## OPINION BY H. J. HAMLIN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS.

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*Hon. James S. Neville, Chairman Railroad and Warehouse Commission, Springfield, Ill.*

MY DEAR SIR—Your board has submitted to me for investigation and an opinion as to the jurisdiction of the Railroad and Warehouse Commission in the matter of crossings.

I have examined the questions submitted, in the following order:

(1). Crossings in cities and villages:—
  (A) Of steam roads with steam roads.
  (B) Of steam roads with street railways.
  (C) Of two street railways.

(2). Crossings outside of cities and villages, having the same three divisions as above.

The question may be further complicated by the fact that the crossing may or may not be in the street or highway, hence it will also be required to consider the effect of a crossing upon private ground, and of a crossing in streets and highways.

It is necessary to consider the Act of 1887 relating to interlocking switches, the Act of 1889 and the Crossing Acts of 1889 and of 1891, as well as the conditions surrounding the passage of these acts. This we have a right to do, because in the City of Chicago vs Evans, 24th Ill. 52 (55) the court, in construing a railroad statute, says that the members of the legislature acted knowing that the various kinds of railroads were in existence, must be presumed to have acted accordingly. It is a familiar principle that the surroundings under which an act was passed, and the evil sought to be remedied, are to be considered in construing the act itself.

### ACT OF 1887.

This act was passed June 3, 1887, and is much narrower in its scope than the acts following. Its title is narrow,—"in regard to dangers incident to railroad crossings on the same level." That the title of the act is pertinent as applying to its true intent is shown in the County of Perry vs. County of Jefferson, 94 Ill., 214 (syl. 4) and Cruse vs. Aden, 127 Ill. 231 (syl. 7).

The circumstances surrounding its passages were these: The act relating to the fencing and operating of railroads (Sec. 12 of the Act of March 31, 1874, as amended) and which expressly in section 38 excepts street railroads, provided that all trains running on any railroads in this State, when approaching a crossing with another railroad upon the same level, should be brought to a full stop within a set distance therefrom. With the increase in travel and the consequent demand for fast freight and passenger service, necessitating as few stops as possible, and the concurrent increase in population and railroad mileage increased the number of crossings, thereby actually lessening the ability to make speed. All this was rendered doubly irksome because new inventions and improved safety devices for grade crossings gave the companies a remedy for the condition. Under such a condition, the Act of 1887 was passed.

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Its terms are closely akin to the words in section 12 of the Act of 1874. It begins by referring to railroads crossing at a common grade, and follows with the words, "crossing any stream or harbor by swing or draw-bridge," the very words of the Act of 1874. The Act of 1887, also, is purely permissive and in substance grants the right to the roads crossing, or to one of them, to erect interlocking switches, rendering it safe for engines and trains to pass such crossing without stopping; which, having been done, and approved by the Railroad and Warehouse Commission, the penalties of section 12, *supra*, were suspended. It was purely a permissive statute and no one could be forced to put in an interlocking switch, and in case the roads could not agree to do so, that ended the matter, unless one of them put the whole plant in at its own expense.

This act did not alter the fact that one road could still, in new construction, condemn its right of way across any railroad, selecting its own spot for the crossing, and did not in the least affect opposed new crossings.

By its limited terms and its narrow title, its permissive character, and its practically quoting the words of section 12, it seems this act of 1887 only applied to so-called steam railroads, or roads governed by the act of 1874.

## ACT OF 1889.

In the meanwhile, electric railroads, street railroads, elevated railroads and the like, spread all over the State, and grade crossings were to be found on all sides. There was a consequent increase in the delay from frequent stops; this was not the only result. Accidents increased and the loss of life from such accidents and the loss of property ran up rapidly. Law suits and judgments for damages piled up on the railroads and vexatious litigation arose out of the attempts to cross established roads at inconvenient places. The repeated decisions of the Supreme Court, following the rule laid down in L. S. & M. S. Ry. Co. vs. Chicago & W. I. R. R. Co., 97 Ill., 506, (syl. 5), gave the new road every advantage. See Malott vs. Collinsville S. & E. St. L. Elec. Ry. Co., 108 Fed., 313, where the circumstances leading up to the Act of 1889 are discussed.

