and will not give you any further trouble except to send information as it arrives. I regret that Merritt was not permitted to go on, as I have not the slightest belief that Ouray can deliver up the murderers. I fear valuable time will be lost. After your dispatch of the 14th, I directed Crook to send to the White River Agency supplies in abundance before deep snows come on, and will assume the risk of keeping Merritt with his present force at that point to await further developments. I understand the country perfectly well. My last summer's trip gave me a very fair knowledge of the country in the vicinity of Los Pinos Agency, and south of that place.

Secretary Schurz has to-day been asked by many persons whether he thought the dispatch of General Sheridan to Gen. Sherman, in which the former speaks of Gen. Merritt's command as being tied up and sold out, was intended to reflect on the Interior Department. In response to this question and a number of cognate inquiries addressed to him by representatives of the Associated Press, in an extended interview to day, the Secretary made the following interesting statements, with which are given letters therein referred to:

I do not see how Gen. Sheridan's telegram can reflect upon this department, nor do I think his dispatch was intended for publication, but since it has been published and disposition of troops has been made known, the rest of the story may properly accompany it.

When Gen. Merritt was still supposed to have fought his way through to White River Agency, I instructed Gen. Charles Adams, (not the Peace Commissioner, but a special agent of this department, on temporary service, chosen on account of his ability and intimate acquaintance with Ute chiefs) to proceed to Los Pinos agency to strengthen Chief Ouray in his friendly attitude. In case the refusal of the Government to stop troops produced excitement among the Los Pinos Utes, he was to assure all Indians within his reach that the troops were bound to force their way to the White River and destroy all resistance, and the longer the resistance lasted the worse it would be for the Indians. On the 14th we received information that the Utes had disappeared from White River, and that Gen. Merritt had proceeded to the agency without resistance and had lost sight of the hostiles. I then instructed General Adams to ascertain the whereabouts of the White River hostiles, to summon them to surrender, or use every possible endeavors to induce peaceable Utes to give themselves up, and to put himself in communication with Gen. Merritt, and give him all the information he had, together with his opinion of the condition of things.

These dispatches were communicated by me to Gen. Sherman before they were sent on. Gen. Sherman communicated them to Gen. Sheridan, and Gen. Merritt was advised to give credence to what Gen. Adams might say, as they were the confidence of this department. These are undoubtedly the dispatches referred to in Gen. Sheridan's telegrams.

Gen. Sherman evidently did not think that by these instructions, which were intended not to arrest but facilitate and aid Gen. Merritt's movement in securing to him information, which, judging from his own report, he could not otherwise obtain, were calculated to "tie up" and "sell out" troops under the command of Gen. Merritt. If he had thought so, he would undoubtedly have said to me before sending them off to Gen. Sheridan, as Gen. Sheridan might have said so before communicating them to Gen. Merritt. When Gen. Sherman, four days afterwards, had received dispatches from Gen. Sheridan, published in the newspapers, he addressed to me the following letter, which is additional evidence that he, down to that time, had not understood my instructions to the special agent of this Department to stop any movement:

HEADQUARTERS U. S. ARMY,
Washington, D. C., Oct. 12th.

Hon. Carl Schurz, Secretary Interior, Washington, D. C.:

Dear Sir.—I have a telegram from Gen. Sheridan, saying he has a message from Gen. Merritt to the effect that to punish the hostile Utes he would, on the 15th inst., move from White River for Grand River and Los Pinos Agency; but Gen. Sheridan supposes that before starting, Gen. Merritt will have received my dispatch of October 13th, notifying him of the appointment of special agent Adams, and to be governed by his instructions. Do you want Gen. Merritt's force of about 1,000 men to be at White River or at Los Pinos Agency? Some one must determine this question, and as the Interior Department has charge of the Ute Indians, and the military is acting to support the Indian Bureau in its management of this tribe of Indians, I beg of you to inform me whether you prefer that this military force shall be at Los Pinos Agency or at White River.

Your obedient servant,
W. T. SHERMAN.

I received this letter on the evening of the 12th, and the same evening visited General Sherman at his house for the purpose of ascertaining what he meant. General Sherman explained to me the difficulties General Merritt's command would have to encounter in crossing the high mountain range between White River and Los Pinos without any wagon road, the possibility of being snowed in, etc., and also that another force could be concentrated in a short time at Alamosa to accomplish all that was necessary without finding such difficulties in the way.

