Chapter 8

ECONOMIC ASPECTS OF A DEVELOPING STATE

In the years after 1860, tremendous economic growth took place in the state. The gold mining industry was joined by farming, cattle-raising, manufacturing, and banking, among others, in developing the state's economy. The building of the transcontinental railroad was another important factor, but in a different way. The railroad was expected to bring a new wave of prosperity to the Golden State, but this did not happen. Instead, "[o]ne of the many unexpected and unfavorable effects that the completion of the Pacific railroad had on the economy of California was that it suddenly exposed her merchants and manufacturers to intense competition from those of the Eastern cities."[1] Regardless of its effect on the state, the railroad, even from before its actual construction, caused a good deal of controversy, legal and otherwise.

One specter facing all businesses was that of taxation. Like other attributes of sovereignty, the taxing power had certain limitations placed on it, and questions arose that only the Supreme Court could answer. Whatever the decisions of the Court, they served to provide a legal framework for the state's business interests to use.

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[1] Walton Bean, *California; An Interpretive History* (New York: McGraw-Hill Book Company, 1968), 219.

The Civil War brought another challenge to the state's economy, the legal tender notes, or "greenbacks." This paper money, though, affected more than just the state's economy. It brought into focus the question of Union loyalty, challenged the role of California as a hard-money state, and as with other major legal controversies, presented a long string of cases for the Supreme Court to adjudicate.

TAXATION

The 1849 Constitution mentioned the subject of taxation in only one section of one article. The section read:

> Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county, and State taxes, shall be elected by the qualified electors of the district, county, or town, in which the property taxed for State, county, or town purposes is situated.[2]

With only one section in the Constitution as a frame of reference, the Court was given many opportunities to explain that section and in so doing help to establish an orderly system of taxation in the state.

The ultimate power over taxation was not stated directly in the Constitution, but the Court, in *People v. Seymour*, clearly placed it in the state, with Justice Joseph G. Baldwin writing that the power to lay and collect taxes

> is a sovereign attribute. The mode of ascertainment and collection of the tax is a matter of legislative discretion. What the Legislature may do, as a general thing, it may do in its own way, and at its own time. There is a general power to tax; there is no restriction of mode, nor is there any limitation of time by the organic law. Unless restrained by the Constitution, the Legislature have plenary power over the subject.[3]

The case itself involved the constitutionality of an 1860 act to enforce the collection of delinquent taxes in Sacramento for the years 1858 and 1859.[4] The

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[2] Cal. Const. (1849), art. XI, § 13.

[3] People v. Seymour (1860), 16 Cal. 343.

[4] Cal. Stats. (1860), chap. 172.

state's power over taxation included the authority to provide such a remedy. This taxing power even extended to fixing the fees allowed to tax collectors.[5]

The question of whether or not a tax was "equal and uniform" was brought up on numerous occasions. In *Sacramento v. Charles Crocker*, the defendant paid both taxes on his merchandise and a business license tax as well.[6] He objected to the license tax, but the Court said the tax was not unequal, because it was a tax on the amount of business transacted, and all businesses paid at the same graduated rate. What violated the "equal and uniform" rule were attempts to exempt the taxable property of a railroad company in a county from paying a school tax lawfully levied on all taxable property in such county,[7] or to remit part of a tax within a district.[8] The leading case of *People v. Whyler*, which involved the levying of a tax for the construction of levees in Sutter County, laid down several points as to what constituted uniform taxation.[9] The levees, the Court admitted, would injure some of the land, and the fact that all the land was taxed at its former value did not make the tax unequal. The tax, being on all property, real as well as personal, was a tax and not an assessment, even though for a local improvement. A tax on real estate alone was considered to be an assessment, and could be levied against only those actually to be benefited by the proposed improvement.[10] But the laying of the assessment had to be equal, which meant in proportion to the benefits accruing from the improvement.[11]

When the Constitution said that all property was to be taxed uniformly, what was meant to be taxed was private property, and not property belonging to the United States or to California.[12] Property belonging to the United States included land that was part of the public domain, and the fact that the land was being preempted and in actual occupation by a settler made no difference because, until the preemptor completed all the steps necessary to acquire title, the title remained with the United States.[13]

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5 Solano County v. Neville (1865), 27 Cal. 465.
6 Sacramento v. Charles Crocker (1860), 16 Cal. 119.
7 Crosby v. Lyon (1869), 37 Cal. 242.
8 Wilson v. Sup. of Sutter Co. (1873), 47 Cal. 91.
9 People v. Whyler (1871), 41 Cal. 351
10 Taylor v. Palmer (1866), 31 Cal. 240.
11 Doyle v. Austin (1874), 47 Cal. 353.
12 People v. McCreery (1868), 34 Cal. 432.
13 People v. Morrison (1863), 22 Cal. 73.

The Court later modified its view somewhat by saying that once a certificate of purchase had been issued, the land could be taxed even though the federal government had not yet issued a patent therefor.[14] The modification virtually involved the use of a "legal fiction" under the 1861 Revenue Act, which said that real estate meant and included "the ownership of or claim to, or possession of, or right of possession to any land."[15] Said the Court:

> The term "claim," as used in this provision, means something more than a mere assertion by the party assessed that he owns or is entitled to possess the lands described in the list. While the word carries with it the idea of such assertion, it involves also the idea of an actual possession of the land claimed.[16]

Later that same October 1866 term, the Court added, "The land itself is not taxed, but the defendant's claim and right of possession is taxed."[17] The public property of counties and towns, as subdivisions of the state, could not be taxed either,[18] and assessments, as differentiated from tax, could not be levied either on public property, even if the property would be benefited by the improvement.[19]

The state, in its sovereign authority, could, by appropriate legislation, authorize any political subdivision to levy a tax or assessment either for general revenue or for special purposes. Such special purposes included building a bridge in the city of Nevada,[20] or for a new county to pay its share of the debt of the county from which it was formed.[21] The grant of taxing power to a local government certainly did not mean that the power could be abused, as was pointed out in *People v. Kohl*. In that case the defendant paid his property taxes and then sold the land, after which Los Angeles County attempted to collect again from the new owner. The Court held that this amounted to an attempt at double taxation.[22] In *People v. Niles*, the Court disallowed

14 People v. Shearer (1866), 30 Cal. 645.
15 Cal. Stats. (1861), chap. 401, § 5.
16 People v. Frisbie (1866), 31 Cal. 148.
17 People v. Cohn (1866), 31 Cal. 211.
18 People v. Doe G. 1034 (1868), 36 Cal. 220.
19 Doyle v. Austin, *supra*.
20 Kelsey v. Trustees of Nevada (1861), 18 Cal. 629.
21 Beals v. Supervisors (1865), 28 Cal. 449.
22 People v. Kohl (1870), 40 Cal. 127.