These conditions led to the passage of the Act of May 27, 1889. This Act of 1889 is an independent act. It contains no reference to section 12 of the Act of 1874 in any way, nor to any other law before then passed. By its terms it relates only to the future. Its title is exceedingly broad. It is: "An act in relation to the crossing of one railroad by another, and to prevent danger of life and property from grade crossings." The first section provides that "hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such a place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed." It will be noticed that this act here uses the word "railway." This first sentence directly changed the Eminent Domain Act as the Supreme Court had so often interpreted it, and put a stop to the power of the new company to cross where and how it pleased. Having taken away the former method of settling the question, the act provides a new way, viz., an appeal to the Railroad and Warehouse Commission. The commission were to decide the question, "with due regards to the safety of life and property;" and the former rule of requiring the new company to pay all the expenses was retained.

Here there is no limit, in the title, or the act itself, nor in the object sought, to exclude from this act any railroad crossing of any kind. Its words are utterly different from the words used in section 12 of the Act of 1874. No reference is made to any stops or remission of penalties. The intent seems to be entirely to protect life and property, and to so do it specifically, in plain words, changes the rule of law announced in the L. S. & M. S. R. R. Co. vs. Chicago & W. I. R. R. Co., 97 Ill., 506, (syl. 5), *supra*, and places the Railroad and Warehouse Commission in charge, with directions to regard the safety of life and property. The words, "engine," "train," *et cetera*, are not found in it.

From this language it would seem that this act includes all railroads of every kind. The language, "any railroad company," is closely akin to the language used in the Act of Feb. 12, 1855, relating to operative contracts,

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*et cetera.* This act is now in the Railroad Act, Chap. 114, Hurd's Stat., Sec. 44, and Sec. 58 in Starr & Curtiss. It gives "all railroad companies incorporated or organized under, or which may be incorporated or organized under, the authority of the laws of this State," the power to do certain things. The language in Chicago vs. Evans, 24 Ill., 52 (55), is discussed by our Supreme Court in these terms:

"This language is manifestly sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power, as well roads authorized to transport passengers only, as roads authorized to transport passengers and freight by other power. The language of the enactment embraces all railroads organized, as well as those which might afterwards become so, and the act makes no distinction or reservation as to the character of the railroad. The members of the General Assembly were fully aware that these various roads existed, and if any roads answering either description were not designed to be embraced, they would, it appears to us, have limited the operation of the act so as to have excluded them. Horse city railways unquestionably fall within the description of the class of subjects of which they were legislating. They are, in every sense of the term, railroads; they are incorporated under the laws of the State, and are embraced within the language of the statute, and we have no doubt, within its spirit."

Another feature which indicates that the legislature meant to include street railroads is the use of the word "railways," as above pointed out. There are some cases which I will refer to later on, which suggest that railways and railroads are different, and that the former means street railroads alone. By the use, however, of both words in this Act of 1889, the legislature seems to have clearly embraced all classes of roads for future crossings, where a main line was crossed.

Another feature is the fact that the legislature, when it desired to except street railroads from any act, has heretofore done so expressly. The Act of March 31, 1874, above referred to concerning the fencing and operating of railroads, by its title and its various sections related to "every railroad comroad company," *et cetera.* This would seem to have included street railroads and that the legislature knew that such would be the case without express exception shown by section 38, which expressly excepts street railways. Again, the General Incorporation Act excepts corporations for the operation of railroads, to which exception the legislature provided that horse and dummy railroads might be organized thereunder. It is true that the enactments of subsequent legislatures, composed of different members, have no more value in the construction of a statute than has the act of any other department of the State; (Rockhold vs. Canton Masonic Ben. Soc., 129 Ill., 440 (syl. 14): but this same argument would prevent section 12 of the Act of 1874 from influencing the meaning of the Act of 1889, a position which is urged with much persistence by the counsel of the Union Traction company, in a brief submitted to me on this question.

