

# There Is a Gap in the Mission Franchise.

**R**ESIDENTS of the Mission district of San Francisco warmly resent the efforts of the agents of the Southern Pacific to bully them into submitting to the wishes of that corporation in connection with the railroad tracks in that section of the city.

They remember well the decision of Superior Judge Seawell that the railroad was a public nuisance, in that it obstructed a public right in crossing five streets of the Mission, over which it did not have, and never had, a franchise. This decision was returned over two years ago, and the Missionites have been impatiently waiting ever since for the city authorities to afford them some relief from the railroad nuisance. Instead of acting in the interest of the citizens of the populous section that is seeking relief, the Board of Supervisors, the Board of Public Works and the City and County Attorney have displayed a masterly inactivity, which has been to the advantage of the railroad company and the great damage of the people of the Mission.

It is believed by those interested that if the public officers of the city would do their duty, a railroad with a break of five blocks in its franchise could soon be brought to terms that would make it give some consideration to the rights and convenience of the residents of one of the most thickly populated sections of the city, rather than to harassing and bullying them.

## OFFICIALS REMAIN INERT.

But the city officials remain inert, while the agents of the railroad are active in pursuing their policy of intimidation. The closing and almost abandoning of the passenger station at Valencia street is in line with the railroad's campaign of bulldozing. This station has been a great convenience to the people of the Mission, and to close it now and require them to go to Third and Townsend streets to take the trains going south works a great hardship upon thousands daily.

The people of the Mission believe that the purpose of the Southern Pacific in greatly reducing the number of trains stopping at the Valencia street station is to so inconvenience the residents of that section that they will not only submit tamely and silently to the proposed franchise exactions of the railroad, but will assist that corporation, by petition and otherwise, to consummate its plans.

Already the agents of the Southern Pacific are moving over the Mission whispering that if the people will endorse the railroad's applications for franchises and other privileges the corporation will erect the finest passenger depot in California at Valencia street; but, if the Missionites refuse to submit to the Southern Pacific's exactions, they will be compelled by that corporation to go twenty-two blocks to take a train for the south.

## PROMISES NOT ACCEPTED.

The promises of the emissaries of the railroad as to a magnificent passenger station are not fully accepted by the residents of the Mission. Some of them remember, when the State Legislature, at its session of 1868-69, gave the Southern Pacific sixty acres of tide lands at the foot of Fourth street, in this city, that the company promised to expend upon it \$200,000. This promise was never kept; instead, the place was used as a public dump until reclaimed, and then the railroad rented it for warehouse and lumber yard purposes, and has received large returns for the property for many years. There was a forfeiture clause in the grant that if this promised \$200,000 was not expended within thirty weeks the sixty acres should revert to the State. But the State officials were as negligent in that instance as the municipal officers have been in this, and the railroad still holds the land. Its value may be estimated from the fact that the company paid over \$1,000,000 recently for a comparatively small par-

cel of land at the foot of Brannan street which it wished for terminal purposes.

## GAP IN THE FRANCHISE.

The discovery that there was a big gap in the Southern Pacific's franchise to run its road in and out of San Francisco was discovered in 1900 by George Center, Max Popper and other Mission property owners and active members of the improvement clubs of that section. The railroad at that time had an application before the Board of Supervisors for a franchise to construct a double-track road through the Mission. This caused the property owners to inquire into the status of the company's original franchise. It was found that the Southern Pacific did not have any franchise for the five street crossings from Seventeenth to Twenty-first streets, both inclusive.

The attention of the Supervisors was called to this condition, and on April 2, 1900, that body adopted an ordinance declaring the tracks on those streets a public nuisance and ordering the Board of Public Works to proceed to abate it by removing all the tracks and rails within thirty days.

The Southern Pacific resisted the order and in its complaint set up that it had no other way by which its line on Townsend street could be connected with the remainder of its line in San Mateo county, even if it could procure rights of way for any new or other line of connecting railway. The complaint also recited:

"Topographical difficulties exist, among which is the San Bruno mountain range, whereby said railroad connecting line would require no less than six tunnels on its route, besides other costly and elaborate structures, which would necessitate the expenditure of not less than two years' time in actual construction.

"The utility of said terminal facilities, and of said through and interstate line, would be destroyed, and all the business thereon to and from the city and county of San Francisco will cease, and plaintiff's local business thereon will be so impaired as to render its investment and property valueless."

## RESTRAINS BOARD OF WORKS.

On May 7, 1900, the then presiding Judge of the Superior Court, Frank H. Dunne, issued an injunction ordering the Board of Public Works to not remove any of the rails or in any way interfere with the operation and maintenance of the railroad. This temporary injunction was returnable on May 11th. According to the record in the County Clerk's office nothing was done, beyond making some minor orders, until February 25, 1901, when Presiding Judge Seawell returned a decision that the railroad was a public nuisance and that it had no franchise to pass over the five streets. Following are excerpts from Judge Seawell's decision:

The Southern Pacific Company has not filed the agreement referred to in said ordinance, has no ownership or title in said railroad and has no power to make or perform such agreement.

For the present I shall only consider the plaintiff's right to maintain its railroad across the streets just mentioned.

Anything which unlawfully obstructs the full passage or use in the customary manner of any street or highway is a nuisance per se.

No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

No one can acquire by adverse occupation or use, as against the public, the right to obstruct a public street or highway.

Even if the defendants (the Board of Public Works) are not authorized by any valid ordinance to remove the plaintiff's tracks which unlawfully obstruct a public street, the plaintiff is not in a position to demand the equitable remedy of injunction. A court of equity will not lend its aid to a continuance of an unlawful act.

As to the portion of the plaintiff's railroad, which is between the charter line of 1851 and the southern boundary line of the city and county, the complaint alleges that the land and the right of way were purchased by the San Francisco and San Jose Railroad Company at a time when the same was private property and long before public streets or highways had been laid out, used or dedicated as or declared to be such public streets. The allegation is not denied by any affidavit or answer on the part of defendants, and must for the purposes of this action be taken as true.

The demurrer to the complaint will be overruled, and plaintiff's motion for an injunction will be granted, except as to such portions of the railroad as are upon Seventeenth, Eighteenth, Nineteenth, Twen-

tieth and Twenty-first streets, as to which the motion will be denied.

The litigation, since its commencement over three years ago, has been in charge of City and County Attorney Lane as the representative of the city and the Board of Works. After the filing of Judge Seawell's decision nothing appears to have been done to advance the interest of the public. The last entry on the record as kept by the County Clerk, is:

"March 7, 1901—Ordered off calendar, 3 days to restore."

City and County Attorney Lane and his chief assistant and brother, George Lane, were not at the City Hall the latter part of yesterday afternoon, but it would seem that the case got back on the calendar in some manner, as the printed calendar of Judge Seawell's court announces that the case of the Southern Pacific Railway Company vs. the Board of Works of San Francisco will be heard on August 14th.