an attempt by Mendocino County to assess a boat serving Mendocino, but whose home port was San Francisco.[23] The Court also voided a San Francisco ordinance taxing goods outside the city's corporate limits or *in transitu* under a bill of lading, as being in restraint of trade.[24]

The assessment and collection of property taxes was important to all counties, and disputes occasionally arose which had to be settled in the Supreme Court. A series of tax cases involved the land in Mariposa County granted to John Charles Frémont. In the first of these cases, *Palmer v. Boling*, the Court said that a tax assessment could not be made until after the title had vested in the owner, but once the title did vest, the assessment could be made immediately.[25] In *Fremont v. Early*, Frémont tried to restrain the collection of the 1856 taxes because the taxes of 1851 through 1854 were allegedly collected illegally.[26] He had paid $13,800 during those years and wanted this amount set off against his 1856 taxes. Frémont did not prove the illegality of the earlier taxes or the insolvency of the county. Without showing that the taxes had been illegal and that the only way the insolvent county could pay what it owed him was by setting off the current taxes, Frémont's case failed.

Frémont, who seemed to have a plethora of tax problems, also sought an injunction against the former sheriff of Mariposa County to prevent the sale of part of his grant to pay $8,000 in delinquent taxes. Although the defendant claimed that he was completing some unfinished business of his office by selling land in 1858 to pay 1855 taxes, the Court held for Frémont, noting that the defendant's term in office had ended in October 1855, and his right to finish the business of his term ended in March 1856, when he settled his accounts with the county auditor.[27] The delinquent taxes should have then gone on the tax roll of the next year, 1856, to be collected by the new sheriff.

Under the provisions of the 1857 revenue act, the board of supervisors was authorized to sit as a board of equalization to which tax appeals could be brought.[28] In spite of the general language used in the statute the Supreme Court limited arbitrary use of the act in *Patten v. Green* when it

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23 People v. Niles (1868), 35 Cal. 282.
24 Ex parte Frank (1878), 52 Cal. 606.
25 Palmer v. Boling (1857), 8 Cal. 384.
26 Fremont v. Early (1858), 11 Cal. 361.
27 Fremont v. Boling (1858), 11 Cal. 380.
28 Cal. Stats. (1857), chap. 251, § 8.

voided the act of the board of equalization of Sonoma County in raising the valuation of plaintiff's land by one-half without giving him notice.[29] Justice Baldwin, speaking for the unanimous Court, said,

> We think it would be a dangerous precedent to hold that an absolute power resides in the Supervisors to tax land as they may choose, without giving any notice to the owner. It is a power liable to a great abuse. The general principles of law applicable to such tribunals, oppose the exercise of any such power.[30]

As with other legislative acts, laws dealing with taxation had to be followed exactly, even to the extent of including dollar signs for each valuation.[31] Further, in order to bring suit to collect a tax, the suing governmental body had to aver in its complaint that the statute had been complied with in all its particulars.[32] One particular not followed on several occasions was that the assessor be elected from the taxed district. This meant that the assessor elected by the city and county of Sacramento could not assess a tax in the city for city purposes alone.[33] The various county and state boards of equalization were also limited to statutory provisions in their actions. In *People v. Reynolds*,[34] the Yuba County Board of Equalization added property to the assessment roll although the 1861 revenue act said only the assessor could do this.[35] This action of the board's was illegal and was not allowed to stand, nor could a cancellation of assessments be allowed.[36]

For a number of years, the Legislature had been arranging for the codification of the state's laws, and these codes were adopted at the Legislature's 1871–72 session, with most of the codes to take effect January 1, 1873. The Political Code provided for a three-member State Board of Equalization to equalize the assessments of taxes in the different counties

> so as to cause them to approximate as nearly as possible to the equality and uniformity enjoined by the Constitution. It had become

29 Patten v. Green (1859), 13 Cal. 325.
30 Ibid., 329.
31 Hurlbutt v. Butenop (1864), 27 Cal. 50.
32 People v. Castro (1870), 39 Cal. 65.
33 People v. Hastings (1866), 29 Cal. 449.
34 People v. Reynolds (l865), 28 Cal. 107.
35 Cal. Stats. (1861), chap. 401, § 22.
36 People v. Board of Supervisors (1872), 44 Cal. 613.

> apparent . . . that when the value of property for the purposes of taxation was to be ascertained and finally determined by the local Assessors, subject only to a limited control by the County Boards of Supervisors, the grossest inequality frequently existed in the valuations in different counties, whereby the requirement of the Constitution that "taxation shall be equal and uniform throughout the State" was practically abrogated.[37]

The power of the Legislature to create a board with these powers, upheld in the above-quoted case, *Savings and Loan Society v. Austin*,[38] was challenged again at the Court's next term in *Houghton v. Austin*, and with different results. In the latter case the Court held that the section giving the State Board of Equalization the right to fix the rate of taxation was unconstitutional because it was a delegation of legislative authority.[39]

> This section [3696] of the Code attempts to confer upon the State Board the power to add any sum to the amount of tax to be levied by law. We are of opinion that the Legislature cannot commit to the board this power to increase . . . the amount of tax to be paid by the people.[40]

Justice Elisha McKinstry commented that in California the power of taxing the people rested only in the Legislature, and the members of that body could not substitute the judgment of others for their own.

Houghton v. Austin was affirmed by the Court in 1878 in a case challenging the validity of tax sales of land made under the void statute. The Court said that since the tax levy was void, any sales made because of that void tax were also void, and any deeds issued to confirm such sales were nullities.[41]

The series of cases having the greatest importance to the banking community, the legal tender note controversy excepted, had to do with solvent debts. Generally stated, banks could be taxed on all money, gold dust, bullion on hand, and all solvent debts, which included all mortgages and other loans and debts due them; credits secured by mortgages were simply regarded as

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37 Savings and Loan Society v. Austin (1873), 46 Cal. 473–74.