It is also argued that the words "in all cases," that the new company shall pay the expense of the crossing, indicates that the act of 1889 applies only to so-called commercial roads. The cause of the C., B. & Q. R. R. Co. vs. West Chicago Street Ry. Co., 156 Ill., 255, holds that a steam railroad company is not entitled to damages for the crossing of its lines by a street railroad. The fact that the act of 1889 changes, in effect, the eminent domain law, is also urged as an argument for its limitation to steam roads: for, as it will be seen further on, street railroads have very limited powers of eminent domain. It is also said that the use of the words "main line" indicates steam roads. These arguments are unsound. The act says that compensation shall be paid, in all cases * * * to be determined in the manner provided by law, this refers to eminent domain; or, if the law provides for no compensation, why may it not mean nothing is to be paid? The use of the words "main line" are discussed under the act of 1891 where numerous such words are used.

The intent of the Legislature in 1889 was evidently to make future grade crossings safe for life and property, and by the careful omission of any reference to the act of 1874, by the use of the words "railroads" and "railways" and by the direction that the commission shall decide with "due regards to

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safety of life and property;" and from the fact that there were street railroads everywhere at that time, a common thing, well known to the members of that Legislature, and by the further fact that accidents were numerous at the crossings of all railroads, the conclusion is forced upon us that the words of the act of 1889 include all classes of railroads so far as future crossings are concerned. It is certain that it governs the crossings of all roads organized under chapter 114, whether the crossing takes place within or without cities, villages and towns. This was expressly decided in the case of Malott vs. Collinsville C. & E. St. Louis Elec. R. Co., 108 Fed., 313, above quoted, where the electric railroad sought to cross the steam road within the corporate limits of Caseyville, Illinois, but not upon a street actually opened, but one which was about to be opened and which had been already authorized by village ordinance. The electric road was organized under chapter 114. In that case the court (Grosscup J.) say:

"We think it clear that in respect to the place and manner of crossing, and an independent tribunal to determine such place and manner, the (act of 1889) was intended to modify the former (acts of eminent domain over crossings). In no State is the mileage of railways so great as that of Illinois. In no state has the extension of railways been so rapid. Nearly every township is now intersected, north and south and east and west, by these great railways. With the increase of mileage has come, also, multiplying of trains, on roads already laid and growing need for greater speed. There has been no time when the danger from all these sources was not rapidly increasing. The purpose behind the act of 1889 is, we think clearly disclosed in this rapid evolution of the railway situation.

"The act of 1889 doubtless looked towards an escape as far as possible from (future) grade crossings. * * *

"Our conclusion as to the purpose of the act is reinforced by the fact that it followed shortly after the decision of Lake Shore & M. S. Ry. Co. vs. Chicago & W. I. R. Co. (supra): and by the fact that it was followed by another act (the act of 1891).

"The fact that its trains are to be operated by electricity instead of steam does not effect its place in the laws of the State as a railroad company. * * * Indeed, these electric railroads; in the speed of their trains, in the distance traveled, and in their capacities for transportation, are well within the field of public utilities hitherto supplied by steam railroads alone. We cannot conceive that (the act of 1889) was not meant to cover every form of railroad, that, in the march of events, answers the purposes of general transportation. Nor does their incidental function as street railways in the towns and cities traversed, lift them out of the railroad statutes." * * *

From this reasoning it follows that the Railroad and Warehouse Commission, by the act of 1889, was erected into an "independent tribunal" having powers new in the law and drawing to itself the powers of the new company to locate the new crossing, and limiting the power of the court to consider an eminent domain petition before action was had by the Railroad and Warehouse Commission. It is apparent from the above authorities that the act of 1889 gave the commission power over the crossing of two steam roads whether within or without cities, or rather the crossing of two roads organized under chapter 114. The only question now in doubt under this act of 1889 is its effect upon the crossing of a company organized under chapter 32, with one organized under chapter 114, and the crossing of two companies both organized under chapter 32. These, the language of the statute and the reasoning above, would say were also included; but at this stage that question is held until other matters are taken up below. At this point, it is best to consider the next act and make one discussion cover the general street railway question.

