Union Pacific Railroad.
Papers relating to the Central Branch.
1867.
A resolution of the House of the 9th instant, transmitting certain papers relative to the central branch of the Union Pacific and San Francisco and St. José Railroad Company.

DECEMBER 11, 1867.—Referred to the Committee on the Pacific Railroad and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 11, 1867.

SIR: Pursuant to a resolution of the House of Representatives of the 9th instant, I have the honor to transmit the accompanying papers:

No. 1 is a copy of a letter of the 19th of February last from this department to the Commissioner of the General Land Office, touching the asserted right of the Central Branch Union Pacific Railroad Company to construct their road from its intersection with the original line of road of the Union Pacific Railway Company, eastern division, and along such line to the 100th meridian of longitude, and to receive therefor a subsidy in lands and bonds per mile equal to that promised per mile for one hundred miles of road west of the Missouri river.

No. 2 is a copy of a letter of the 31st of October last from this department to the secretary of the San Francisco and San José Railroad Company, rejecting their claim to an acceptance of their road by the United States and to lands and bonds.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

HON. SCHUYLER COLFAX,
Speaker of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 19, 1867.

SIR: The Central Branch Union Pacific Railroad Company, formerly known as the Atchison and Pike’s Peak Railroad Company, has requested me to reconsider the order communicated to you in my letter of the 10th day of November last, restoring to market certain lands in Kansas and Nebraska, de-
scribed in your letter of the 17th of October, which had theretofore been withdrawn from market upon the application of the Union Pacific Railway Company, eastern division.

These lands were situated within the twenty-mile limit of the line of road, as shown upon the map transmitted by the latter company to this department on the 23d of June, 1865. After their compliance with the act of Congress, July 3, 1866, authorizing them to designate the route of their road and file a map thereof at any time before the first day of December of that year, the lands along the entire new line of road were reserved from sale, and those upon the vacated line were restored to their original status.

The said central branch claim that under existing laws they are entitled to extend their road from its intersection with such vacated line, and on the latter, to the 100th meridian line of longitude, and to receive in aid of the construction thereof the same subsidies in lands and bonds per mile as for the first one hundred miles of their road.

Elaborate briefs have been filed and the question orally discussed by learned counsel on behalf of the company. The order was, in my opinion, properly issued. In view of the interests involved, it is proper to state the reasons which have led me to a conclusion adverse to the claim of the company.

The 13th section of the act of July 1, 1862, authorizes the Hannibal and St. Joseph Railroad Company of Missouri, the assignor of the present claimants, to extend its road from St. Joseph, by the way of Atchison, so as to connect and unite with the road through Kansas, or if actual survey should render it desirable, to construct its railroad, with the consent of the Kansas legislature, on the most direct and practicable route west from St. Joseph, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the 100th meridian of west longitude, or with the main trunk road at said point. The company was thus authorized to adopt either of two routes; but that section expressly declares that in no event shall lands or bonds be given to the company to aid in the construction of their road for a greater distance than one hundred miles.

With a full knowledge, therefore, of the limit of the grant of lands and bonds, the company selected the existing line, and filed, on the 5th day of July, 1863, a map showing the general route of the road. On the following day instructions were sent to the General Land Office for the withdrawal of the lands. On the 4th of March, 1866, a map showing the definite location of the road was filed.

The Union Pacific Railway Company, eastern division, is authorized to construct a railroad and telegraph line from the Missouri river, at the mouth of Kansas river, on the south side thereof, so as to connect with the Pacific railroad of Missouri, to a point to be fixed by the President of the United States, on the 100th meridian of longitude west from Greenwich, where it would meet and connect with the Union Pacific railroad. The road through Kansas was to be so located between the mouth of that river and the said point that the several railroads from Missouri and Iowa, authorized by the act to connect with the same, could make a connection within the limits prescribed by that act, provided the same could be done without deviating from the whole line to the Pacific coast.

The 10th section authorizes the Hannibal and St. Joseph railroad, the Pacific Railroad Company of Missouri, and the Union Pacific Railroad Company, or either of them, on filing their assent to the act, to unite upon equal terms with the Kansas company in constructing a railroad and telegraph to said meridian of longitude, with the consent of said State of Kansas.