38 Houghton v. Austin (1874), 47 Cal. 646.

39 Cal. Pol. Code (1872), §§ 3693, 3696.

40 Houghton v. Austin, 652.

41 Harper v. Rowe (1878), 53 Cal. 233.

property and taxed as such. At the same time the mortgagor paid taxes on the full value of his property regardless of the debt against it, at least nominally. "As a matter of fact, however, it was usually arranged in agreement between debtor and creditor that the debtor should pay the taxes on both the property and the loan."[42] The mortgage was not taxed *as such*, but the money secured thereby was.[43] A bond, though, could be taxed as personal property, although the Court limited its ruling to state bonds because the United States Supreme Court had already decided that federal bonds could not be taxed.[44]

The first real challenge to the system of taxing solvent debts occurred in 1868 when Andrew B. McCreery, holder of a $125,000 note on James Lick's "Lick House," claimed that taxing both the money loaned and the property on which the money was lent amounted to double taxation.[45] The Court said that the question of double taxation did not arise from the facts of the case.

> While the defendant held the money, which he afterwards loaned to Lick, he was taxable for that sum, and when he passed the money to Lick upon making the loan, and took Lick's obligation to pay the same, secured by a deed of trust or other adequate security, he certainly did not divest himself of so much property. He possessed the same amount of property that he held before the loan was made. Its form only was changed. And so in all cases of loans. The lender owns the debt, and the debt is property, its value depending on the sufficiency of the security, . . . and the ability of the borrower to pay the debt. The holder of the debt is taxable upon the value of the debt.[46]

The Court added that the borrower *might* claim double taxation if the debt were not subtracted from the taxable value of his property, but such was not the case here.

The Court sidestepped the question again the next year in *People v. Whartenby*, when the lender claimed double taxation.[47] As against the lender, the Court said, there was no double taxation:

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42 Carl B. Swisher, *Motivation and Political Technique in the California Constitutional Convention, 1878–79* (Claremont: Pomona College, 1930), 66.

43 Falkner v. Hunt (1860), 16 Cal. 167.

44 People v. Home Insurance Company (1866), 29 Cal. 533.

45 People v. McCreery, *supra*.

46 Ibid., 446–47.

47 People v. Whartenby (1869), 38 Cal. 461.

> The debt secured by the mortgage has been but once taxed, and if the owner of the mortgaged property shall claim that the amount of the mortgage should be deducted from the value of the property, and that he should be assessed only for the remainder, it will be our duty to decide that question when it comes before us; but it is not before us in this case.[48]

Possibly in response to protests by the San Francisco banking community, the Legislature enacted a law in 1870 exempting solvent debts from taxation,[49] but this law was declared unconstitutional by the Supreme Court in *People v. Eddy*.[50] The reasoning of the Court was that a solvent debt was property, and the Legislature could not exempt any private property because the state constitution said all property was to be taxed. Finally a property owner brought suit, claiming the amount of the mortgage should have been subtracted from the value of the property, but this argument was not allowed.[51]

The new codes that went into effect January 1, 1873, again provided for the taxation of solvent debts,[52] and set the stage for the key cases of *Savings and Loan Society v. Austin*[53] and P*eople v. Hibernia Bank*.[54] The first of these cases held the tax on solvent debts to be an instance of double taxation, although the case itself hinged on a procedural point. Justice Joseph Crockett said, "if a debt for money lent and secured by mortgage be taxed, and if the mortgaged property be also taxed, the same *value* and subject matter has been twice taxed, and it presents a case of double taxation."[55]

The *Hibernia Bank* case involved the solvent debt question directly, as San Francisco banking interests brought the suit. The Court said that credits were not "property" as that term was used in the Constitution, and hence, not taxable. Further, there had to be a basis of valuation, and a solvent debt, being a paper promise to pay money, was not money itself. Such

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48 Ibid., 464–65.

49 Cal. Stats. (1869–70), chap. 424.

50 People v. Eddy (1872), 43 Cal. 331.

51 Lick v. Austin (1872), 43 Cal. 590.

52 Cal. Pol. Code (1872), § 3607.

53 Savings and Loan Society v. Austin, *supra*.

54 People v. Hibernia Bank (1876), 51 Cal. 243.

55 Savings and Loan Society v. Austin, 491.

a credit or debt was only property in the general sense. If the debt had a value of its own, then the payment of the debt would affect the value of assets in the state, but, "When a debtor pays his debt he does not abstract or destroy any portion of the taxable property of the State; the aggregate of values remains the same."[56] This decision left considerable disaffection,

> especially by debtors and tax payers, for it was recognized that creditors were still escaping their share of the burden of taxes. Debtors did not now appear to be carrying a double load, as they had done when they had paid taxes on the full value of their property and again on the money loaned to them, but still they and their fellow holders of tangible property had to pay nearly the total tax bill of the state."[57]

THE LEGAL TENDER CASES IN CALIFORNIA

The question of the use of greenbacks in California was a most vexing problem for the state as a whole, not only financially, but because it raised the possibility of a conflict between the state and the federal government. Although California no longer questioned the judicial primacy of the United States Supreme Court, occasional disputes between the state and the national government still arose from time to time, and the use of legal tender notes, or "greenbacks," during the Civil War was one such dispute.

By 1862 the financial situation of the United States government was quite gloomy. The suspension of specie payments in late 1861 caused financiers to look elsewhere to solve financial problems. With taxes and loans insufficient to meet the cost of the war, the issuance of paper money became a most tempting and necessary recourse.

On February 25, 1862, Congress passed a legal tender act authorizing the issuance of $150,000,000 in non–interest-bearing United States notes, which were to be "legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest."[58] To ensure negotiability and to prevent depreciation of these notes, the

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56 People v. Hibernia Bank, 248.

57 Swisher, *Motivation and Political Technique*, 69.

58 12 U.S. Stat. at L. (1862), 345–48.

government declared them to be legal tender, but they were in fact fiat money, lacking gold reserves and a redemption date. It was expected that the value of these notes would depend on the confidence of the people in the United States. The obvious necessity for the issuance of these notes stilled opposition in the eastern states, but opposition continued on the Pacific Coast, and in California in particular.

Following the discovery of gold, California became and remained for many years a "hard money" state. "This was undoubtedly due to the fact that it was able to produce more than enough gold and silver to satisfy "the needs of its people for a circulating medium."[59] There were no banks of issue in California, and the organic law of the state specifically prohibited the creation and circulation of bank notes as money.[60] The complete text of the act did not reach the state until March 27, 1862. On June 13 the fears of Californians over depreciated currency were realized when the legal tender notes were quoted at discounts of 1 to 2 percent. By June 30 the discount was up to 8 percent; by July 19 they had reached 15 percent, and from that time into the 1870s greenbacks were bought and sold on the street and in the stock exchanges of San Francisco.[61]

The first case dealing with legal tender notes to reach the California Supreme Court was *Perry v. Washburn*, decided at the July 1862 term.[62] At issue was an attempt by the plaintiff to pay taxes owed to the city and county of San Francisco in legal tender notes. The defendant, San Francisco's tax collector, said that under the California general revenue act of 1861 he could only accept taxes paid "in the legal coin of the United States, or in foreign coin at the value fixed for such coin by the laws of the United States."[63] The lower court held that the taxes could not be paid in greenbacks, and the plaintiff applied to the Supreme Court for a mandamus to compel the tax collector to accept the notes. The Court, in a unanimous decision, with Chief Justice Stephen J. Field writing the opinion, affirmed the district court's decision: "The Act does not, in our judgment, have any reference to taxes levied under the laws

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59 Ira B. Cross, *Financing an Empire; History of Banking in California*, vol. I (4 vols.; Chicago: The S. J. Clarke Publishing Co., 1927), 289.