### ACT OF 1891.

Following the act of 1889 then came the act of June 2, 1891. This is a wonderfully comprehensive statute. The title is: "To protect property and persons from danger at the crossings and junctions of railroads, by providing a method to compel the protection of the same." The last section of the act

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(section 7) defines a crossing to include "every junction of two or more railroads' tracks, whether the tracks joining each other shall be owned by different companies or by the same company," with the proviso that the definition shall not apply to "switch, spur or side tracks."

This act, on its face, purports to govern crossings already in, as well as crossings made in the future. As to crossings in the future, it extends the power of the Railroad and Warehouse Commission so even that the companies concerned in the crossing should agree upon the terms of the crossing and there be, in fact, no dispute between them, yet in case the commission should deem the crossing to be dangerous to the public, the commission could force the placing of proper safety devices. In all other respects, it confirms the act of 1889 and in no way lessens its effects.

Considering the act of 1891 itself, the first section says that "in every case" where the main tracks of railroads cross at a grade "any company" owning or operating either of them, may force the installation of safety devices. Section 2 provides that if the Railroad and Warehouse Commission, "from information obtained in any manner, have cause to believe that any such grade crossing is dangerous to the public," or "to persons operating trains" then it may of its own motion, force the installation of safety devices. Section 3 orders the Railroad and Warehouse Commission, after an investigation of any crossing, to act as "the public good requires."

In certain parts of the act the words "trains," "persons operating trains" are used; and in section 4 a reference is made to the stopping act of 1874. It is contended that these words limit the act to so-called steam roads alone, a contention which will be considered hereafter. Let us first consider the conditions surrounding the passage of the act of 1891.

This act is, on its face, solely for the protection of the public. The intention of the Legislature seems to have enlarged with each act relating to railroad crossings. The Act of 1887 was a purely permissive one and one merely a matter of accommodation to the companies. The Act of 1889 changed the law applicable to new crossings and established the Railroad and Warehouse Commission into a new and independent tribunal to govern disputed future crossings, leaving the companies, if they could agree, the right to regulate the crossing in any manner as suited themselves and leaving the crossings already in, however dangerous they might be, to remain as they were. This Act of 1891 enlarges the powers of the commission so that any dispute over a crossing, established, as well as future, may find its solution before the commission. Not only so, but it gives the commission the power of itself initiating the inquiry as to the safety of the crossing. It is manifest that the act enlarged the powers of the commission, acting as the independent tribunal established by the Act of 1889. This power of the commission extended to all crossings embraced in the act, and the act goes to the length of defining crossings. This definition has been quoted above.

The first noticeable thing in the definition is the fact that a crossing of two tracks of the same company may be required to be protected with safety devices and at the expense of the company. This, it cannot be contended, is a reference to compensation under the Eminent Domain Act, as the words "in all cases" are contended to be in the Act of 1887. It is purely a provision for the protection of life and property. Then, too, the definition excepts certain things. Now the presumption would be that when the legislature makes certain exceptions, that it excepts all that is to be excepted and that if it had meant to except any other matter included in the general words used, it would have done so. Having gone to the trouble to specify certain excepted things, the presumption is that if other words were to be excepted, it would have gone to the trouble to enumerate them. The exceptions are "switches, spurs and side tracks." This language is as applicable to street railroads as to steam railroads, for the statute governing horse and dummy railroads then in force, though since repealed, in Sec. 1 and 2 recognizes that such roads have switches, spurs and side tracks. Furthermore, in passing the Act of 1891, the Legislature had the common knowledge open to us all that there were in existence street railroads organized under Chap. 32, and that they were so-called railroads. The intent of the Act of 1891 was to pro-

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tect life and property on all grade crossings. The intent was that in two classes of cases, first, where the companies crossing now, or in the past, should at any time disagree over the condition of the crossing, that the Railroad and Warehouse Commission should be a tribunal of sufficient power to hear and decide the dispute, and second, that where any grade crossing was dangerous to the public, the Railroad and Warehouse Commission could make and keep it safe. This second intention is so plainly expressed that the term includes street railroad crossings. The language is so broad that the act would, unless affirmatively shown otherwise, include every kind of railroad crossing.