At any time after the passage of the act the companies named therein, and assenting thereto, or any two or more of them, were authorized to form themselves into one consolidated company. Notice of such consolidation, in writing, was to be filed in this department. These are all the provisions of the act of
1862, cited by counsel as having any bearing upon the question, except some
general expressions, which it is claimed denote the intention of Congress to se-
cure the construction of continuous lines of road from the several points design-
nated on the Missouri river to the Pacific coast.

The act of 1864, however, extends the time for filing maps by the railroad
companies of their respective routes, and for the completion of so much of the
roads required by each company. The ninth section authorizes any company
who had the right to construct, by the terms of the original act, its road from
the Missouri river to the initial point on the 100th meridian of longitude, to
construct its road and telegraph line so as to connect with the Union Pacific
railroad at any point westwardly at such initial point, in case such company
shall deem such westward connection more practicable or desirable; and in aid
of the construction of so much of its road and telegraph line as shall be a de-
parture from the route thereinbefore provided for its road, such company shall
be entitled to all the benefits and be subject to all the conditions and restric-
tions of that act. The section further provides that the bonds of the United
States shall not be issued to such company for a greater amount than is there-
inbefore provided, if the same had united with the Union Pacific railroad on the
100th degree of longitude, nor shall such company be entitled to receive any
greater amount of alternate sections of public lands than are also therein pro-
vided.

The sixteenth section authorizes any two or more of the companies who are
entitled to participate in the benefits of that act to unite and consolidate their
organization, and to assume and adopt a corporate name, and to file a copy of
such consolidation in this department. It also provides that upon the comple-
tion, by such consolidated organization, of the roads or either of them, of the
companies so consolidated, if any company not embraced in such organization
shall not have constructed the number of miles of road within the time re-
quired, the consolidated organization is authorized to continue the construction
of its road and telegraph in the general direction and route upon which such
incomplete and unconstructed road is authorized to be built, until such continu-
ation of the road of such consolidated organization should reach the constructed
road and telegraph of such company and at such point as to connect and
unite therewith. In aid thereof the consolidated organization was authorized
to do and perform, in reference to such portion of road and telegraph as should
be in continuation of its constructed line and telegraph, and the construction
and equipment thereof, all and singular, the several acts and things which were
provided and authorized or granted to be done by the company authorized to
construct and equip the same, and was entitled to all similar and like grants,
benefits, immunities, guarantees, acts and things to be done and performed by
the government of the United States, the Secretaries of the Treasury and In-
terior, and by the commissioners, in reference to such company and to such
portion of road thereinbefore authorized to be constructed by it, and upon the
like and similar terms and conditions, so far as the same are applicable thereto.

The act further provides that the consolidated organizations shall pay to the
said defaulting company the estimated value of all the work done and materials
furnished by said company which may be adopted and used by said organi-
zation in the progress of the work and also provides that the defaulting com-
pany, at any time before receiving pay for its work and materials, may, on its
own election, pay the consolidated organization the value of the work done and
material furnished, and resume the control of its road and all the rights, benefits,
and privileges which shall be acquired, possessed, or exercised pursuant to that
law.

The section further provides that if any company authorized shall not enter
into any such consolidated organization, such company, upon the completion of
its road as thereinbefore provided, shall be entitled to and is thereby authorized
to continue and extend the same, under the circumstances and in accordance with the provisions of that section, and to have all the benefits thereof as fully and completely as are therein provided touching such consolidated organization. The Union Pacific Railway Company, eastern division, filed in due time its assent to the provisions of the act, and a map showing the general route of the road. It subsequently claimed the right, under the ninth section of the act of 1864, to construct its road so as to form a connection with the Union Pacific railroad at a point westwardly from the 100th meridian. On February 21, 1866, it presented to the department a map showing a new route west from Fort Riley by the Smoky Hill, and requested the lands within the authorized limits to be withdrawn. On submitting the question to the Attorney General, my predecessor was advised that, as three years had then elapsed since the taking effect of the act of July 1, 1862, the company could not file a map delineating a new line of road, and that the request for a withdrawal of the lands could not be granted without further authority from Congress.

An act approved July 3, 1866, (Statutes at Large, volume 14, p. 79,) authorized the company to designate the general route of the road and to file a map thereof at any time before the following December. Upon filing a map showing such route, the lands along the entire length thereof, so far as the same might be designated, were to be reserved from sale by order of the Secretary of the Interior.

