

RAIL-ROAD USURPATION OF NEW JERSEY.

SPEECH

OF

HON. CHARLES SUMNER,

OF MASSACHUSETTS,

ON THE ACT TO REGULATE COMMERCE AMONG THE SEVERAL STATES.

IN THE SENATE OF THE UNITED STATES, FEBRUARY 14TH, 1865.

NEW YORK YOUNG MEN'S REPUBLICAN UNION:
1865.

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1856-1860-1864.

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The proposition under consideration was in the following terms :

“ AN ACT TO REGULATE COMMERCE AMONG THE SEVERAL STATES.

“*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, connexions, boats, bridges, and ferries, all freight, property, mails, passengers, troops, and government supplies on their way from any State to another State, and to receive compensation therefor.*”

Mr. President, the question before us concerns the public convenience to a remarkable degree. But it concerns also the unity of this Republic. Look at it in its simplest form, and you will confess its importance. Look at it in its political aspect, and you will recognize how vital it is to the integrity of the Union itself. On one side we encounter a formidable Usurpation with all the pretensions of State rights, hardly less flagrant and pernicious than those which have ripened in bloody rebellion. On the other side are the simple and legitimate claims of the Union under the Constitution of the United States.

Thus stands the question at the outset. Public convenience and the Union itself in its beneficent powers on the one side. Pub-

lic inconvenience and all the discord of intolerable State pretensions on the other side.

The proposition on its face is applicable to all the States throughout the Union, and in its *vital principle* it concerns every lover of his country. But it cannot be disguised that the interest which it has excited in the other House, and also in the Senate, must be referred to its bearing on the railroads of New Jersey. Out of this circumstance springs the ardor of opposition; perhaps, also, something of the ardor of support. Therefore pardon me if I glance one moment at the geographical position of this State, and its railroad Usurpation in the name of State rights.

Look on the map, or better still, consult your own personal experience in the journey from Washington to New York, and you will find that New Jersey lies on the great line of travel between the two capitals of the country, political and commercial. There it is, directly in the path. It cannot be avoided except by a circuitous journey. On this single line commerce, passengers, mails, troops—all must move. In the chain of communication by which capital is bound to capital—nay more, by which the Union itself is bound together, there is no single link of equal importance. Strike it out, and where are you? Your capitals will be separated and the Union itself will be loos-

ened. But the evil sure to follow, if this link were struck out, must follow also in proportionate extent from every interference with that perfect freedom of transit through New Jersey which I now ask in behalf of commerce, passengers, mails and troops.

Such is the geographical position of New Jersey. And it is here on this highway of travel that pernicious pretensions have been set up which can be overthrown only by the power of Congress. The case is plain.

New Jersey, in the exercise of pretended State rights, has undertaken to invest the Camden and Amboy Railroad Company with unprecedented prerogatives. These are the words of the Legislature: "It shall not be lawful, at any time during the said railroad charter, to construct any other railroads in this State without the consent of the said companies, which shall be intended or used for the transportation of passengers or merchandise *between the cities of New York and Philadelphia*, or to compete in business with the railroad authorized by the act to which this supplement is relative." (New Jersey Session Laws for 1854, page 387.) Here, in barefaced terms, is the grant of a monopoly in all railroad transportation, whether of commerce, passengers, mails, or troops, between *New York*, a city *outside* of New Jersey, and *Philadelphia*, another city *outside* of New Jersey. Or, looking at this grant of monopoly again, we shall find that *while it leaves the local transportation of New Jersey untouched*, it undertakes to regulate and appropriate the transportation between two great cities outside of New Jersey, constituting, from geographical position, the gates through which the whole mighty movement, north and south, must pass.