It is contended, however, that the words "train," "persons operating trains" and the reference to the Stopping Act, all limit the act to apply only to so-called commercial railroads.

The rule governing the construction of statutes is thus announced in Burke vs. Monroe Co., 77 Ill., 610 (in discussing the word "city" as to whether it also included incorporated towns).

(614) "In Mason vs. Finch, 2 Scam., 223, it is said, in construing statutes, courts look at the language of the whole act, and if they find in any particular clause, an expression not so large and extensive in its import as those used in other parts of the statute, if, upon a view of the whole act, they can collect, from the more large and extensive expressions used in other parts, the real intention of the Legislature, it is their duty to give effect to the larger expressions."

This case announces the rule also, that the remedy sought to be applied by the legislature in that act in order to carry out the object sought, of necessity included incorporated towns. The reasoning of the whole case is quite applicable to the Act of 1891 concerning crossings. The object of the act is to protect life and property and to compel the protection of grade crossings and that object, when a street railway crossing is in fact dangerous, can only be carried out by the Railroad and Warehouse Commission having power over such crossing.

Again: In the case of B. & I. R. R. Co. vs. Gregory, 15 Ill., 20, (25), in discussing the contention that certain sections of a private act, by its narrow terms, limit the broader terms in the grant, and the Court say:

"One portion of a law may undoubtedly qualify, restrain, or even suspend another portion; but in order to have that effect, it must appear that it was framed with that intention."

From these citations it appears impossible to regard the use of the words above as limiting the intent to protect life and property.

The case of Thompson vs. Bulson, 78 Ill., 277, (syl. 2), has been referred to in support of the contention of a limitation of the statute. The Court says in that case:

"A section of a statute will be construed with reference to the provisions of other sections relating to the same subject and so as to leave all the words in the different sections in full effect according to their ordinary and usually accepted meaning."

This case, however, is not one where the larger terms of the act, title included, was sought to be limited by the casual words in some sections, hence it is impossible to apply the Thompson case as contrary to the position above taken.

In my opinion, the effect of the Acts of 1889 and 1891, is that, first, it establishes the Board of Railroad and Warehouse Commissioners as an independent tribunal to govern railroad crossings, in two classes of cases:

(A) When either company shall apply for a ruling of the commission.

(B) Whenever the safety of life and property requires action.

This power is limited to no special company or companies, but to all crossings, whether in or without cities and villages, and whether the companies are incorporated under the general corporation act or under the railroad act. Furthermore, it is apparent that this power so far as street railroads are concerned, is applicable to crossings only and not to the reports required from the so-called commercial railroads, under the act creating the commission.

So far I have considered only the effect of the acts themselves. I will now consider some of the objections that are made to the construction above given.

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OBJECTION THAT CITY'S POWER IS ABSOLUTE.

The first contention made in the above construction is that the city has absolute power over streets and that to permit the Railroad and Warehouse Commission to interfere with street railroad crossings, or with a crossing of the steam road by a street railroad, would be to bring about a conflict of authority between the commission and the municipal authorities in cities. It will hardly be contended that city authorities may prevent the commission from taking jurisdiction of the crossing of two steam railroads within the city limits, or even such a crossing in a street. In the case of Malott vs. Collinsville C. & E. St. L. Elec. Ry. Co., 108 Fed., 313, the Act of 1889 was held to apply to the crossing of two companies incorporated under Chap. 114, where the crossing took place within the corporate limits of Caseyville, Illinois, and at a place which was ordered to be, but had not yet been opened as a street. The same argument causing a conflict over the crossing of street railroads would cause a conflict over the crossing of steam railroads, for the statute,(Sec. 25).gives the city power to "provide for and change the location, grade and crossings of any railroad," a section which has been held in Harvey vs. Aurora & Geneva R. R. Co., 186 Ill., 283, (292), to apply to steam roads alone. The same argument which would deny the commission power over street railroad crossings in cities would construe the above section to exclude its power over any crossings in cities. Such an argument would nullify the Acts of 1887, 1889 and 1891, and would deprive the commission of power to protect at the very place where that power was most needed.

