

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

THE MUNICIPAL LEAGUE,
Complainant.

vs.

SOUTHERN PACIFIC COMPANY,
THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY and SAN PEDRO,
LOS ANGELES AND SALT LAKE RAILROAD
COMPANY.

Defendants.

ORIGINAL

Case No. 970.

CENTRAL DEVELOPMENT ASSOCIATION
OF LOS ANGELES,

Complainant.

vs.

SOUTHERN PACIFIC COMPANY, THE
ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and SAN PEDRO,
LOS ANGELES AND SALT LAKE RAIL-
ROAD COMPANY.

Defendants.

Case No. 971.

CIVIC CENTER ASSOCIATION OF
LOS ANGELES,

Complainant.

vs.

SOUTHERN PACIFIC COMPANY, THE
ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and SAN PEDRO,
LOS ANGELES AND SALT LAKE RAIL-
ROAD COMPANY.

Defendants.

Case No. 972.

CITY OF PASADENA, a Municipal
Corporation.

Complainant.

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY, ATCHI-
SON, TOPEKA AND SANTA FE RAILWAY
COMPANY, SAN PEDRO, LOS ANGELES
AND SALT LAKE RAILROAD COMPANY and
CITY OF LOS ANGELES,

Defendants.

Case No. 974.

CITY OF ALHAMBRA, a Municipal
Corporation.

Complainant.

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY, ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY,
SAN PEDRO, LOS ANGELES AND SALT LAKE
RAILROAD COMPANY and CITY OF LOS
ANGELES,

Defendants.

Case No. 980.

Decision No. 3805

CITY OF SAN GABRIEL, a Municipal Corporation,

Complainant,
vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY, ATCHISON
TOPEKA AND SANTA FE RAILWAY COMPANY,
SAN PEDRO, LOS ANGELES AND SALT LAKE
RAILROAD COMPANY and CITY OF LOS
ANGELES,

Defendants.

Case No. 981.

CITY OF SOUTH PASADENA, a Municipal Corporation,

Complainant,
vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY, ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY
SAN PEDRO, LOS ANGELES AND SALT
LAKE RAILROAD COMPANY and CITY OF
LOS ANGELES,

Defendants.

Case No. 983.

- Gibbons & Sholton and Marshall Stimson, for Municipal League, Central Development Association of Los Angeles and Civic Center Association of Los Angeles.

Joseph Scott for Chamber of Commerce of Los Angeles.

John Munger, City Attorney, for City of Pasadena.

Alfred Barstow, City Attorney, for City of Alhambra.

S. O. McFadden, City Attorney, for City of San Gabriel.

William Hazlett, for City of South Pasadena.

- C. W. Durbrow and George D. Squires for Southern Pacific Co.

- E. W. Camp and U. T. Clotfelter for The Atchison, Topeka and Santa Fe Railway Company.

A. S. Halsted for San Pedro, Los Angeles and Salt Lake Railroad Company.

Frank Karr and E. E. Morris for Pacific Electric Railway Co.

- Albert Lee Stephens, City Attorney, and Howard Robertson and Chas. S. Burnell, Assistant City Attorneys, for City of Los Angeles.

BY THE COMMISSION.

O P I N I O N.

In these proceedings the various complainants ask the Railroad Commission to make a comprehensive investigation into the entire railroad situation in the City of Los Angeles, including such matters as union passenger and freight terminals, the elimination of railroad grade crossings, the crossing of railroad tracks by railroad tracks and related matters affecting the comfort, convenience and safety of passengers traveling to, from and through

the City of Los Angeles, and the safety of freight so moving. The Railroad Commission is asked, upon the completion of such investigation, to make its orders in the execution of such plans as the Railroad Commission may formulate. The Railroad Commission is asked to do a constructive work of great magnitude in the interest of the people of Los Angeles and other sections of California.

The defendants in these proceedings having challenged the Railroad Commission's jurisdiction, a public hearing on the issue of jurisdiction was held in the City of Los Angeles on September 15, 1916, before the Railroad Commission en banc. At that time, by stipulation of all the parties, it was agreed that the issue of jurisdiction should be decided on the allegations of the complaints herein and that the seven above entitled proceedings should be consolidated for hearing and decision on this issue.