If this monopoly is offensive on its face, it becomes still more offensive when we consider the motive in which it had its origin. By the confession of its supporters, it was granted in order to raise a revenue for the State out of men and business not of the State. It was an ingenious device to tax commerce, passengers, mails, and troops in their transit across New Jersey, from State to State. Here is a confession, which will be found in the legislative journal of New Jersey, as long ago as 1841, in a document from the executive committee of the coalesced railroads, represented by the Camden and Amboy Company:

"It seems plain, from the acts incorporating these companies, and the testimony of those best conversant with the history of their incorporations, that it was the policy of the State, *taking advantage of the geographical position of*

New Jersey, between the largest States and cities of the Union to create a revenue by imposing tax or transit duty upon every person who should pass on the railroad across the State between those cities from the Delaware river to the Raritan bay; but that it was not their design to impose any tax upon citizens of their own State for traveling between intermediate places." * * * * * "Here, again, the policy and intention of the State is most clearly indicated in exempting her own citizens from the operation of this system of taxation."—Page 29.

And here are the words of another functionary equally frank, belonging to the same railroad connection:

"The Company believe that a careful consideration of the whole matter, as well from the provisions of the charter as from a recurrence to the period when it was granted, will produce the conviction that *the transit duty was intended to be levied only on citizens of other States passing through New Jersey.*"

The spirit in which this tax has been laid will appear from another incident which cannot be without interest to the Senators from New York. The Erie railroad, which is so important to transportation in the great State which they represent on this floor, has been compelled, in addition to the usual tax on that part of the road in New Jersey, to pay an extra tax in the shape of "a transit duty of three cents on every passenger and two cents on every ton of goods, wares, and merchandise, *except passengers and freight transported exclusively within this State.*" This imposition was as late as 1862, and it is a part of that same system which constitutes the railroad Usurpation of New Jersey.

But the character of this Usurpation becomes still more apparent in the conduct adopted toward another railroad in New Jersey. It appears that a succession of railroads has been constructed, under charters of this State, from Raritan Bay, opposite New York, to Camden, opposite Philadelphia, constituting a continuous line, suitable for transportation, across New Jersey and between the two great cities of New York and Philadelphia. The continuous line is known as the Raritan and Delaware Bay Railroad. On the breaking out of the rebellion, when Washington was menaced by a wicked enemy, and the patriots of the land were aroused to sudden efforts, the Quartermaster-General of the United States directed the transportation of troops, horses, baggage, and munitions of war, from New York to Philadelphia over this line. The other railroad, claiming a monopoly, filed a

bill in equity, praying that the Raritan and Delaware Bay Railroad "be decreed to desist and refrain" from such transportation, and also praying "that an *account* may be taken to ascertain the amount of damages." The counsel of the monopoly openly insisted that, by this transportation, the State was "robbed of her ten cents a passenger;" and then cried out, "I say it is no defense whatever if they have succeeded in obtaining an order of the Secretary of War, *when we call upon them to give us the money they made by it*; and that is one of our calls. They have no right to get an order to deprive the State of New Jersey of the right of transit duty, *which is her adopted policy*." Such was the argument of Mr. Stockton, counsel for the monopoly, November 12, 1863. The *transit duty* is vindicated as the *adopted policy* of New Jersey. Surely, in the face of such pretensions, it was time that something should be done by Congress.

Such, sir, are the pretensions of New Jersey to interfere with commerce, passengers, mails, and troops *from other States*, on their way, it may be, to the national capital, even with necessary succors at a moment of national peril. Such pretensions, persistently maintained and vindicated, constitute a Usurpation not only hostile to the public interests, but menacing to the Union itself. Here is no question of local taxation, or local immunities, under State laws; but an open assumption by a State to tax the commerce of the United States on its way from State to State.

From the nature of the case, and according to every rule of reason, there ought to be a remedy for such a grievance. No usurping monopoly ought to be allowed to establish itself in any State across the national highway, and, like a baron of the middle ages perched in his rocky fastness, levy tolls and tribute from all the wayfarers of business, pleasure, or duty. The nuisance should be abated. The Usurpation should be overthrown. And happily the powers are ample under the Constitution of the United States. Following unquestionable principles and authentic precedents, the committee have proposed a remedy which I now proceed to discuss.