60 Cal. Const. (1849), art. IV, § 34, 35,

61 Cross, *Financing an Empire*, vol. I, 310.

62 Perry v. Washburn (1862), 20 Cal. 319.

63 Cal. Stats. (1861), chap. 401, § 2.

of the State. It only speaks of taxes due to United States, and distinguishes between them and debts. . . . Taxes are not debts within the meaning of this provision."[64] Under this decision the notes could still be used to pay debts and other business obligations, and did not prevent the state's treasurer, Delos R. Ashley, from paying California's quota of the United States direct tax in greenbacks, which the federal government accepted.

In an attempt to void the chance of being paid with depreciated currency, merchants began the practice of inserting a clause in contracts that provided for payment in gold or its equivalent. "But in the absence of a specific law giving validity to such contracts, they could not be enforced; and many people disregarded their promises and paid their debts with greenbacks at par."[65]

To ensure the validity of such contracts, Silas W. Sanderson, then a member of the Legislature, authored a bill "providing that contracts in writing for the direct payment of money, made payable in a specific kind of money or currency, might be specifically enforced by the courts, and judgments on such contracts be made payable and collectable in the kind of money or currency specified."[66] This bill passed the Legislature in 1863 and was generally known as the "Specific Contract Act."[67]

At its July 1864 term, the California Supreme Court rendered several key opinions dealing with legal tender, and it passed on the constitutionality of the federal act and the legality of the state act. In *Lick v. Faulkner*, James Lick sued William Faulkner to collect money due as rent on a store in San Francisco. Lick refused to accept the legal tender notes that Faulkner proffered, claiming that the act under which the notes were issued was contrary to the United States Constitution because Congress was not given the power to make such notes legal tender. The Court, with Justice John Currey writing the decision, felt otherwise. Currey first pointed out, "Though the Government of the United States is one of enumerated and limited powers, it is supreme within its sphere of action."[68] These powers were for

64 Perry v. Washburn, 350.

65 Joseph Ellison, "The Currency Question on the Pacific Coast During the Civil War," *The Mississippi Valley Historical Review* XVI (June, 1929): 56.

66 Theodore H. Hittell, *History of California*, vol. IV (San Francisco: N. J. Stone & Company, 1885–97), 347.

67 Cal. Stats (1863), chap. 421.

68 Lick v. Faulkner (1864), 25 Cal. 418.

the purposes stated in the preamble, "But they could not be carried into execution without legislation; of this the framers of the Constitution were aware, and hence Congress was empowered to make all laws necessary and proper for carrying into execution the powers specified."[69]

The powers to declare war, to raise an army and navy, and to suppress insurrections were granted to Congress by the Constitution, and the power to pass laws to execute these other powers. This particular law was passed as a means of effecting these enumerated powers, and "the Act of Congress upon this particular point was an exercise of sovereign authority within the scope of the powers granted in the Constitution."[70]

The Court affirmed *Lick v. Faulkner* again that term in *Curiac v. Abadie*[71] and *Kierski v. Mathews*.[72] In the former case the lower court tried to circumvent the Supreme Court by treating the contest as one in equity, noting that paper money was worth but sixty cents on the dollar at that time. The Court found for the plaintiff, but the Supreme Court reversed the decision and directed a verdict for the defendant, on the basis of *Lick v. Faulkner*.

Had the decision in *Lick v. Faulkner* been different, and the Court declared the federal act unconstitutional, there would have been no need for a state specific contract law. But as things turned out, the federal law was constitutional, and the California Supreme Court had to deal with the state law as well in *Carpentier v. Atherton*.[73]

In a contract dated April 2, 1864, Faxon D. Atherton agreed to pay Horace W. Carpentier five hundred dollars in United States gold coin, on demand. Some time later Carpentier demanded payment and Atherton offered only legal tender notes for both principal and interest. Carpentier refused the paper money and brought suit on the contract. The lower court held for him, and Atherton appealed to the Supreme Court. Justice John Currey wrote the opinion, holding that the California statute was not in conflict with the federal statute. The latter was paramount in cases involving the payment of money generally,

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69 Ibid., 419.

70 Ibid., 433.

71 Curiac v. Abadie (1864), 25 Cal. 502.

72 Kierski v. Mathews (1864), 25 Cal. 591.

73 Carpentier v. Atherton (1864), 25 Cal. 564.

> but as to the contract, which is the foundation of the judgment in this case, it is more than a contract for the payment of money merely. It goes to the extent of defining by what specific act the contract shall be performed. By the admitted and settled rules of law, such a contract can be performed, according to the agreement of the parties, only by the payment of the kind of money specified.[74]

Justice Currey added that the act was merely remedial and created no new rights. Chief Justice Silas W. Sanderson, author of the state law, expressed no opinion.

Another important case decided at the July 1864 term dealing with legal tender notes, *Galland v. Lewis*, declared that the specific contract act was retroactive in its operation.[75] The case involved a contract executed September 1, 1862, and payable in United States coin on October 15, 1862. The defendant offered the amount due in United States notes February 1, 1863, also before the passage of the state act. In his opinion Justice Oscar L. Shafter wrote that when retroactive laws had been voided, such laws had been in conflict with some vested right. "But when an Act like the one now in question takes a contract as it finds it, and simply enforces a performance of it according to its terms, it is not liable to objection because it may have a retroactive operation by way of relation to past events."[76]

In the *Galland* case the execution of the contract, the due date, and the proffered payment all occurred in the period between the passage of the federal and state acts. At the January 1865 term the Court answered another challenge to the federal act, at least as to contracts executed prior to its passage.[77] At issue were bonds offered in 1858 and 1859 by a mining company, which attempted to redeem them in legal tender notes. The plaintiff admitted the validity of the federal acts as to the payment of debts,[78] but questioned whether debts created before February 25, 1862, were subject to satisfaction by the payment of legal tender notes.