The complaint in Case No. 970 alleges in effect, as follows:

1. That complainant, The Municipal League, is a voluntary organization having a membership of several hundred citizens of the City of Los Angeles, who have organized themselves for the purpose of considering matters of public importance to the City of Los Angeles and its inhabitants and of securing necessary and appropriate action upon such matters;
2. That the defendants are each a railroad corporation engaged in the operation of a line of transcontinental railway and having a terminus in the City of Los Angeles;
3. That the citizens and residents of the City of Los Angeles and of the territory surrounding and tributary to the City and the passengers upon railroad cars traversing the City are profoundly affected by the existence within the limits of the City of Los Angeles of many crossings at grade of the streets of said city by lines of steam and electric railways and the use of many of the streets of said city by such lines of railway;

4. That the City of Los Angeles, a city having a population of about 600,000 inhabitants, is crossed from north to south by the trunk lines of the three transcontinental railroads which are parties defendant herein;

5. That the three defendant railroads maintain within the City of Los Angeles three separate main passenger stations, three separate principal freight stations and other subsidiary passenger and freight stations, and three separate yards in which freight and passenger trains are made up;

6. That Pacific Electric Railway Company maintains at two different points within the business district of the City of Los Angeles separate passenger stations for the use and service of its interurban trains and that these interurban trains, to the number of more than two thousand each day, enter and leave the City of Los Angeles over various routes, crossing certain of the steam railroad lines of the defendants;

7. That the entrance and crossing of the City by the lines of railway and tracks operated by defendants have resulted in the crossing of the streets of the City of Los Angeles by their lines of railway at grade in many different places and that several streets of the City, notably Alameda Street, a main artery, and Alhambra Avenue, an important street, are occupied longitudinally by the lines of railway of one of the defendants;

8. That many of the railroad grade crossings referred to in the complaint are upon streets which are main arteries of traffic to and from the business center of the City of Los Angeles and its suburbs and along which large numbers of street cars, thousands of vehicles, including heavy loaded trucks, and a great number of pedestrians pass;

9. That the crossing of the streets of the City of Los Angeles at grade by the railroad tracks of the defendants has produced many accidents and collisions which have been destructive

of the lives and property of the people of the City of Los Angeles and visitors to said city and that these railroad grade crossings produce constant danger of injury and destruction to the cars of the railroad lines and to the passengers thereof;

10. That important and populous sections of the eastern area of Los Angeles, known as Boyle Heights, and East Los Angeles, are separated from the remainder of the City of Los Angeles by the main tracks of the defendants and that intercommunication between Boyle Heights and East Los Angeles and the business portion of the City is made difficult and dangerous by reason of the crossings at grade of the main arteries of the City of Los Angeles by the main lines of the defendants, to the great danger and detriment of the people intercommunicating between said sections of the City of Los Angeles and the business center of the City and to the injury and damage to a greater or less extent of the property situated in Boyle Heights and East Los Angeles;

11. That a number of important and populous cities and towns, including the City of Pasadena, with more than 40,000 inhabitants, whose inhabitants and whose tourists and visitors largely find their center of trade in the City of Los Angeles, are so situated that all persons traveling from them to the business center of the City of Los Angeles are compelled to cross one or more main tracks of the defendants at grade, with great danger of personal injury;

12. That the three defendant railroad companies maintain in the City of Los Angeles three separate main passenger stations and subordinate stations, which are not interconnecting, and are not situated on main thoroughfares, but are maintained as separate and distinct centers, each with its equipment of main tracks and spur tracks;

13. That the three defendant railroad companies maintain three separate centers of freight collection and delivery in the

City of Los Angeles and that the present location of these freight centers make it necessary that each railroad shall maintain a separate system of industrial tracks for the collection and delivery of freight, thus causing excessive and unnecessary use of the streets of the City of Los Angeles by the defendants' engines and cars, and resulting in great inconvenience to the people of the City of Los Angeles and to the visitors of the City in the use of its streets and in grave risk to the lives and property of such citizens and visitors, in great damage to the property located on and near said tracks and in danger to the railroad cars and the passengers thereon, on account of collisions;

14. That the bridges and viaducts across the Los Angeles River, running from north to south through the City of Los Angeles near its business center, have excessive grades of approach and that a number of them are in such condition of disrepair that the City of Los Angeles will shortly find it necessary to replace them with more adequate structures, and that in order that such reconstruction shall be done properly, there should be a readjustment of the tracks of some of the defendants running along and near the Los Angeles River, which tracks are crossed by said bridges and viaducts or the approaches thereto;

15. That in order to relieve the people of the City of Los Angeles and the railroad cars and passengers from the danger, damage and inconvenience of the existence of numerous grade crossings and other conditions complained of, it will be necessary to concentrate the various tracks of the defendants and to provide for the use by the lines of defendants entering and leaving the City of Los Angeles with passengers and freight, of a central or union passenger station and of one or more central freight stations or depots;

16. That the injury and menace to life and property is constantly increasing with the growth of the City of Los Angeles and the business of the defendants, and that thereby the barrier between the center of the City of Los Angeles and the districts to the north and east is constantly becoming more intolerable; and

17. That the City of Los Angeles and The Municipal League of the City of Los Angeles have both appointed committees for the study of the problems presented and that reports of these committees are attached as Exhibits "A" and "B" to the complaint in Case No. 970.