The bill under consideration was originally introduced by me into the Senate. It was afterward adopted and passed by the other House as a substitute for a kindred bill which was pending there. Beyond the general interest which I take in the public business, this is my special reason for entering into this discussion.

The bill is arraigned as unconstitutional. But this objection is a common-place of opposition. When all other reasons fail, then is the Constitution invoked. Such an attempt on such an occasion attests to my mind the weakness of the cause. It is little better than the assertion of an *alias* in a criminal case.

The entire and unimpeachable constitutionality of the present measure is apparent in certain familiar precepts of the Constitution, which were brought to view in the title and preamble of the bill as introduced by me, but which have been omitted in the bill now before us. The title of the bill as introduced by me was, "to facilitate commercial, postal, and military communication among the several States." This title opens the whole constitutional question. This was followed by a preamble, as follows:

"Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several States, to establish post roads, and to raise and support armies: Therefore, *Be it enacted*."

In these few words three sources of power are clearly indicated, either of which is ample; but the three together constitute an overrunning fountain.

First. There is the power "to regulate commerce among the several States." Look at the Constitution and you will find these identical words. From the great sensitiveness of States this power has been always exercised by Congress with peculiar caution; but it still lives to be employed by an enfranchised Government.

In asserting this power I follow not only the text of the Constitution, but also the authoritative decisions of the Supreme Court of the United States. Perhaps there is no question in our constitutional history which has been more clearly illustrated by our greatest authority, Chief Justice Marshall. In the well known case where the State of New York had undertaken to grant an exclusive right to navigate the waters of New York by vessels propelled by steam, the illustrious Chief Justice, speaking for the court, declared the restriction to be illegal, because it interfered with commerce between the States precisely as is now done by New Jersey. In his opinion commerce was something more than traffic or the transportation of property. It was also "the commercial intercourse between nations and parts of nations in all its branches," and it embraced by necessary inference *all inter-State communications* and the whole subject of inter-

course between the people of the several States. It was declared that the power of Congress over the subject was not limited by State lines, but that it was co-extensive with commerce itself, according to the enlarged signification of the term. Here are the words of Chief Justice Marshall :

"But in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power if it could not pass these lines. Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every State in the Union, and furnish the means for exercising this right. *If Congress has the power to regulate it, that power must be exercised wherever the subject exists.* If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State."—*Gibbons vs. Ogden*, 9 *Wheaton*, 196.

This important decision of the Supreme Court was before railroads. It grew out of an attempt to appropriate certain navigable thoroughfares of the Union. But it is equally applicable to those other thoroughfares of the Union, where the railroad is the substitute for water. It is according to the genius of jurisprudence, that a rule once established governs all cases which come within the original reason on which it was founded. Therefore I conclude confidently that the power of Congress over internal commerce by railroad is identical with that over internal commerce by water. But this decision does not stand alone.

Mr. Justice Story, who was a member of the Supreme Court at this time, in a later decision thus explains the extent of this power :

"It does not stop at the mere boundary line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. *It extends to such acts done on land as interfere with, obstruct, or prevent the free exercise of the power to regulate commerce with foreign nations and among the States.*"—*United States vs. Coombs*, 12 *Peters*, 78.

From various cases illustrating this power I call attention to that known as the Passenger case, where the Supreme Court declared that the statutes of New York and Massachusetts, imposing taxes upon alien passengers arriving at the ports of those States, was in derogation of the Constitution. On this occasion Mr. Justice McLean said :

"Shall passengers, admitted by act of Congress without a tax, be taxed by a State? The

supposition of such a power in a State is utterly inconsistent with a commercial power, either paramount or exclusive in Congress."

Mr. Justice Grier said, with great point :

"To what purpose commit to Congress the power of regulating our intercourse with foreign nations and among the States, *if these regulations may be changed at the discretion of each State?*" * * * * "It is, therefore, not left to the discretion of each State of the Union either to refuse a right of passage to persons or property, or to exact a duty on permission to exercise it."—7 *Howard*, 464.

But this is the very thing that is now done by New Jersey, which "exact a duty" from passengers across the State.