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74 Ibid., 572–73.

75 Galland v. Lewis (1864), 26 Cal. 46.

76 Ibid., 48.

77 Higgins v. B. R. & A. W. & M. Co. (1865), 27 Cal. 153.

78 At issue as well was a second federal act passed March 3, 1863, providing for the issuance of additional legal tender notes. 12 U.S. Stat. at L. (1863), 709–13.

Justice Currey again spoke for the Court, holding the federal act did apply to debts created before its passage, and:

> The Acts of Congress under consideration making United States notes lawful money and a legal tender in the payment of debts are not laws, operating retrospectively but *in presenti* and prospectively. No new obligations are created nor new duties imposed by them; neither do they attach new disabilities in respect to transactions or considerations which had transpired before their passage. They simply provide that the notes issued by their authority shall be lawful money, and that such money shall be a legal tender in the payment of debts.[79]

With this decision the remainder of cases dealing with legal tender notes, and they continued until 1878, essentially involved explanations and amplifications of these earlier decisions. The decision in *Perry v. Washburn*, for example, that legal tender notes could not be used for the payment of taxes, was the basis for later holding that the greenbacks could not be used to pay wharfage fees to an agency of the state because such fees were in the nature of public revenue,[80] and that the notes could not be used to pay a fine, as a fine was not a debt within the meaning of the federal statute.[81]

Under California's specific contract law any contract or debt generally payable in money, without specifying a particular kind of money, could be satisfied by legal tender notes. This included a judgment,[82] the obligation of a judgment creditor,[83] and interest on a savings deposit, even though the deposit itself was in gold coin.[84] It was also necessary that a plaintiff aver in his complaint that a recovery in coin was being sought. The lack of such an averment prevented a judgment in default being paid in gold in *Lamping v. Hyatt*, where the Court ruled that in a default judgment "the Court was therefore not authorized to grant any greater relief than is demanded in the prayer of the complaint."[85] In another instance the Court said, "The right to the relief given is peculiar and exceptional, and if a party would recover

79 Higgins v. B. R. & A. W. & M. Co., 159–60.
80 People v. Steamer America (1868), 34 Cal. 676.
81 In re Whipple (1866), 1 Cal. Unrep. 274.
82 Reed v. Eldredge (1865), 27 Cal. 346.
83 People v. Mayhew (1864), 26 Cal. 655.
84 Howard v. Roeben (1867), 28 Cal. 281.
85 Lamping v. Hyatt (1864), 27 Cal. 102.

money in the form of gold or silver of one who received it for him in that form, the form or kind of money received should be specially averred."[86]

One method attempted to get around the lack of a specific kind of money was to show the difference between the value of gold and the value of greenbacks. But the Court refused to accept such proof, saying, "'Greenbacks' are lawful money — they are a legal tender for all debts — and are therefore necessarily a legal standard for the measurement of values — not of other lawful money, but of all commodities bought and sold, services rendered, etc."[87]

Another method was to specify gold coin or its equivalent. This was tried in *Lane v. Gluckauf*, where a contract dated August 4, 1863, included the proviso that if the debt were not paid in gold coin then damages were to be paid equal in value to the difference between gold and paper money in the San Francisco market. The complaint also specified alternative remedies of gold and paper, and was upheld by the Court because the intent of the contract was to insure payment in gold, and only if gold could not be obtained, was the payment to be made in notes.[88] A contract that merely said that gold or its equivalent in legal tender notes was to be paid in satisfaction of the debt was not enough to bring the contract within the provisions of the specific contract act because there was no standard of comparison.[89] The Court concluded, "In contemplation of law, a dollar in legal tender notes is equal to, and therefore the equivalent of, a dollar in gold coin. In comparing the two kinds of money the law knows no difference in value between them. It recognizes no other standard of equivalents."[90]

The introduction of the legal tender notes and their rapid depreciation presented questions that the federal government probably never anticipated, but state courts had to answer. One example that should suffice was whether the $50 line separating a felony from a misdemeanor was to be based on gold or paper currency at the latter's lesser value. The California Supreme Court settled this matter by saying that the federal act was not involved since that act only created a kind of money to be used in business, and as a tender in the payment of debts. But since no contract or tender was involved here, "The

86 McComb v. Reed (1865), 28 Cal. 288.
87 Spencer v. Prindle (1865), 28 Cal. 276.
88 Lane v. Gluckauf (1865), 28 Cal. 288.
89 Reese v. Stearns (1865), 29 Cal. 273.
90 Ibid., 276.

grade of the offense must be determined by the standard with reference to which it must be presumed to have been fixed by the legislature."[91]

Judicially, California was in line with the rest of the nation since "[p]ractically every State Court which had considered the question had upheld the constitutionality of the [federal] law."[92] No California legal tender cases were appealed to the United States Supreme Court, although that tribunal acted on similar cases. At its December 1868 term the United States Supreme Court ruled that paper money was not legal tender for state taxes,[93] and that the notes were not legal tender in the settlement of obligations calling specifically for payment in gold or silver coin.[94]

Although California was in line legally,

> [a]t the same time it seems plain that the policy of California nullified, to a certain extent, a federal law. To be sure the circulation of the federal notes throughout the state was not actually prohibited. Their use, however, was practically banned by the state laws. . . . As far as California was concerned, the law giving legal tender quality to treasury notes was of little effect.[95]

The legal tender notes may have been of little effect in general, yet California businessmen were able to make large profits by purchasing goods in eastern markets with depreciated greenbacks and selling those goods for gold on the Pacific Coast.

THE RAILROADS

Probably the best-known fact associated with the building of the transcontinental railroad was the financial aid, both in money and land, extended to the railroad companies. What is not as well known is the fact that a goodly amount of largesse was forthcoming from the states as well, and California was certainly not to be outdone, particularly with the "Big Four" being

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91 People v. Welch (1865), 1 Cal. Unrep. 221.

92 Charles Warren, *The Supreme Court in United States History*, vol. II (2 vols.; Boston: Little, Brown & Co., 1921), 499.

93 Lane County v. Oregon (1868), 7 Wall. 71.

94 Bronson v. Rodes (1868), 7 Wall. 229.

95 Joseph Ellison, *California and the Nation . . .* , University of California Publications in History, vol. XVI (Berkeley: University of California Press, 1927), 230.

California residents and active in Republican politics at a time when the G.O.P. was in political ascendency both nationally and in the state. Of the various states extending aid, California was the only far western state to be in a position to be interested in aiding railroads. In spite of constitutional prohibitions against financial aid to private corporations, California presented rights-of-way, land for terminals, and guaranteed Central Pacific bonds.