The map was filed within the time prescribed, showing a wide departure from the original line west from Fort Riley. The difficulty, suggested by the Attorney General to the exercise of the power conferred upon the company by said ninth section, was thus removed, and the duty of the Secretary to withdraw the lands distinctly asserted.

I cannot perceive that the act of 1862 recognizes the right of the claimants to build their road upon the line then vacated. It does not vest in them a privilege or franchise of the Union Pacific Railroad Company, eastern division, on the surrender or forfeiture thereof by the latter. It simply recognizes their right to unite with that company, on equal terms, in constructing its railroad and telegraph to the 100th meridian. This implies a prosecution by that company of its work upon the line which it had originally adopted. Congress, as I have just shown, sanctioned a departure from it, with an express saving to the company of its right to lands and bonds upon filing a map of its intended new line within a given period.

The right of the claimants is not, in my judgment, sustained by the act of 1864. If two or more companies, authorized to participate in its benefits, had united their organizations, as therein provided, certain conditions must precede the exercise, by such consolidated organization, of its contingent right to build any portion of a road belonging to a company not embraced in such organization. It must have completed the roads, or one of them, of the companies so consolidated, and the companies not so embraced must have failed in the construction of "the number of miles of its road within the time required." Neither of these conditions exists. No company mentioned in the act of 1862 or 1864 has completed its road, and it will not be pretended that the Union Pacific Railway Company, eastern division, is in default. The resolution of May 7, 1866, (Stat. at Large, No. 14, p. 355) extended the time for the completion of one hundred miles of its road until the 24th day of June, 1866, provided that the time for completing each succeeding section of one hundred miles should be reckoned from the latter date. One hundred miles of road were completed within the designated period. The time has not yet expired for the construction of the second section of one hundred miles. There could, therefore, be no just claim by such organization to construct any portion of the road of that company.

No such organization was formed. Conceding that the central branch is one
of the corporations referred to in the 16th section of the act of 1864, it is only authorized to exercise the special privilege thereby conferred under the same circumstances, and in accordance with the provisions of that section, and to have all the benefits as fully and completely as are therein provided, touching such organization. The same conditions, the default of the other company, and the completion of its own road, must exist. Now, the claimant has not completed one hundred miles of its road, much less the entire length thereof required to form a connection with the original route of the Union Pacific Railway Company, eastern division.

But, supposing such connection was formed, the non-default of the latter company would present an insuperable objection to the asserted right of the claimant. It is strenuously insisted, however, that if the other company does not build the required number of miles upon its original route within the time prescribed, then the right of the claimant will accrue, and that such right, contingent before the act of 1866, is now rendered absolute by it, and the action of such other company under it. I am unable to concur in this view. A breach of a condition or requirement imposed by law is contemplated, involving a forfeiture of some pre-existing right. Such a breach cannot be predicated of the authorized abandonment of a portion of the old line, nor will it ever occur if the road be properly constructed in due time upon the substituted new line. The original route from Fort Riley has been vacated by authority of law, and no company is entitled to public lands or bonds in aid of the construction of a road upon it.

The continuing right of the Union Pacific Railroad Company, eastern division, to bonds and lands is recognized, not granted, by the act of 1866. The claim presented, however, assumes the existence of distinct and independent grants of subsidies, both of which can be rendered available—one by the claimant upon the vacated, and the other by the eastern division company upon the new line. An examination of the ninth, in connection with the sixteenth section of the act of 1864 and the act of 1866, renders it clear that such an assumption cannot be maintained. A careful analysis of the sixteenth section of the act of 1864 makes it doubtful whether, in any event, the present claim could be recognized. The eastern division company has completed its road to Fort Riley, which is distant about fifty or fifty-five miles southeast from the point of intersection of the claimant’s line with the original route. It is not proposed by the claimant to extend its road to the constructed road and telegraph of that company, as contemplated by that section, but only from such point of intersection northwardly upon the old route to its junction with the Union Pacific railroad at the 100th meridian. But I need not discuss the case from this point of view.