The Municipal League asks the Railroad Commission to investigate the entire situation; to hear all parties and examine all designs; to order relief by reclaiming Alameda Street and other streets, by the improvement and abolition of grade crossings; and by the installation of a union terminal station and by a re-organization of the trackage situation so that, as far as possible, the operation of the railroad lines of the defendants along or across the streets of the City of Los Angeles may be eliminated, locating said terminal station in as accessible a position as possible to the main lines of street and interurban electric railroads.

The complaints in Case No. 971 and Case No. 972 allege that the complainants, Central Development Association of Los Angeles and Civic Center Association of Los Angeles, ^{are} respectively, organizations having a membership of citizens of the City of Los Angeles, who have organized themselves for the purpose of considering matters of public importance to the City of Los Angeles and its inhabitants and of securing necessary and appropriate action upon such matters. The allegations of the complaints in Case No. 971 and Case No. 972 are similar to the allegations of the complaint in Case No. 970, except that the complaints in Case No. 971 and Case No. 972 do not contain allegations with

reference to union terminal passenger and freight stations.

The complaint in Case No. 974 alleges, in effect, as follows:

1. That the City of Pasadena, the complainant, is a municipal corporation in Los Angeles County, with a population of approximately 45,000 inhabitants;

2. That Pacific Electric Railway Company is a corporation operating numerous lines of interurban and electric railroads for the transportation of passengers and freight in Los Angeles County, two of which lines, known as the Short Line and the Oak Knoll Line, are operated between the City of Pasadena and the City of Los Angeles and into and in said cities, that the City of Los Angeles is a municipal corporation situate about nine miles southwesterly from the City of Pasadena and that the other defendants are corporations engaged in the operation of transcontinental steam railroads and operating the same into, in and between the cities of Los Angeles and Pasadena;

3. That Pacific Electric Railway Company in the operation of its said interurban service between said cities of Los Angeles and Pasadena, operates trains between its terminal station at Sixth and Main Streets, in the City of Los Angeles and its station on Colorado Street and its car barns on Fair Oaks Avenue, in the City of Pasadena;

4. That the tracks maintained by Pacific Electric Railway Company between and in said cities and over which it operates its service between and in said cities cross at grade the tracks of the other defendant railway companies on Aliso Street, in the City of Los Angeles;

5. That the main public highway between the City of Pasadena and the center of the City of Los Angeles, known from north to south as Fair Oaks Avenue, Huntington Drive, Mission Road and North Broadway, crosses the right of way and tracks of Pacific Electric Railway Company at grade at Mission Road, in

the City of Los Angeles;

6. That a large portion of the travel and traffic by automobile and other passenger and freight vehicles between the City of Pasadena, the City of South Pasadena and other nearby communities, and the center of the City of Los Angeles is over the main line highway hereinbefore described and crosses the tracks of Pacific Electric Railway Company which are maintained by it at grade across said main line highway;

7. That the grade crossings maintained and used by the defendant steam railway companies on Aliso Street in the City of Los Angeles are unsafe, and are improper, inadequate and insufficient for the reasonable protection of the traveling public traveling on the interurban cars of Pacific Electric Railway Company, including the citizens of the City of Pasadena and of a large adjacent territory, and that said grade crossings are improper, inadequate and insufficient for the reasonable protection of the traveling public traveling on the trains of the defendant steam railway companies;

8. That the service of Pacific Electric Railway Company, in the operation of its interurban cars and trains between its termini in the City of Pasadena and the City of Los Angeles is unreasonably and unnecessarily delayed by reason of the maintenance by Pacific Electric Railway Company of said grade crossings at Aliso Street, in the City of Los Angeles;

9. That the grade crossings maintained and used by Pacific Electric Railway Company at Mission Road in the City of Los Angeles are unsafe, and are improper, inadequate and insufficient for the reasonable protection of the traveling public traveling on the interurban cars of Pacific Electric Railway Company between and in said cities and are to a ~~large~~ much greater extent improper, inadequate and insufficient for the reasonable protection of the traveling public traveling on said highway;