The one statute involving direct state aid to be tested in the California Supreme Court was passed in 1864. It authorized the Central Pacific Railroad to issue $1,500,000 in 7 percent bonds, with the state to pay the interest on the bonds for twenty years; the state was to create a special tax fund through a special 8 percent tax.[96] A suit was instituted in the name of the people for an injunction to restrain the railroad from issuing any bonds; the petitioner claimed the law violated the provisions of the Constitution limiting the amount of state indebtedness,[97] and prohibiting both the use of the state's credit to help a private person or institution, and the state becoming a stockholder either directly or indirectly.[98] The injunction was denied and the law declared constitutional in *People v. Pacheco*.[99] The Court quickly disposed of the debt limitation problem by citing the cases dealing with the state prison and state capitol, because no specific debt was being created immediately.[100] The principle involved was that of taxation, vested in the Legislature; that power was unlimited.

> The Legislature may not only determine the extent to which it will exercise the taxing power, but also for what objects of public interest it shall be exercised, and it may appropriate the moneys raised to such objects . . . .
>
> There is in the Constitution of California no limitation on the power of the Legislature to appropriate moneys, either as to the amounts to be appropriated or the objects for which they may be made.[101]

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96 Cal. Stats. (1863–64), chap. 320.

97 Cal. Const. (1849), art. VIII.

98 Ibid., art. XI, § 10.

99 People v. Pacheco (1865), 27 Cal. 175

100 See, in chapter 6 *supra*, "Interpreting Other Laws."

101 People v. Pacheco, 209.

The Court said there was no loan or gift of the state's credit contrary to the Constitution because in a case of war there could be no limit to the credit of the state.

> If the Legislature may authorize the building of a railroad for military purposes, it may certainly appropriate funds to aid a corporation in the construction of a similar work in consideration of its use for such purposes. The principal end being the advantage to be derived from the use of the road, it matters not that the appropriation incidentally aids an individual, association or corporation.[102]

The power of the Legislature over its political subdivisions, already noted in other instances, also came into play in regard to the railroads. In the early stages of the construction of the Central Pacific's share of the railroad was the problem of finances. The government delayed the issue of the first mortgage gold bonds and the company could not borrow money with only second mortgage security. In addition, California laws making stockholders personally liable for a company's debts made railroad stocks virtually unsalable, and outright borrowing was precluded by high interest rates. California expectations that financial problems would cause the demise of the railroad enterprise were modified however, when Leland Stanford, the state's governor, persuaded the Legislature to aid the company.

Encompassing a period little more than a year in length, the Legislature passed eight acts granting special concessions to the Central Pacific and Western Pacific railroads alone, and other railroads also received favorable legislation. In addition to the act involved in the *Pacheco* case, the Legislature authorized various cities and counties to subscribe to railroad stock. Not all the statutes were challenged in the courts, but enough were so as to keep many lawyers occupied.

One of these laws to be challenged was the bill authorizing the San Francisco Board of Supervisors to take and subscribe a million dollars to the capital stock of the Western Pacific and Central Pacific.[103] Even in the Legislature there was controversy over the bill, with only half of San Francisco's ten representatives voting for its passage. Controversy did not end with passage, however. One provision of the law was that the people of San

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[102] Ibid., 225.

[103] Cal. Stats. (1863), chap. 291.

Francisco approve the subscription to the railroad bonds. The necessary consent was secured at an election held in May, 1863, but several students of the subject feel that irregular means were used to carry the election.[104]

The ordinance passed by San Francisco's citizenry bound the city to purchase $600,000 worth of stock in the Central Pacific and $400,000 in the Western Pacific, but Wheeler N. French instituted a taxpayer's suit to prevent the city from purchasing the stock. A temporary injunction was granted by the district court, but on appeal, the Supreme Court upheld the constitutionality of the statute in *French v. Teschemaker.*[105] French's contention was that the enabling statute was void because it relieved the city of any liability beyond the amount subscribed, contrary to the constitutional provisions making stockholders personally and proportionately liable for all corporate debts.[106] The Court turned down this argument saying that the city could not subscribe to railroad stock without the permission of the Legislature, and the Legislature would also determine proportionate liability, since it was not defined in the Constitution.

Those opposing the subscription also turned to the Legislature, which passed an act[107] authorizing the city to compromise with each of the two railroads and thus settle all claims

> for cash or other security, in place of bonds claimed by the companies, provided the power to make such compromise should rest in the Board of Supervisors only after and in case said board should be compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in the act.[108]

The city enacted a compromise under which it was to give the Central Pacific $400,000 in bonds instead of buying $600,000 in stock, and $200,000 in bonds to the Western Pacific instead of the $400,000 in stock. The required court order was issued, but the city's officers still refused to deliver the bonds, causing a new writ of mandate to be sought against these

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104 See for example, Stuart Daggett, *Chapters on the History of the Southern Pacific* (New York: The Ronald Press Company, 1922), 31.

105 French v. Teschemaker (1864), 24 Cal. 518.

106 Cal. Const. (1849) art. IV, §§ 32, 36.

107 Cal. Stats. (1863–64), chap. 344.

108 Daggett, *Southern Pacific*, 34.

officials individually; this became *People v. Coon*.[109] The Court granted the mandamus, saying that since the city was a creature of the Legislature, and in the exercise of its legitimate powers could only act by and through its agents. Here the city's agents, the defendants, had to act if all the conditions stated in the act authorizing the compromise were met, and they were. The last condition was an order from the Court, and that order consisted of the final judgment in *French v. Teschemaker*.

As a result of the issuance of the mandamus the city officers signed the bonds, but the city and county clerk, Wilhelm Loewy, either refused or merely failed to countersign them; the bonds ended up with the county treasurer, and the state, as in *People v. Coon*, acting on relation of the Central Pacific, brought suit, seeking a peremptory mandamus commanding Loewy or his successor to get the bonds, countersign them, and help deliver them to the railroad. The Board of Supervisors was to assist him and was made a co-defendant, as the case came up as *People v. Supervisors of San Francisco*.[110] Six of the supervisors tried to answer individually, but the Supreme Court said the Board could only answer in its aggregate capacity. The Board and Loewy now alleged fraud in the 1863 enabling election. Governor Leland Stanford had written an open letter at the time of the election to remind the city's inhabitants of the advantages the railroad would bring to the state generally, and San Francisco in particular.

