It was known that the railroad would extend through towns and cities then existing, and through others that would spring up along its line, and that the rights of the company in and to its right of way would be subject to the power of the municipal corporations through which it passed to extend public streets across the same. That power which is implied in the general authority conferred by city charters for that purpose is conceded to have been vested in the municipal authorities of the city of Spokane; but it is said that, while the easement to cross the right of way might have been wrested from the company by proceedings in invitum, it had no authority to voluntarily cede the same. We see no valid ground on which to base this distinction. The nature of the right of way over the public lands which the railroad company obtained by the grant was not different from that which it acquired over private lands by purchase or by condemnation proceedings, under the laws of the several states through which it passed. Whether the company acquired the fee to the lands covered by its right of way or not, no reason is apparent why it may not dedicate public easements over and across the same, and by its own act grant to the public all the rights which the latter might obtain by the exercise of its right of eminent domain. Of course, the railroad company could confer upon the public no greater estate than it possessed, and, in any view of the case, the dedication could not affect the reserved rights of the United States, whatever they might be. The public easement, so dedicated, is undoubtedly subservient to the exigencies of railroad use, and the public take the dedicated crossing subject to the inconveniences which may result from the increase of traffic and transportation along the line of the road, and the possible necessity of laying more tracks thereupon; but the company, after such dedication, and after rights have been acquired thereunder, may not close up the street with a building, and may not say, as in this case, that because it is convenient to have a warehouse at this point, and because there is no place within the city so desirable for that purpose, it will revoke the rights which it has conferred upon the public by the dedication. One of the objects of congress in making the grant was to upbuild and develop the country through which the road was to pass, and it is in harmony with this purpose, as well as in line with the adjudicated cases, so far as they have approached the question under consideration, to hold that such public use is not inconsistent with or subversive of the railroad use, which was intended by congress. It has been held that trustees holding lands for public uses, and corporations having public duties, may dedicate to public use for highways, when such use is not inconsistent with the purposes for which the lands were vested in trust, or incompatible with the duties required (Rex v. Leake, 5 Barn. & Adol. 469; Canal v. Hall, 1 Man. & G. 392); and that a railroad company may dedicate a highway across land already dedicated to public use as a railroad (State v. City of Bayonne, 52 N. J. Law, 503, 20 Atl. 69); and that railroad corporations have the same rights to dedicate their lands to public use as any other proprietors, unless it is contrary to the provisions of their charters, or amounts to a breach of

their duty to their stockholders (Green v. Canaan, 29 Conn. 157; Williams v. Railroad Co., 39 Conn. 509). The appellant cites the case of Illinois Cent. R. Co. v. City of Chicago (Ill. Sup.) 30 N. E. 1036, where the court said:

"It is plain that, under the act of congress donating lands for the construction of a railroad and the charter of the railroad company, the strip of land—the right of way—is devoted to a certain specified purpose, and cannot be diverted from that purpose."

The language so quoted from the decision in that case must be considered in the light of the question then before the court. It was a case of a special assessment against the right of way of the Illinois Central Railroad to pay for the improvement of a street, upon the theory that the right of way was benefited by the street improvement. The court held that the right of way granted by congress for a special purpose was not chargeable with such an assessment; that the strip so devoted to public use was not land which could be laid off into lots and blocks, and sold by the railroad company for its own advantage, or used as private property is used by individuals; and that, therefore, its value, for the purpose for which it was dedicated, was not capable of being enhanced by the improvement of an adjacent street. This is far from holding that a railroad company may not, in recognition of public interests, and for the promotion of the public welfare, dedicate to the public an easement over its right of way which does not interfere with its own use of the same for a railroad. The decree is affirmed, with costs to the appellees.

HEWITT v. STORY et al.

(Circuit Court of Appeals, Ninth Circuit. November 1, 1894.)

No. 102.

IRRIGATION—ABANDONMENT OF WATER RIGHTS—IRRIGATING DITCHES.

R. and others, in 1869, located a ditch appropriating, for the purpose of irrigating their lands, the waste water of the A. river, remaining after the N. F. and S. F. ditches, previously located, had been supplied. Such ditch was called the "B. R. Ditch." The water appropriated by it being insufficient for their lands, the owners of the B. R. ditch purchased shares in the S. F. ditch, and diverted the water so acquired through the B. R. ditch. Subsequently, by their consent, other owners of shares in the S. F. ditch diverted their water through the B. R. ditch, and in and after 1874 all the water belonging to the owners of the S. F. ditch was taken by them through the B. R. ditch, with the consent of the owners thereof, on condition of contributing to the expense of enlarging and repairing that ditch. Subsequently, the route of the B. R. ditch was twice changed, and the water belonging to the owners of the S. F. ditch was for more than five years conducted through such changed B. R. ditch, and all the water received through such ditch was allotted according to the interests of the owners of such S. F. ditch, who took complete possession, use, and control of the B. R. ditch, adversely to any right or claim under the original location. Complainant and his predecessors in title, the owners of the land originally supplied by the B. R. ditch and the locators of such ditch, knew of and acquiesced in such use, and shared in the water only according to their shares in the S. F. ditch, without objection to such use, and contributed to the alteration and repair of the B. R. ditch only in proportion to their shares in the S. F. ditch. In 1887 complainant