Mr. JOHNSON. Do I understand the Senator to be quoting from the Passenger case ?

Mr. SUMNER. Yes, sir.

Mr. JOHNSON. That was a case where the legislation of Massachusetts was brought before the court.

Mr. SUMNER. I have already stated that there were two State offenders at that time; there is now only one.

I call attention also to the case of the Wheeling bridge, where Congress, under peculiar circumstances, exercised this identical power. In this case the State of Pennsylvania claimed the power to limit and control the transit across the Ohio river to the State of Ohio, and this power was affirmed by the Supreme Court so long as Congress refrained from legislation on the subject. But under the pressure of a public demand, and in the exercise of the very powers which are now invoked, Congress has declared the Wheeling bridge to be a lawful structure, anything in any State law to the contrary notwithstanding. The Supreme Court, after the passage of this act, denied a motion to punish the owners of the bridge for a contempt in rebuilding it, and affirmed that the act declaring the Wheeling bridge a lawful structure was within the legitimate exercise by Congress of its constitutional power to regulate commerce. (13 *Howard*, 528.) But it is this very power which is here invoked in a case more important, and far more urgent, than that of the Wheeling bridge.

There is also another case where Congress has exercised this power precisely as is now proposed. I refer to the Steubenville bridge and Holliday's Cove railroad across the Ohio, in what is called the Panhandle of Virginia. This bridge was first attempted under a charter granted by Vir-

ginia, but Congress at last interfered and enacted :

"That the bridge partly constructed across the Ohio river at Steubenville, in the State of Ohio, abutting on the Virginia shore of said river, is hereby declared to be a *lawful structure*.

"That the said bridge and Holliday's Cove railroad are hereby declared a public highway, and established a *post road* for the purpose of transmission of mails of the United States."—12 *Statutes at Large*, 569.

Such are the precedents of courts and of statutes showing how completely this power belongs to Congress in the regulation of internal commerce. The authorities are plain and explicit. They cannot be denied. They cannot be explained away. It would be superfluous to dwell on them. There they stand like so many granite columns, fit supports of that internal commerce which in itself is a chief support of the Union.

Secondly. There is also the power "to establish post roads," which is equally explicit. Here, too, the words are plain, and they have received an authoritative exposition. It is with reference to these words that Mr. Justice Story remarks that "constitutions of government do not turn upon ingenious subtleties, but are adapted to the business and exigencies of human society; and the powers given are understood, in a large sense, in order to secure the public interests. Common sense becomes the guide, and prevents men from dealing with mere logical abstractions." (Story, *Commentaries on Constitution*, vol. 2, sec. 1134.) The same learned authority, in considering these words of the Constitution, seems to have anticipated the very question now under consideration. Here is a passage which may fitly close the argument on this head :

"Let a case be taken *when State policy*"—

As, for instance, in New Jersey at this time—

"or State hostility shall lead the Legislature to close up or discontinue a road, the nearest and the best between two great States, rivals, perhaps, for the trade and intercourse of a third State; shall it be said that Congress has no right to make or repair a road for keeping open for the mail the best means of communication between those States? May the national Government be compelled to take the most inconvenient and indirect routes for the mail? *In other words, have the States the power to say how, and upon what roads, the mails shall and shall not travel?* If so, then, in relation to post roads, the States, and not the Union, are supreme."—Story, *Commentaries on the Constitution*, vol. 2, sec. 1144.

Thirdly. Then comes the power "to

raise and support armies:" an unquestionable power lodged in Congress. But this grant carries with it, of course, all incidental powers necessary to the execution of the principal power. It would be absurd to suppose that Congress could raise an army, but could not authorize the agencies required for its transportation from place to place. Congress has not been guilty of any such absurdity. Already it has by formal act proceeded "to authorize the President of the United States in certain cases to take possession of railroads and telegraphs, and for other purposes." (12 *Statutes at Large*, p. 334.) By this act the President is empowered "to take possession of any or all the railroad lines in the United States, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances," and it is declared that any such railroad "shall be considered as a post road and a part of the military establishment of the United States." Here is the exercise of a broader power than any which is now proposed. The less must be contained in the greater.