Stanford did not limit his influence to letter writing, for at the trial in the lower court witnesses testified that Stanford's brother Philip, a large Central Pacific stockholder, purchased votes at the polls. This argument was rejected, the Court saying that since fraud had not been found by the lower (trial) court, the matter was now *res judicata*. Failing on this point, the defendants raised other technical matters, but the railroad won the day.

The victory was costly to the railroad, at least in part, as "Stanford and his associates afterward claimed that this action on the part of San Francisco seriously weakened the credit of the company not only in the West but in the financial centers of the East."[111] The bonds were delivered

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[109] People v. Coon (1864), 25 Cal. 635.

[110] People v. Supervisors of S. F. (1865), 27 Cal. 655.

[111] Harry J. Carman and Charles H. Mueller, "The Contract and Finance Company and the Central Pacific Railroad," *The Mississippi Valley Historical Review* XIV (December, 1927): 332.

to the company April 12, 1865, seven days after the decision in *People v. Supervisors of S. F.*, but also after two years of legal struggles. This two-year delay proved costly to the company; had the bonds been available in 1864 the company would have built its line more rapidly and gone beyond Salt Lake.

The city was the loser in the long run, too. The result was a flat payment by the city with no stock in return, "but since the road later made money and its stocks soared in value, this move cost the city millions in railroad securities."[112]

Due to San Francisco's prominence in the state, the controversy between it and the railroad probably received more notoriety than the problems of other cities and counties, but these problems were real enough to the local governments involved. As early as 1860, before the passage of the federal railroad act, Butte County appeared in the Supreme Court as a defendant in a taxpayer's suit to restrain the county from carrying out provisions of two 1860 acts of the Legislature authorizing the county to buy bonds of the California Northern Railroad Company.[113] In *Hobart v. Supervisors of Butte County*, the Court rejected the plaintiff's contention that the act was not a "law, for the reason that the matter prescribed is not the will of the Legislature, but a mere transfer to the people of Butte County of powers to legislate.[114]

The Court reiterated the extensive powers of the Legislature, which were limited only by the Constitution. The act provided for an election before the bonds were to be purchased:

> The Legislature frame the law, and fix its terms and provisions; but they declare that this law shall only take effect in a particular event, that event being the assent of the people interested. It is difficult to see upon what principle the Legislature, having the general powers before attributed to it, may not as well make a *local law* depend for effect upon the will of all the voters of a locality or a majority, as upon the assent of a few; and laws are passed everyday which depend for validity upon the acts of individuals.[115]

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112 Norman E. Tutorow, *Leland Stanford: Man of Many Careers* (Menlo Park: Pacific Coast Publishers, 1971), 77.

113 Cal. Stats. (1860), chap. 122, 164.

114 Hobart v. Supervisors of Butte County (1860), 17 Cal. 30.

115 Ibid., 33.

The exact monetary provision of the 1860 acts was that the county would issue bonds totaling one-third of the railroad's expenditures. The county claimed that even though the railroad spent some $97,000, the work was worth only $30,000, making the county liable for $10,000 in bonds. The Supreme Court disagreed, saying that the actual expenditure was the real basis of the county's liability. "Any other basis, besides being uncertain, and leading to embarrassing inquiries, is unwarranted by the express terms and evident spirit of the Act."[116] The county now followed the legislative and judicial dictates, but in 1863 the Legislature passed a new act, authorizing the county to issue county bonds to pay for the railroad bonds,[117] and in 1866 a further act for the levying and collection of a tax to provide for the payment of accruing interest on the county bonds, and eventual payment of the principal.[118] In 1872 the county was called upon to appear again in court, with the Supreme Court ordering the county to increase the tax levy for the payment of the interest and principal.[119]

Other local governments involved in railroad stocks and bonds to become involved in Supreme Court litigation because of such involvement, included Sacramento's consolidated city and county government, the counties of Napa, Plumas, Santa Clara, and Marin, and the cities of Stockton and San Diego. Although the facts may have differed from city to city or county to county, no new principles of law were involved, although a look at Stockton's involvement might shed further light on the problems faced by a local government in its relationship with a railroad. At its 1870 session, the Legislature empowered the city of Stockton to aid the Stockton and Visalia Railroad, directing the municipal authorities to donate $300,000 to the railroad, which was to have a permanent terminus in the city, at its waterfront.[120] Bonds were to be placed in the hands of trustees who were to deliver them piecemeal to the railroad as the work progressed. All went well until the city authorities refused to levy the tax to pay the accruing interest on the bonds, claiming the act was unconstitutional.

116 C. N. Railroad Company v. Butte County (1861), 18 Cal. 675.
117 Cal. Stats. (1863), chap. 178.
118 Cal. Stats. (1866), chap. 305.
119 Robinson v. Butte County (1872), 43 Cal. 353.
120 Cal. Stats. (1869–70), chap. 396.

In *S. & V. R. R. Co. v. City of Stockton*, the Court again stressed the power of the Legislature over local governments, taxation, and internal improvements, and upheld the law.[121] Meantime, the railroad, the Stockton and Visalia Railroad Company, to be exact, sold out its interests to Leland Stanford and friends, who were then in the process of assembling their railroad network. The agreement had been that the railroad was to go from Stockton to Visalia, by which time all the bonds were to be delivered to the railroad company, but the company tried to use a portion of another acquired road, not built by the Stockton Railroad, as part of the road it constructed.

David S. Terry, a former chief justice, acted as attorney for the railroad, but then changed over to the city, whose officials challenged Stanford's group. Terry's biographer has traced the proceedings:

> Starting in 1871 the Stockton and Visalia Railroad case wound its weary way through the courts for half a dozen years and then was settled out of court. By the summer of 1872 Terry had become one of the attorneys for the people. . . . The district court's decision favored the city and county, but in 1875 the supreme court reversed the decision and held that the bonds should be delivered to the railroad company. Terry and his associates in the case managed to delay matters until May, 1877, and finally effected a compromise. City and county bonds to the value of $200,000 were to go to the railroad's representative, and in return $300,000 worth of bonds and their coupons were to be canceled. The total cancellations amount to $530,000. Terry and those who had worked with him on the case had saved Stockton and San Joaquin County a very substantial sum of money.[122]

The county of San Joaquin was also a party to the subsidy for the railroad, but was not involved in the Supreme Court case with the city of Stockton, *Stockton Railroad Co. v. Stockton*.[123] In that case the Court said that by purchasing what it did, the railroad was still securing to the people of Stockton the benefits they sought, permanent communication by a railroad from the Stockton waterfront to Visalia.