The right of Congress to amend or repeal the act of 1862, having due regard for the rights of the company thereunder, was expressly reserved. It was, therefore, undoubtedly competent for Congress to pass the act of 1864. The claimants have availed themselves of the more liberal grant of lands along their line which that act confers, and their claim chiefly rests upon its provisions. Granting an extension of time by the act of 1866 to the eastern division company to file its map, was only a renewed exercise of the power already exerted in relation to all the companies by the act of 1864. The claimants, however, represent that they established their line of road and filed their map with reference to the original route of the eastern division, and that their rights as a branch of the Union Pacific railroad became thenceforth fixed and determined; that they have invested a large amount of money, with a full reliance that no deviation from that route would be sanctioned, and have faithfully executed all their engagements. They also declare that, relying upon the good faith of Congress, they have made representations which have resulted in the sale of a large portion of the stock and bonds of the company, and that the value of their road will be essentially impaired if their present claim is not acknowledged.

My duty, as an executive officer, is confined to ascertaining and carrying into
effect the expressed will of Congress, however prejudicially it may act upon 
supposed corporate rights. This I have endeavored to do in the present instance. 
If any injury has resulted to the claimants from the action of Congress, that 
body alone can give relief.

Be pleased to forward a copy of this letter to R. N. Pomeroy, esq., president 
Central Branch Union Pacific Railroad Company.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

Hon. Joseph S. Wilson,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 31, 1867.

Sir: I have received your letter of the 21st of February last, in reference to 
the application of the San Francisco and San José Railroad Company for the 
acceptance by the President of the United States of their road, constructed be-
tween San Francisco and San José, in the State of California.

The commissioners were notified by the surveyor general of California of 
the completion of the road, and they submitted a report, accompanied by the 
required profile and map. Its construction, equipment, &c., fully meet, in their 
opinion, the standard of excellence prescribed by the act of 1st July, 1862, 
commonly called the Pacific road law, and its gauge is 4 feet 8½ inches.

You claim that the road is entitled to such acceptance, and to patents for land, 
and to bonds. The company, it is represented, was formed under the general 
railroad act of California to construct a railroad between San Francisco and 
San José. Prior to the passage of said act of 1st July, 1862, it had expended 
not exceeding $60,000 on the work. The entire road was so far completed that 
the first train ran over it 14th of February, 1864.

No act of Congress designates the said company as entitled to the benefits 
and privileges conferred upon the corporations engaged in the construction of the 
main line of the Pacific railroad, or any of its branches. It claims as the 
assignee of the Central Pacific Railroad Company of California, which was or-
organized under the laws of that State, “for the construction of a railroad from 
the city of Sacramento to the eastern boundary line of that State, (acts of 
1863–7), p. 344.) The 9th section of the original act of Congress authorized 
that company to construct a railroad and telegraph line from the Pacific coast, 
at or near San Francisco, or the navigable waters of the Sacramento river, to the 
eastern boundary of California. It filed, 24th of December, 1862, in the De-
partment of the Interior, its acceptance in general terms of the conditions of the 
act; a map designating the general route of the road from Sacramento to the 
Big Bend of the Truckee river, in the then Territory of Nevada, had been pre-
viously filed. The officers of the Marysville land district were instructed by 
the Commissioner of the General Land Office, by letter bearing date 2d of August, 
1862, to withdraw from pre-emption, private entry and sale, the public lands in 
that district situate within fifteen miles on each side of said route. Immediately 
after the passage of the amendatory act of 2d July, 1864, a corrected map of 
the route between the same termini was filed by the company, and the Com-
misssioner, on the 6th of July, was instructed to withdraw the lands within 25 
miles of each side of said route; and on the 9th of the following month the 
officers at Marysville, and those at Carson City, Nevada, were by the Commis-
ioner instructed accordingly.

The San Francisco and San José Railroad Company, on the 9th of July, 
1864, nearly five months after the completion of their road, filed in this depart-
ment a map thereof, as the same was surveyed and adopted June 9, 1862,
and requested a withdrawal of the lands situate on the line thereof, but no action was taken on the subject.

On the 9th of December, 1864, the Central Company filed a map designating a route from San Francisco by way of San José to Sacramento, and on the 14th of that month this department made an order for the withdrawal of the contiguous public lands along said route.

