

Mr. BROWN. Do you draw the conclusion as a matter of political fact or as a matter of legal fact? Have States refused to act, citing legal precedent?

Mr. MAHONEY. As a legal fact. A number of times the States have tried unsuccessfully to get carriers to continue interstate trains, even when the trains haven't been up before the ICC, or if they have been up before the ICC, and the ICC has told them to continue those trains in operation.

They had a situation in California, for example—and I forget the name of the train—which involved a train that went from San Francisco to Portland.

The carrier decided that it would take the trains off. The State commission in California said, "You will continue that train to the border, to the Oregon border." That is where the jurisdiction ends.

The Oregon commission said, "You will continue that train to the Oregon border." That was the way it was done before 13(a) was passed, automatically and routinely.

The railroads appealed that decision and took it to the courts, saying, "You cannot require us to take a train to the border. There is nothing at the border but desolation. The border is as far as we will take the train and this is where it will stop."

The courts agreed and said, "Yes; you can only make them continue that train to the last station stop in California," and conversely in Oregon, "You can only make them continue the train to the last station stop in Oregon."

So you had a hiatus of anywhere from 30 to 150 miles where there would not be any train service. That effectively ended State jurisdiction over interstate trains, or the States felt it did. The States have had many cases which have been thrown out after the Commission has permitted the discontinuance of an interstate train and the States have tried to inject their State authority or State law in some fashion to require the continued operation of these trains and the courts have held uniformly and properly so that once a notice is filed, the State law is superseded. So the States are gun shy of any interstate train where the railroad has filed a notice with the Commission.

In this case, we went to these various States along these lines and asked them, sent telegrams to them, to do something about this because the Santa Fe was clearly in violation of State law as well as Federal law, and the States said, "There is nothing we can do." So as a practical matter, there has been created a no man's land.

The order of the Commission which said that violation of the law vitiated their jurisdiction is what really, I think, caused the passage of S. 2711. In its report accompanying S. 2711, the Senate Committee on Commerce stated that:

If removal of a passenger train service in violation of 13a(1) would vitiate Federal jurisdiction within the statutory 30-day notice, it would appear to be equally true that ICC jurisdiction would also be vitiated by discontinuance of train service in violation of Commission orders within the one-year statutory continuance of service period.

No such results were contemplated in the enactment of 13a(1).

I agree with that statement for the simple reason that if the removal, the violation of a statute, vitiates jurisdiction, the violation of a Commission order which has not the dignity of a statute enacted by this Congress would likewise vitiate Commission jurisdiction.