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121 S. & V. R. R. Co. v. City of Stockton (1871), 41 Cal. 147.

122 A. Russell Buchanan, *David S. Terry of California; Dueling Judge* (San Marino: The Huntington Library, 1956), 164.

123 Stockton Railroad Co. v. Stockton (1876), 51 Cal. 328.

In *Hornblower v. Duden*, the Supreme Court upheld the right of El Dorado County to hire outside counsel to represent its interests in a contested election for directors of the Placerville and Sacramento Valley Railroad.[124] The county owned 2,000 shares having a nominal value of $200,000, and "was, therefore, a stockholder, and as such directly interested in the conduct and management of the affairs of the company, and therefore in the selection of its officers. She had precisely the same rights as any other stockholder."[125]

As a stockholder the county's interests had to be looked after with the same care as other property, and the Board of Supervisors had the power to use whatever means were necessary. If this case was not a landmark in legal history, it did indicate some of the problems raised by the entry of the railroads and the involvement of local governments in railroad financing.

Railroads were also considered to be "public uses" and were entitled to use the state's power of eminent domain under the California Railroad Law of 1861.[126] The Supreme Court held that numerous decisions had already decided that a railroad was a "public use" within the constitutional meaning. It refused to be put in the position of determining the point for each individual railroad, saying such a determination was within the discretion of the Legislature.[127]

Such a condemnation was, of course, a special proceeding, and "[i]t is a rule of universal recognition that in special proceedings, by which private property is taken for public use, the statute must be strictly construed."[128] Under the 1861 law, commissioners were to be appointed to appraise the value of the land when it was actually taken, which meant when the title passed to the railroad.[129] The Court also upheld statutory provisions allowing the commissioners to take into account any benefits accruing to the rest of the owner's land, or any injury thereto. Only in such a way could a "just compensation be reached."[130] In *Southern Pacific Railroad*

124 Hornblower v. Duden (1868), 35 Cal. 664.
125 Ibid., 670.
126 Cal. Stats. (1861), chap. 532.
127 Contra Costa Railroad Co. v. Moss (1863), 23 Cal. 323.
128 S. P. R. R. Co. v. Wilson (1874), 49 Cal. 396.
129 S. F. & S. J. R. R. Co. v. Mahoney (1865), 29 Cal. 112.
130 S. F. A. & S. R. R. Co. v. Caldwell (1866), 31 Cal. 367.

Co. v. Reed, the Court said that it was possible for two railroads laying tracks over the same land to each cause injury to property owners, and each become liable for such injury as it inflicts.[131] The Court also laid down the rule that the railroad could not enter and use the condemned land until title passed to it, while no title could pass until just compensation was given to the land owner.[132]

Taxation of the railroads also came within the purview of the Supreme Court, which upheld the state's right to tax the property of railroads within the limits of the state.[133] In the case of railroad land, also part of the public domain, such land became liable to taxation by the state when all the steps needed to receive a federal patent had been completed.[134]

Cases emanating from federal railroad laws did not reach the state courts of California with great frequency, but conflicts did arise, such as when a railroad line was made to cross a mineral claim. The 1862 Pacific Railroad Act specifically excepted mineral lands from grants by the federal government to the railroads,[135] but in *Doran v. Central Pacific Railroad Company* the railroad's actual line of road crossed public mineral lands claimed, improved, and mined by the plaintiff.[136] In such an instance the railroad had priority because title to the land was in the federal government, and as the holder of the paramount title, the government could dispose of the land as it wished. The plaintiff was, as compared to the government, a mere naked trespasser, and could not prevent the entry of the paramount authority or one who enters under that authority. The same reasoning, in essence, was used in *Western Pacific Railroad Co. v. Tevis*, when the Court said the railroad's right of way, as granted by Congress, prevailed against a preemptor who had not yet perfected his claim because until the claim was perfected, the title to such public lands remained in the federal government.[137] If the United States had already disposed of the land in any way, then a railroad could not enter. One such instance occurred in *Butterfield*

131 Southern Pacific Railroad Co. v. Reed (1871), 41 Cal. 256.
132 Fox v. W. P. Railroad Co. (1867), 31 Cal. 538.
133 People v. Central Pacific Railroad Co. (1872), 43 Cal. 398.
134 Central Pacific Rail road v. Howard (1877), 52 Cal. 227.
135 12 U.S. Stat. at L. (1863), 489–98.
136 Doran v. Central Pacific Railroad Company (1864), 24 Cal. 2.
137 Western Pacific Railroad Co. v. Tevis (1871), 41 Cal. 489.

v. C. P. R. R. Co. when the Central Pacific entered land the property of a holder under a federal military land warrant, and the railroad was liable for damages.[138]

The three sections comprising this chapter indicate, as noted earlier, some economic aspects faced by California as a developing state. The section dealing with taxation involves purely state and local problems, but the sections dealing with legal tender notes and the railroads, while developed from the view of the state, also show California reacting to national concerns.

Generally stated, the decisions were victories for, and beneficial to the business interests of the state, particularly financial groups, who no longer had to pay interest on their mortgages, did not have to accept depreciated paper money, and fully expected to profit from the railroad industry, both through the bonds and from the increased business that was expected to be generated by the railroads. Many of these decisions, seemingly probusiness, left the Court under fire, as claims were made that the decisions were arrived at on the basis of business and not law. Certainly the justices were generally men of property and may have had sympathies for the business community; some of the justices certainly had (Republican) political connections with the Big Four. Another consideration might have been political, as the justices may have been catering to businessmen, many of whom were also political leaders, to ensure their own careers, either continuing on the Court or in other political offices.

There are other more charitable explanations as well. The most obvious one is merely to say that the decisions represented the law as the justices saw it. Another possible explanation was that the justices were influenced by outside considerations, but not personal ones. They may have felt that their decisions would go far in helping California grow and develop financially.

The long-range trend of the opinions presents still another option, the one favored by this author. These decisions involved the continuing constitutional question of legislative authority. The Constitution gave the Legislature a tremendous amount of power, and the Court, unless there was a clearly unconstitutional enactment, was prone to support and even encourage legislative power. It has been noted earlier in this study that although the Court said there were limits on the power of the Legislature, it

138 Butterfield v. C. P. R. R. Co. (1866), 31 Cal.

still tended to give this power wide latitude. Thus, the Court accepted the judgment of the Legislature about the Specific Contract Act and the various railroad acts, and actually preferred direct Legislative control over tax matters to that by the State Board of Equalization. It may very well be true that members of the Court agreed with these decisions as private persons, but the constitutional question of legislative power was a real legal issue.

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