The expression of his views was of course satisfactory to me, and I left General Sherman with the understanding that I, in this sense would officially answer his letter on the following morning, which I did, and here is the answer:

Department of the Interior,
Washington, D.C., Oct. 18, 1879.

General—In reply to your letter yesterday referring to General Sheridan's dispatch, in which he expressed apprehensions as to difficulties likely to attend a movement of General Merritt's troops across the mountain ridge between White River and Los Pinos agencies, which dispatch you communicated to me in full at our interview subsequent to the receipt of your letter, I have the honor to say that Gen. Charles Adams, a special agent of this department will probably reach Los Pinos agency to-day or to-morrow. As you know, he is instructed to ascertain, if possible, the present whereabouts of the White River Utes, and succeeding in this, to use every effort with the aid of Chief Ouray, to bring about their surrender. I may have a telegraphic report from him by Wednesday next. It will probably then appear whether that surrender can be accomplished without the assistance of a considerable body of troops or not. In the meantime I fully agree with the opinion you expressed at our interview last night, that Gen. Merritt should not at present undertake a hazardous march across the mountain divide, but remain at or near the White River, and that another body of troops be concentrated at Alamosa to act as the condition of things at Los Pinos and the Southern Ute Agency may require.

I shall without delay inform Gen. Adams of the instructions telegraphed by you to Gen. Sheridan last night, and direct him to put himself in communication not only with Gen. Merritt as ordered before, but also with the commander of the forces at Alamosa, keeping both these officers fully advised of the situation of things.

Very truly, your obed't servant,
C. SCHURZ, Sec'y.

To Gen. W. T. Sherman, United States Army.

From this it will appear that there has been no disaccord between Gen. Sherman and myself; that there were no instructions from me to stop Gen. Merritt's command; that necessary information to be procured of my agent will probably be on hand before the force assembling at Alamosa will be ready for action, and that Gen. Sheridan's remark about the "tieing up" and "selling out" of Gen. Merritt's command, while it gave expression to his feelings concerning the difficulties surrounding those troops, cannot be held to any action on the part of this Department.

Los Pinos, Colorado, 17, via Del Norte, 20.—A runner has just arrived from the Southern Ute agency with a letter from Page to Stanley, dated the 14th inst., with information that another all-day council was held by the chiefs of the Southern Utes. All were united and desirous of peace, and requested that a runner be sent, renewing the assurances already given. Twenty-four chiefs and head men were present. The Indians of this agency are all encamped around Ouray's house. Not one report in fifty has a particle of truth, and the facts are exaggerated beyond reason. The women and children are safe, but probably will not be given up till after matters are arranged by the peace commission, expected here in a week, from Washington.

CAMP ON WHITE RIVER, three miles north of Agency, Col., Oct. 17, *via* Rawlings, Wyo., Oct. 20.

This afternoon, Gen. Merritt and command returned to this point, orders from Washington being to suspend operations against the Utes and await orders either at White or Bear River, as negotiations for peace are in progress, it being understood that the hostiles have agreed to surrender the warriors engaged in the late depredations. It is probable that the combined commands of Merritt and Gilbert will remain for the present at this point, although nothing definite is known as to their future movements. In the event of peace being established, it is altogether probable that a permanent military post will be constructed either at Bear River or at the agency.

San Francisco, 20.—The hundred citizens who left Messila last Tuesday to relieve the settlements of Santa Barbara and Colorado from the savages, returned on Friday. They found the bodies of 10 Mexicans eight miles out. They had been killed by Indians, their wagons destroyed and teams captured. Four other dead Mexicans, and the body of Wm. T. Jones, killed on the 13th, were found. They also found sundry other Mexican ranchmen and traders killed by the Indians. The most of the hostile Indians have left for the Florida Mountains and New Mexico. Major Morrow, who is pursuing the Indians, intends to follow them across the boundary. The victors had apparently been reinforced by Indians from Old Mexico.

Washington, 20.—E. L. Mansfield telegraphs the commissioner of Indian affairs, from Rawlins, that he was in the employ of the late Indian Agent Meeker, since Aug., 1878, and that he escaped the fate of the employees by being sent with a dispatch to Capt. Dodge on the 26th ult., and awaits at Rawlins any instructions the Commissioner may desire to give.

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