

tion of the crossings desired. It has contracted with other railway companies whose lines it crosses in the vicinity of the crossing here sought for, for that privilege. To deny the relief asked would be simply to block a desirable public work, which should not be done by a court of equity, unless upon grave and controlling considerations.

It was insisted that the Wisconsin Central Company owned a certain right of way of which the Electric Company had possessed itself without authority of law, and without compensation to the Central Company. With respect to this, it need only be said that the Electric Railway Company sought to condemn that strip and right of way, which it claims had been for 14 years abandoned by the Chippewa Falls & Western Railway Company, which had formerly occupied it, and in regard to a portion of which right of way that company had never had title; and, upon notice of the alleged rights of that company, it impleaded that company and its receiver, Mr. Rand, by leave of this court, in the condemnation proceedings, and paid into court the damages awarded. It is now said that the Wisconsin Central Company, and not the Chippewa Falls & Western Company, was the owner of that strip; but it appears that the Electric Railway Company, in July last, was notified by the counsel of the receiver of the Chippewa Falls & Western Railway Company that the strip and right of way was the property of the Chippewa Falls & Western Railway Company, and was in the exclusive possession and control of Mr. Rand, its receiver. That counsel was and is one of the receivers of the Wisconsin Central Company, and it is somewhat strange that he should have given that notification if the right of way, if any existed, is now or was then owned by the Wisconsin Central Company, as is now claimed. While, of course, the notification given by that gentleman could not deprive the Wisconsin Central Company of its ownership, if ownership it had, such action by him disposes largely of the equitable consideration now urged upon us, that we should withhold permission until the right of the Electric Company to that strip has been determined by condemnation proceedings; and especially since we are advised at the argument that proceedings have been taken against the Wisconsin Central Company to procure proper condemnation, and its rights, if any, can be amply protected in that proceeding. We think the prayer of this petition should be granted. We are not inclined to block a public improvement upon any trivial or doubtful consideration, where the rights of the parties can be otherwise amply protected.

There has been submitted to us an agreement with respect to this crossing, which was proposed between the parties during the past summer, and which was said to be similar to, if not identical with, the agreements between the other railway companies whose tracks are crossed and the Electric Company. We think the right should be granted substantially upon the terms suggested in that proposed agreement. While it is unquestionably true that the crossing of one railway by another at grade is necessarily accompanied with great danger to the public, to life, and to property, and that crossings, at least in populous communities, should be required by law to be above or below grade, such has not yet become the established policy of the

state. Nor do we perceive why that policy should be adopted with respect to electric railways when not applied to steam railways, for in the latter case the danger is much greater than in the former. The electric car can be much more speedily brought to a stop than can cars propelled by steam; and we can perceive no reason for enforcing so stringent a rule with respect to cars propelled by electricity, when the authorities of the state do not deem it necessary to apply it to cars propelled by steam. The prayer of the petition will be allowed, and the right to cross granted, upon the terms and conditions contained in the agreement proposed between the parties, and which has been submitted to us. The order allowing the petition may be prepared by counsel, and will be settled by the court upon notice.

WAITE v. CITY OF SANTA CRUZ.

(Circuit Court, N. D. California. September 29, 1898.)

No. 12,094.

1. JURISDICTION OF FEDERAL COURTS—ACTION ON MUNICIPAL BONDS.

The fact that a circuit court of the United States has no jurisdiction of an original proceeding for a writ of mandamus to compel municipal officers to levy a tax to pay bonds, does not affect its jurisdiction of an action at law by a citizen of another state to recover judgment on such bonds, though any judgment recovered can be enforced only by mandamus proceedings against such officers.

2. STATUTES—SPECIAL OR LOCAL LAWS—CLASSIFICATION OF CITIES.

A statute authorizing the issuance of bonds by cities or towns, except those of the first class, is not a local or special law, within Const. Cal. art. 4, § 25, subd. 33, prohibiting the passage of such laws "in any case where a general law can be made applicable." Such constitution, by authorizing the organization and "classification in proportion to population" of cities, in effect authorizes different charters for different classes.

3. MUNICIPAL BONDS—VALIDITY—ACTS OF OFFICERS DE FACTO.

In the signing and delivery to a purchaser of municipal bonds the acts of officers de facto are, as to third persons, equally as binding on the city as though they had been officers de jure.

4. OFFICERS DE FACTO—HOLDING OVER TERM.

Where a mayor and council of a city were elected and qualified, but did not actually enter upon their duties as officers for some four weeks thereafter, the outgoing officers, who continued to act during such time publicly and without objection, were the officers de facto, and their acts were, as to third persons, binding on the city.

5. MUNICIPAL BONDS—REFUNDING INDEBTEDNESS—LEGALITY.

Under a statute authorizing cities to issue bonds for the purpose of refunding their bonded indebtedness, a city has no power to refund bonds issued by a water company, and secured by mortgage on its property, which the city has since bought, subject to the mortgage.

6. PRINCIPAL AND AGENT—NOTICE TO AGENT.

A purchaser of bonds through an agent is not chargeable with the knowledge of his agent as to defects where the agent in reality acted in the transaction for his own benefit, receiving a share of the profits realized by the seller.

7. MUNICIPAL BONDS—EFFECT OF RECITALS.

Recitals in municipal bonds that such bonds are issued in conformity with the provisions of a statute authorizing cities to refund their indebted-