

KANSAS CITY, OKLAHOMA AND PACIFIC RAILWAY
COMPANY.

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

RETURNING

Without his approval House bill 8165, entitled "An act authorizing the Kansas City, Oklahoma and Pacific Railway Company to construct and operate a railway through Indian reservations in the Indian Territory and the Territories of Oklahoma and New Mexico, and for other purposes."

FEBRUARY 25, 1895.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the House of Representatives:

I return herewith without approval House bill number 8165, entitled "An act authorizing the Kansas City, Oklahoma and Pacific Railway Company to construct and operate a railway through Indian reservations in the Indian Territory and the Territories of Oklahoma and New Mexico, and for other purposes."

This bill contains concessions more comprehensive and sweeping than any ever presented for my approval, and it seems to me the rights and interests of the Indians and the Government are the least protected.

The route apparently desired, though passing through or into one State and three Territories, is described as indefinitely as possible, and does not seem to be subject to the approval in its entirety of the Secretary of the Interior or any other governmental agency having relation to the interest involved.

There is no provision for obtaining the consent of the Indians through whose territory and reservations the railroad may be located.

Though it is proposed to build the railroad through Territories having local courts convenient to their inhabitants, all controversies that may arise out of the location and building of the road are by the provisions of the bill to be passed upon by the United States circuit and district courts for the district of Kansas, "and such other courts as may be authorized by Congress."

The bill provides that "the civil jurisdiction of said courts is hereby extended within the limits of said Indian reservations without distinction as to citizenship of the parties, so far as may be necessary to carry out the provisions of this act." This provision permits the subordination of the jurisdiction of Indian courts, which we are bound by treaty to protect, to the "provisions of this act" and to the interests and pref-

erences of the railroad company for whose benefit the bill under consideration is intended.

A plan of appraisal is provided for in the bill in case an agreement can not be reached as to the amount of compensation to be paid for the taking of lands held by individual occupants according to the laws, customs, and usages of any of the Indian nations or tribes, or by allotment or agreement with the Indians. It is, however, further provided that in case either party is dissatisfied with the award of the referees to be appointed an appeal may be taken to the district court held at Wichita, Kans., no matter where on the proposed route of the road the controversy may originate. If upon the hearing of said appeal the judgment of the court shall be for the same sum as the award of the referees, the costs shall be adjudged against the appellant, and if said judgment shall be for a smaller sum the costs shall be adjudged against the party claiming damages. It does not seem to me that the interests of an Indian occupant or allottee is properly regarded when he is obliged, if dissatisfied with an award for the taking of his land, to go to the district court of Kansas for redress, at the risk of incurring costs and expenses that may not only exceed the award originally made to him, but leave him in debt.

It is probable that there are other valid objections to this bill. I have only attempted to suggest enough to justify my action in disapproving it.

In constructing legislation of this description it should not be forgotten that the rights and interests of the Indians are important in every view and should be scrupulously protected.

GROVER CLEVELAND.

EXECUTIVE MANSION,
February 23, 1895.

[H. R. No. 8165. Fifty-third Congress of the United States of America; at the third session, begun and held at the city of Washington on Monday, the third day of December, one thousand eight hundred and ninety-four.]

An act authorizing the Kansas City, Oklahoma and Pacific Railway Company to construct and operate a railway through Indian reservations in the Indian Territory, and the Territories of Oklahoma and New Mexico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Kansas City, Oklahoma and Pacific Railway Company, a corporation created under and by virtue of the laws of the State of Kansas, be, and the same is hereby, authorized and invested and empowered with the right of locating, constructing, owning, equipping, and operating, using, and maintaining a railway and telegraph and telephone line through all Indian reservations in the Indian Territory and the Territories of Oklahoma and New Mexico upon a line beginning at a point to be selected by said railway company at or near the town of Coffeyville, in the county of Montgomery, State of Kansas, and running thence in a south and west direction over the most practicable route, through the Indian Territory and the Territory of Oklahoma, to a point at or near Pawhuska, and also Guthrie and Kingfisher, in the Territory of Oklahoma, and thence to the east line of Wheeler County, State of Texas; thence to the east line of the Territory of New Mexico, and through the Territory of New Mexico to the city of Albuquerque, in the Territory of New Mexico, with the right to construct, use, and maintain such tracks, turn outs, sidings, and extensions through such Indian reservations as said company may deem to their interests to construct along and upon the right of way and depot grounds herein provided for.