It is said that the city might consent to a crossing at one spot only, and that the commission would deny the right because the place was dangerous; or that the city might consent to and insist upon a grade crossing and the commission insist upon an overhead crossing. But the same argument equally applies to the crossings of steam roads, and if the Legislature permitted such a possible conflict in one case, why not in the other. The protection of life and property is an object of sufficient importance to permit the risk of a possible conflict of this character, a remote danger compared with the common danger at grade crossings. Some street car grade crossings in the city of Chicago yearly claim dozens of victims and the crossings of a steam and street railroad are still more dangerous. The danger the Legislature sought to avoid is so much more real than this hypothetical danger that there seems to be no doubt of the power of the commission.

OBJECTION THAT THE ACT CREATING THE COMMISSION IS LIMITED.

It is also argued that the Act of April 13, 1871, creating the Railroad and Warehouse Commission, by its terms, by the word "Warehouse" by the provisions requiring detailed reports from railroads, all indicate that the commission had nothing to do with street railways. It is argued that the words of the act are broad, the terms "any railroad," "any railroad company" and "every railroad company now or hereafter incorporated or doing business in the State under any general or special law," the reference to the officers of "every railroad company"—all appear and being as broad as the words in the Acts of 1889 and 1891 indicate that the latter acts should be strictly construed. This argument, even should it be conceded that the original act creating the commission is limited to steam roads, does not carry any weight, for the Act of 1889 expressly enlarges the powers of the commission and makes it an independent tribunal to control crossings.

It is true that the original act creating the commission has not been, in practice applied to street railways; and that there are two obiter dicta in Illinois which indicate that the act does not apply to them. The first one is in Wiggins Ferry Co. vs. E. St. L. U. Ry. Co., 107 Ill. 455-6, where the Court says:

"To say the least, it is a matter of grave doubt whether the consolidated Act of 1874 entitled "Railroads" has any application to street railroads or whether street railroads can lawfully incorporate at will under that act. This special provision in the corporation act (excepting horse and dummy



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railroads) would seem to indicate a purpose on the part of the Legislature to treat horse and dummy railroads, at least in some respects, as a distinct class of roads, and this purpose on the part of the Legislature, is further manifested in certain provisions found in the Railroad and Warehouse Act. That act, as consolidated in the revision of 1874 consists of a number of statutes passed by the Legislature at different times, but each having in view the accomplishment of some particular object or objects. While the terms of the first section of the act seem sufficiently broad to embrace horse and dummy railroads, which we regard as falling within the general description of 'street railways,' yet, in other subdivisions of the act, this class of roads is expressly excluded from its operation. Citing section 77 and section 95, chapter 114, Hurd 1874."

But the court then says that this question is not decided, for the reason that the company before the court was organized under chapter 114, and the question is expressly reserved.

The other case is Dean *vs.* Chicago Gen. Ry. Co., 64 Ill., App. 167, where Waterman J., at the end of the opinion, and wholly outside of the case before him, says:

"We do not regard the Railroad and Warehouse Act as applying to the operation of street railways within the limits of one city."

On the other hand, the case of Chicago *vs.* Evans, 24 Ill., 55, quoted above, expressly held that certain portions of the act, existing before the revision, did apply to street railroads. Furthermore, the legislature's care in excepting street railroads from the act for fencing and operating railroads, shows that in the mind of that body the act would apply to them, if not specially excepted.

Again, in Malott *vs.* Collinsville C. & E. St. L. Elec. Ry. Co., 108 Fed. 313, the court said, and was quoted above:

"Nor does their incidental function as street railways in the towns or cities traversed, lift them out of the railroad statutes,"—reasoning which the Illinois Supreme Court approve in Knopf *vs.* Lake St. Elec. R. R. Co., 197 Ill., 218.