The withdrawal of lands has, in times past, been occasionally ordered, in view of anticipated legislation. Such a practice was, to say the least of it, of very doubtful propriety, and ought not to be continued. The last order does not, therefore, under the circumstances, relieve me from the duty of investigating this claim, nor can it be cited as a conclusive recognition by the department of the right of the Central Company over the route between San Francisco and Sacramento.

On the 4th of December, 1862, that company assigned to Timothy Dame, Richard Chenery, Emory T. Pease, and George H. Bodfish, their associates and assigns, "the right to construct all of that portion of a line of railroad and telegraph lying between the city of Sacramento and the city of San Francisco," which it was or might be authorized to construct under the act of 1862; and, as a condition precedent, said parties were within thirty days to organize a company to construct and maintain a railroad from Sacramento to San José, there to connect with the San Francisco and San José railroad.

On the 11th of that month, said parties, with nine associates, adopted articles of association, under the name of "The Western Pacific Railroad Company," to construct a road from San José to Sacramento. Directors were chosen, who elected officers of the company.

Three days thereafter, said Dame, Chenery, Pease and Bodfish assigned to the San Francisco and San José Railroad Company that part of the line from San Francisco to San José, with all the rights, grants, donations, &c., under the act of Congress, which they had derived from the Central Company, subject to all the liabilities imposed by the said act.

October 21, 1864, more than ten months after the completion of your road, the Central assigned to your company whatever right the former had, under the acts of Congress of July 1, 1862, and July 2, 1864, to construct, own, and operate, all that portion of a line of railroad and telegraph between San Francisco and San José.

I do not propose to examine whether the trust has been executed according to its tenor; but will proceed to consider the import and meaning of the fifteenth section of the act of 1862, and its effect upon the pending application.

It provides that "wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors and assigns, the same as if the words had been properly added thereto."

The incapacity of Congress to empower a corporation created by State laws to transfer to, or vest its franchises in, another corporation so created, or to endow the latter with the capacity to take them, cannot be seriously questioned. These companies owe their existence to State legislation, and it alone must determine the extent of their corporate rights. Nothing in the acts on the subject justifies the conclusion that Congress assumed to confer upon an existing State corporation an original and substantive power to extend its road within the limits of a State. Liberal subsidies are granted to the corporations engaged in the construction of a national highway; and it was no doubt presumed that if the Central Company had not the right to construct a road from Sacramento to the Pacific coast, she would obtain it by appropriate State legislation. You admit that she was only authorized to construct a road from Sacramento eastward. It appears, therefore, that the road in question was built by your company, in the exercise of a franchise granted by the State, and that the Central Company neither had nor claimed such franchise.
Again: the act of 1862 authorized the Central Company to construct a railroad “from the Pacific coast at or near San Francisco, or the navigable waters of the Sacramento, to the eastern boundary of the State.” She assented to the act, and filed a map of the road, designating Sacramento as the western terminus. This election concluded her. She could not, subsequently, substitute San Francisco as the initial point, and maintain a claim to bonds and land, in consideration of the construction of a road between that city and the original terminus.

Again: let it be conceded that the term “assigns,” construed in connection with other provisions as well as that wherein it occurs, authorized such an assignment by the Central Company as would invest your company with the right to construct a road between San Francisco and San José, and to receive, on the completion thereof, all grants and subsidies as fully as if she had been specifically named by Congress. Her claim must then depend upon her fulfilment of all the requirements of the act. Her assent thereto, in the mode and within the time prescribed, being a condition precedent to her right to such grants or subsidies, her omission to file it is fatal.

I do not doubt that a company named in the act could employ an incorporated company, as well as individuals, to construct portions of her road, and assign to such company or individuals her claim to lands or bonds. The original company would be, in such a case, the proprietor of the road, and remain responsible to the government. When her claim was allowed, the lands might be patented and bonds delivered to her assignee, if there was nothing in the law to forbid it. Such is not this case. Your company, in her own right, makes the claim and insists that it should be allowed, on account of her construction of a road which she owns and controls.