SEC. 2. *That the said corporation is authorized to take and use, for all purposes of a railway and for no other purpose, a right of way one hundred feet in width through said reservations, and to take and use a strip of land two hundred feet in width, with a length of three thousand feet in addition to right of way, for stations for*

every ten miles of road, with right to use such additional grounds where there are heavy cuts or fills, not exceeding one hundred feet in width, as may be necessary for the construction and maintenance of said right of way, or so much thereof as may be included in said cuts or fills: *Provided*, That no more than said addition of land shall be taken for any one station: *Provided further*, That no part of said lands herein authorized to be taken shall be leased or sold by the company; and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railroad, telegraph, and telephone lines; and when any portion thereof shall cease to be so used, such portion shall revert to the nation or tribe of Indians, or individual Indians, from which the same shall have been taken.

SEC. 3. That before said railway shall be constructed through any lands held by individual occupants, according to the laws, customs, and usages of any of the Indian nations or tribes through which it may be constructed, or by allotment under any laws of the United States or agreement with the Indians, full compensation shall be made to such occupants for all property to be taken or damages done by reason of the construction of such railway. In case of failure to make amicable settlement with any occupant such compensation shall be determined by the appraisalment of three disinterested persons or referees, to be appointed, one, who shall act as chairman, by the President, one by the chief of the nation to which said occupant belongs, or in case of an allottee, by said allottee, or by his duly authorized guardian or legal representative, and one by said railway company, who, before entering upon the duties of their appointment, shall take and subscribe, before a district judge, clerk of the district court, or United States commissioner, an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to and filed with the Secretary of the Interior within sixty days from the completion thereof; and a majority of said referees shall be competent to act in case of the absence of a member after due notice; and upon the failure of either party to make such appointment within thirty days after the appointment made by the President the vacancy shall be filled by the district judge of the court held at Wichita, Kansas, upon the application of the other party. The chairman of said board shall appoint the time and place for all hearings within the nation to which the occupant belongs. Each of said referees shall receive for his services the sum of four dollars per day for each and every day they are engaged in the trial of any case submitted to them under this Act, with mileage of five cents per mile. Witnesses shall be allowed the usual fees allowed by the courts of said nation. The costs, including the compensation of the referees, shall be made a part of the award, and to be paid by said railway company. In case the referees can not agree, then two of them are authorized to make the award. Either party being dissatisfied with the findings of the referees shall have the right, within ninety days after the making of the award and notice of the same, to appeal by original petition to the district court held at Wichita, Kansas, which court shall have jurisdiction to hear and determine the subject-matter of said petition according to the laws of the State of Kansas providing for the determining of damages when property is taken for railway purposes. If, upon the hearing of said appeal, the judgment of the court shall be for a larger sum than the awards of the referees, the costs of said appeal shall be adjudged against the railway company. If the judgment of the court shall be for the same sum as the award of the referees, then the costs shall be adjudged against the appellant. If the judgment of the court shall be for a smaller sum than the award of the referees then the costs shall be adjudged against the party claiming damages. When proceedings have been commenced in court the railway company shall pay double the amount of the award into court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway.