It is further urged that the original act creating the Railroad and Warehouse Commission, even though not by its terms, limited to so-called commercial roads, yet the acts of the commission in their public business has interpreted it as though such was its true meaning and that the construction thus adopted is binding by usage. Counsel for the Union Traction company, in this behalf, cites Chicago & Northwestern Ry. Co. *vs.* Boone county, 44 Ill., 243, and Link *vs.* City of Litchfield, 141 Ill., 477, yet the act of 1871 which created the Railroad and Warehouse Commission was, in Central Elevator Co. *vs.* The People, 174 Ill., 210, exempted from this rule. In that case the court said:

"Finally it is claimed that there has been a practical construction of the law by the Warehouse Commissioners, permitting the practice complained of * * * It is said, however, that since the practice became common the Warehouse Commissioners charged with the administration and enforcement of the law did not question the legality of the practice. There was nothing in the nature of affirmative construction and the most that can be said is that the Railroad and Warehouse Commissioners failed to enforce the law. That fact does not amount to a practical construction. If the commissioners were derelict, it would not bind the public, and indifference on their part could not have that effect."

A complete examination of the cases discussing construction of statutes from the acts of officials, will show that it is affirmative action by the officials and not the absence of action, that the courts consider, and the fact that the commission may have failed to apply the crossing acts to street railways does not indicate that the act itself does not cover them. Furthermore, it could be conceded that the original act creating the commission did not mean to include street railways, and still the acts of 1889 and 1891, by their express addition to the powers of the commission, would give ample grounds to include street railway crossings within these new acts.

The Railroad and Warehouse Commission, however, has been for some years taking jurisdiction of the crossing of electric roads with steam roads in the country districts. In May, 1896, (decisions of the Commission, pages

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337, 339 and 340) the commission took jurisdiction of the crossings of the C. & A. R. R. Co.'s tracks by the Alton Ry. & Ill. Co. In October, 1890, it took jurisdiction of the crossing of the C. & A. tracks by the Lincoln Street Railway Co. In the petition of the Illinois Trans. R. R. Co. vs. L. E. & St. L. Cons. R. R. Co. (Volume 2 of decisions, pp. 1, 6) the board took jurisdiction of a like crossing. Also in the case of the C. M. & St. P. R. R. Co. vs. Freeport Ry. Co. in October, 1903, (pp. 33-38) the commission took jurisdiction over the crossing of electric road with steam road. In the petition of the C. & A. R. R. Co. vs. St. L. & S. R. R. Co. where the grade crossing was within the limits of Carlinville, Ill., the commission took jurisdiction of the crossing by an electric line of the same company's tracks.

These acts are affirmative constructions of the statute by the commission in favor of its power over crossings of steam roads by street railroads, and are a complete answer to the above contention. Indeed these acts will weigh with the court as a strong argument in favor of the power of the commission.

It is further contended by counsel that the policy of the Legislature has been to put street railways and commercial railroads in two distinct classes, which for convenience may be called, corporations organized under chapter 32 and corporations organized under chapter 114. The cases of Wiggins Ferry Co. vs. E. St. L. U. Ry. Co., 107 Ill., 456, also Harvey vs. Aurora & Geneva Gen. Ry. Co. 174 Ill., 307, are cited in support of such contention, also the further fact that paragraph 25 of the powers of cities, has been held to apply only to general or commercial railroads and the fact that chapter 131, page 1236 Starr & Curtiss, Vol. 4 and Hurd 1903, page 1834, each have acts limited to street railroads, are also urged as showing the distinction.

Suppose that it be granted that the Legislature's policy is to distinguish between the two classes of roads, does it follow that the crossing Acts of 1889 and 1891 would not apply to both classes, in proper cases? The danger to life and property would come about wholly from the use, and the protection needed would be required regardless of the method of incorporation. Corporations organized under chapter 32 can run long distances. can go through the country and carry travel for miles. In Russell vs. Chicago Elec. Ry. Co., 205 Ill., 155, the company sought to extend its lines outside the city limits and the court said that under proper conditions it could do so.

An examination of the corporation laws of Illinois, in my opinion, confirms the position and shows that the distinction between street and commercial railroads is solely with reference to the powers of the companies and not with reference to the police power of the State exercised for the protection of life and property.