The act of 1862 required that within two years after its passage each company therein named should “designate a general route of their road, as near as may be, and file a map thereof” in this department. The Central Company promptly complied with this requirement, but the map did not embrace the route between San José and San Francisco. The act of July 2, 1864, extended the time “for designating the general route and filing a map,” but it obviously implies, not that the company had already done so, but that she had made default in the performance of this condition. I have, therefore, serious doubts whether such provision applies to the Central Company. It certainly does not sanction the adoption of another initial point, nor of a route in a totally different direction from that which the company notified the department had been originally selected. Although the filing by the Central Company, in December, 1864, of a map delineating a route between Sacramento and San Francisco, by the way of San José, is in your letter insisted upon as authorized by the act of 1864, and as having a material bearing I will not dwell upon the point, as the further discussion of it is unnecessary in the view I take of that act.

It conferred upon the respective companies new and valuable privileges, among which are an enlarged grant of land and the postponement of the government lien in favor of that of the companies’ first mortgages. The Central Company has availed itself of the privileges, and neither it, nor a party claiming under it, can accept a portion of the act and repudiate the rest. The concluding proviso of the eleventh section is in these words:

“That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto, under the provisions of any act or acts other than this act, and the act amended by this act.”

The history of this proviso furnishes a significant commentary upon its text.

I have before me the bill as it originally passed the House of Representatives. The eleventh section declares that “the assignment of the Central Pacific Railroad Company to the Western Pacific Railroad Company and the San Francisco
and San José Railroad Company, is ratified and confirmed, and all the rights, interests, and benefits arising to or accruing from the construction of the road from San Francisco to Sacramento City, are confirmed” to these companies, “subject to the terms, conditions, obligations, and restrictions of the said Central Railway Company.” This section was stricken out. Had there been no further action, it might be urged that if the rights now asserted were then consummated and vested, a formal legislative recognition of them is not essential, and that the absence of it should work no prejudice. But a substitute therefor was adopted, part of which I have quoted. In this shape the bill became a law. Congress, therefore, not only refused to acknowledge the binding force of the assignment and the validity of the claim under it, but, in clear and apt terms, prohibited the conveyance of lands of the issue of bonds to your company.

An act approved March 3, 1865, (Stat. at Large, vol. 13, page 504,) secured to the “Western Pacific Railroad Company all the rights and privileges of the several acts relating to the Union Pacific Railroad Company, subject to all the conditions thereof.” There has been no similar legislation in regard to your company.

You refer to the debates in the Senate, when this act was under discussion, (Cong. Globe, 2d session 38th Congress, part 2, p. 1221.) I have read them, and noticed that the legislation of 1864 was made the subject of special allusion by the senators from California. Mr. Connors remarks: “There was an old assignment made by the Central Pacific Railroad Company to the Western Railroad Company, and the bill which passed the House last year, if adopted by the Senate, would have confirmed that assignment, and extended the benefits of the Pacific Railroad act to the railroad known as the San Francisco and San José Railroad—fifty miles of road, I wish senators to understand, finished and constructed and running, and profitably so. I believed, with others, that the policy of Congress was not to make a gift to roads already constructed, but to make grants to induce the construction of roads; and therefore, among others, I objected to that confirmation, but this bill does not contain it at all.” Mr. McDougall remarked: “The fifty miles of road to which my colleague refers was built upon the faith of that legislation, as much as any one line of road in Kansas or California; but the right of the parties building that fifty miles, and completing it, and running it, which was first done as part of the Pacific railroad, to the privileges of our legislation, was denied, and is ignored now. It was ignored at the last session. My colleague opposed the proposition. I insisted that the benefits of the law should be extended to San Francisco. I suppose that now they have no chance of the benefit of this law, although they built the first fifty miles of the Pacific railroad.”

My interpretation of the act is thus not only justified, in my opinion, by its terms, but gives full effect to its intent and purpose, as declared by senators who were conspicuously identified with it and conversant with the action of the two houses. Upon the whole case, therefore, I cannot avoid the conclusion that the executive allowance of this claim, so far from being warranted, is positively forbidden by law.

The agent of your company was orally informed to that effect when the claim was first presented, long prior to the receipt of your communication. A careful consideration of the views you present has wrought no change in my convictions. If I have ignored any just rights which you represent, or misapprehend the legislation of Congress, that body at its approaching session will, I doubt not, cheerfully afford you an appropriate remedy.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

CHARLES B. POLHEMUS, Esq.,
Secretary of San Francisco and San José Railroad Company.
H. Ex. Doc. 31—2