SEC. 4. That said railway company shall not charge the inhabitants of said Territories a greater rate of freight than the rate authorized by the laws of the State of Kansas for services or transportation of the same kind: *Provided*, That the passenger rates shall not exceed three cents per mile. Congress hereby reserves the right to regulate the charges for freight and passengers on said railway, and of messages on said telegraph and telephone lines, until State governments are formed and shall exist in said Territories, within the limits of which said railway, or a part thereof, shall be located, and then such State government, or governments, shall be authorized to fix and regulate the cost of transportation of persons and freight within their respective limits by said railway; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railway company whenever such transportation shall extend from one State into another, or shall extend into more than one State: *Provided*, That the rate of such transportation of passengers, local or interstate, shall not exceed the rate expressed: *Provided further*, That said railway company shall carry the mail at such prices as Congress may by law provide, and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said line may be located, the sum of fifty dollars, in addition to the compensation provided for in this Act for property taken and damage done to individual occupants by the construction of the railway, for each mile of railway constructed in said reservations, said payments to be made in installments of five hundred dollars as each ten miles of road is located and graded: *Provided*, That if the general council of either of the nations or tribes through whose lands said railway may be located shall, within four months after the filing of maps of definite locations, as set forth in section six of this Act, dissent from the allowances provided for in this section, and certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nations or tribes under the provisions of this Act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: *Provided further*, That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe shall be in lieu of the compensation that said nation or tribe would be entitled to receive under the foregoing provisions, except as to annual tax. Said company shall also pay, so long as said reservations are owned and occupied by the Indians, to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in the said reservations. The money paid to the Secretary of the Interior under the provisions of this Act shall be apportioned by him, in accordance with the laws and treaties now in force, among the different nations or tribes according to the number of miles of railway that may be constructed by said railway company through their lands: *Provided*, That Congress shall have the right, so long as said lands are occupied and possessed by said nations or tribes, to impose such additional taxes upon said railroads as it may deem just and proper for their benefit. And any Territory or State hereinafter formed through which said railway shall have been established may exercise the like power as to such part of said railway as may be within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this Act.

SEC. 6. That said railway company shall cause maps showing the route of its located line through said reservations to be filed in the office of the Secretary of the Interior, and also to be filed in the office of the principal chief of each of the nations or tribes through whose lands said railway may be located; and, after the filing of said maps, no claims for a subsequent settlement and improvement upon the right of way shown by said maps shall be valid as against said company: *Provided*, That when a map showing any portion of said railway company's located line is filed, as herein provided for, said company shall commence grading said located line within six months thereafter, or such location shall be void. And such locations shall be approved by the Secretary of the Interior in sections of twenty-five miles before the construction of any such section shall be begun.

SEC. 7. That the United States circuit and district courts for the district of Kansas, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, concurrent jurisdiction over all controversies arising between said Kansas City, Oklahoma and Pacific Railway Company and the nations and tribes of Indians through whose reservation said railway shall be constructed. Said courts shall have like jurisdiction, without reference to the amounts in controversy, over all controversies arising between the inhabitants of the said nations or tribes of said railway company; and the civil jurisdiction of such courts is hereby extended within the limits of said Indian reservations without distinction as to citizenship of the parties so far as may be necessary to carry out the provisions of this Act.

SEC. 8. That the officers, servants, and employees of said company, necessary to the construction and management of said road, shall be allowed to reside, while so engaged, upon said right of way, but subject to the provisions of the Indian intercourse laws, and such rules and regulations as may be established by the Secretary of the Interior, in accordance with said intercourse laws.

SEC. 9. That said railway company shall build at least one hundred miles of its railway within three years after the passage of this Act or the rights herein granted shall be forfeited as to that portion not built. That said railway company shall construct and maintain continually all fences, road and highway crossings, and necessary bridges over said railway wherever said roads or highways do now or may hereafter cross said railway's right of way, or may be, by the proper authorities, laid out across the same.

SEC. 10. That the Kansas City, Oklahoma and Pacific Railway Company shall accept this grant of the right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise, nor assist in any effort looking toward the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian nations or

tribes any further grant of land, or its occupancy, than is hereinbefore provided for: *Provided*, That any violation of the conditions mentioned in this section shall operate as a forfeiture of all rights and privileges of said railway company under this Act.

SEC. 11. That all mortgages executed by said railway company conveying any portion of its railway, with its franchises, that may be constructed in said reservations, shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution, and shall convey all rights and property of said company as therein expressed.

SEC. 12. That Congress may at any time alter, amend, or repeal this Act.

CHARLES F. CRISP,
Speaker of the House of Representatives.

A. E. STEVENSON,
Vice-President of the United States and President of the Senate.

I certify that this Act originated in the House of Representatives.

Attest:

JAMES KERR, *Clerk.*