I do not consider it necessary to discuss the relative powers of railways organized under chapter 32 and under chapter 114 *supra*. It is true that corporations organized under chapter 32 are much more limted in their powers than those organized under chapter 114. In my opinion, it is not necessary to discuss these limitations. It seems that the distinction made between the two classes of companies by the courts is solely as to the power each class may possess. This distinction as to power in my judgment does not in the least affect the question of protection to life and property; for the danger comes from the use, not from the scope of the power of the corporation. It is also plain that the danger will arise regardless of the place of crossing, whether within or without cities, villages and towns and whether on or off of private ground. Indeed, the danger will increase in cities and still further increase when the crossing is in a street. The danger to life and property being the thing influencing the Legislature under the Acts of 1889 and 1891, it would seem that the crossings where danger arose, regardless of their location or the method of organization of companies, were under the power of the commission.

In consideration of the provisions of the statutes above referred to and a review of the cases of our own courts, and regardless of the fact whether the act creating the Railroad and Warehouse Commission covered all raiload companies, I am of the opinion that the Act of 1889 made the commission an independent tribunal to act upon disputed future crossings, of all companies, wherever located, for the protection of life and property, and the Act of 1891

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enlarged the power of this independent tribunal to cover established crossings upon the application of either company thereto, and to cover established crossings, including crossings of two tracks of the same company, in all cases where danger existed. This tribunal is to act for the protection of life and property and to make that protection effective, its power covers all kinds of crossings, whether situated in or outside of cities, on private or public ground, and of any companies, for the words in the act are broad enough to embrace all these matters. The intent is broad enough to reach any dangerous crossing and the mischief to be remedied can only be remedied by thus construing these acts. Such being the case, and as this construction does not strain the words of the statute, but on the contrary, is within the usual meaning of the same, the power of the commission in my judgment, is well settled.

I am led to the above conclusion also from examination of cases in other states under similar statutes. See Penn. R. Co. vs. Braddock Elec. Ry. Co., 156 Pa. 127; Port Richmond & Prohibition Park Elec. R. R. Co. vs. Staten Island Rapid Trans. Co., 144 N. Y., 445; Stillwater & M. St. Ry. Co. vs. Boston and Maine R. R. Co., 171 N. Y., 589, and Rutland Ry. Co. vs. Bellows Falls and Sexton River St. Ry. Co., 73 Vermont, 20; Elliott on Railroads, Vol. 3, Sec. 211, where the author uses the following language:

"Street railways have a right to cross steam railways and it has been held that the general statutes in force regulating the manner in which steam railroads shall cross each other are applicable in such cases; and under a statute which authorizes a court to order a crossing other than at grade, a street railway may be ordered to construct an overhead crossing." Citing Elizabethtown etc. R. R. Co. vs. Ashland, etc., R. R. Co., 92 Ky., 347 and the New York and Pennsylvania cases above cited. Joyce on Electric Law, Sec. 407: "The right of the railroad at such crossings is subject to the police power of the State."

In conclusion, one other argument in favor of the power of the commission is offered, and it is one which greatly adds to the position above taken. The Act of 1889 requires the commission, after the hearing, to decide, "with due regards to the safety of life and property." The act of 1891 requires the decision to be such a decision as "the public good requires." These words make the question of the power of the commission over crossings, a question involving a public interest, and where a public interest is involved, a statute is liberally construed so as to carry out the best interests of the public. If these statutes are to be liberally construed then they cover all crossings of all roads whenever the crossing is dangerous to life and property. If a public interest is involved, the jurisdiction of the commission is presumed unless the street railroads can make it appear that the legislature by affirmative words exempted them from the operation of the statutes, for, in that case, it would not be a question of extending the meaning of the statute by implication, but of limiting it by implication, and to place the limitation would require evidence of such an intent of the legislature. This principle plainly gives the Railroad and Warehouse Commission authority over all crossings for the purpose of protecting life and property and compelling the protection of the same.

Respectfully submitted,

H. J. HAMLIN,
*Attorney General.*

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