Mr. President, such are the three sources of power in the Constitution, each and all applicable to the present case. Each is indisputable. Therefore the conclusion, which is sustained by each, is three times indisputable.

So plain is this power that it has been admitted by New Jersey in a legislative act, as follows :

"SEC. 6. *Be it enacted*, That when any other railroad or roads for the transportation of passengers and property between New York and Philadelphia across this State shall be constructed and used for that purpose, under or by virtue of *any law of this State or the United States authorizing or recognizing said road*, that then and in that case the said dividends shall be no longer payable to the State, and the said stock shall be re-transferred to the Company by the treasurer of this State."

Thus, in formal words, has New Jersey actually anticipated the very measure now under consideration. All that is now proposed so far as New Jersey is concerned is simply to *recognize other railroads for the transportation of passengers and property between New York and Philadelphia across this State.*

Such is the argument in brief for the constitutionality of the present bill, whether it be regarded as a general measure applicable to all the railroads of the country, or only applicable to the railroads of New Jersey. The case is so plain and absolutely unas-

any single element of the Union, if there be any single triumph of the Constitution which may be placed above all others, it is the freedom of commerce between the States, under which that *free trade*, which is the aspiration of philosophers, is assured to all citizens of the Union, as they circulate through our whole broad country, without hindrance from any State. But this vital principle is now in jeopardy.

Do not forget that it is the tax imposed on commerce between New York and Philadelphia, two cities outside of the State of New Jersey, which I denounce. I have denounced it as hostile to the Union. I also denounce it as hostile to the spirit of the age, which is everywhere overturning the barriers of commerce. The robber castles, which once compelled the payment of toll on the Rhine, were long ago dismantled, and exist now only as monuments of picturesque beauty. Kindred pretensions in other places have been overthrown or trampled out. The duties levied by Denmark on all vessels passing through the Sound and the Belts, the duties levied by Hanover on the goods of all nations at Stade on the Elbe; the tolls exacted on the Danube in its protracted course; the tolls exacted by Holland on the busy waters of the Scheldt, and all transit imposts within the great Zoll-Verein of Germany have all been abolished; and in this work of enfranchisement the Government of the United States led the way, insisting, in the words of President Pierce, in his annual message, "on the right of *free transit* into and from the Baltic." But the right of free transit across the States of the Union is now assailed. Strange that you should reach so far to secure *free transit* in the Baltic and should hesitate in its defense here at home!

Thank God! within the bounds of the

Union, under the national Constitution, commerce is free. As the *open sea* is the highway of nations, so is this Union the highway of the States, with all their commerce, and no State can claim any exclusive property therein. The Union is a *mare liberum* beyond the power of any State, and not a *mare clausum*, subject to as many tyrannies as there are States. And yet the State of New Jersey now asserts the power of closing a highway of the Union.

Such a pretension, so irrational and destructive, cannot be dealt with tenderly. Like the serpent, it must be bruised on the head. Nor can there be any delay. Every moment of life yielded to such a Usurpation is like the concession once in an evil hour yielded to nullification, which was kindred in origin and character. The present pretension of New Jersey belongs to the same school with that abhorred and blood-spattered pretension of South Carolina.

Perhaps, sir, it is not unnatural that the doctrines of South Carolina on State rights should obtain a shelter in New Jersey. Like seeks like. There is a common bond among the sciences, among the virtues, among the vices, and so, also, among the monopolies. The monopoly which was founded on the hideous pretension of property in man obtained a responsive sympathy in that other monopoly which was founded on the greed of unjust taxation, and both were naturally upheld in the name of State rights. Both must be overthrown in the name of the Union. South Carolina must cease to be a slave State, and so must New Jersey. All hail to the genius of universal emancipation! All hail to the Union, victorious over the Rebellion, victorious also over a Usurpation which menaces the unity of the Republic!