10. That the grade crossings maintained by the defendant railway companies on Aliso Street and across Mission Road, in the City of Los Angeles, should be eliminated;

11. And that on April 27, 1916, the Railroad Commission in Case No. 938, made its order for the construction by Pacific Electric Railway Company, Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company of a standard interlocking plant at the crossing of their respective lines of railway at said Aliso Street; and that said interlocking plant should not be installed for the reason that the installation thereof would not obviate the unreasonable and unnecessary delay in the operation of the interurban cars and trains of Pacific Electric Railway Company between its termini in said cities, and for the further reason that the tracks of the defendant railway companies should not cross at grade at said points; owing to the danger and delay specified in the complaint.

The City of Pasadena asks the Railroad Commission to order a hearing upon the matters referred to in the complaint, to rescind the order made by the Railroad Commission in Case No. 938, to require the defendants to eliminate all the railroad grade crossings complained of, and for such other and further relief in the premises as may be just and reasonable.

The complaints in Cases Nos. 980, 981 and 983 allege, respectively, that the City of Alhambra is a municipal corporation located in Los Angeles County and having a population of approximately 10,000 inhabitants; that the City of San Gabriel is a municipal corporation in Los Angeles County having a population of approximately 3,000 inhabitants; and that the City of South Pasadena is a municipal corporation ^{in Los Angeles County} having a population of approximately 7,000 inhabitants. The complaints in Cases Nos. 980, 981 and 983 are in other respects practically identical with the complaint in Case No. 974, filed by the City of Pasadena.

At the hearing held herein, the Chamber of Commerce of the City of Los Angeles appeared by Mr. Joseph Scott, its attorney, and was permitted to intervene for the purpose of "urging the Railroad Commission of the State of California to take such action as may be proper and within its jurisdiction to eliminate, or assist in the elimination of, railway crossings in the City of Los Angeles."

The subject matter of this opinion will be considered under the following heads:

1. Importance of issue.
2. Position of parties.
3. Argument of proponents of Railroad Commission's jurisdiction.
4. Argument of Counsel for City of Los Angeles.
5. Central Trust Company case.
6. Exclusive jurisdiction vests in Railroad Commission.
 - (a) Section 17, 22 and 23 of Article XII of State Constitution, together with Railroad Commission Act of 1911 and Public Utilities Act passed thereunder, vest exclusive jurisdiction in Railroad Commission.
 - (b) Charter provisions of City of Los Angeles are inoperative on subject matter of present proceedings, because they refer to a "state affair" and not a "municipal affair".
7. Conclusion.

1. IMPORTANCE OF ISSUE.

All parties herein agree that the issues presented are of tremendous importance, not merely to the City of Los Angeles but also to the State at large.

The question of a union passenger depot affects the convenience, comfort and safety of millions of passengers traveling each year between other portions of California and the United States and the City of Los Angeles, and also passing through the City of Los Angeles to and from other points in California and elsewhere.

The question of a union freight depot is not merely of vital concern to the commercial interests of the City of Los Angeles, but also to shippers in other sections of California and elsewhere, shipping to, from or through the City of Los Angeles.

Track layouts in connection with union passenger and freight depots are an integral part of such depots and present numerous and difficult questions for solution.

The crossing of railroad track by railroad track affects the safety of millions of passengers traveling each year to, from and through the City of Los Angeles, and also the speed with which large numbers of people living in other sections of Los Angeles County and elsewhere, can travel to, from and through the City of Los Angeles on lines of railway which, at least in so far as they are located outside the City of Los Angeles, are admittedly subject to the jurisdiction of the Railroad Commission.

The crossing of streets in Los Angeles by railroad tracks and of railroad tracks by streets, both as part of a comprehensive union terminal plan and also apart therefrom, affects the safety not merely of persons traveling on foot and in vehicles across such railroad tracks to and from points beyond as well as within the City of Los Angeles, but also directly and vitally the safety of passengers traveling over such railroad tracks, most of which passengers are traveling from or to points in California and elsewhere outside the limits of the City of Los Angeles.

The general plan formulated by civic and commercial organizations of the City of Los Angeles and by other municipalities in Los Angeles County, complainants herein, to have all these important, difficult and interrelated problems solved in a broad, constructive manner by an impartial state tribunal, is one worthy of the constructive genius of the people of Los Angeles County. The plan contemplates a comprehensive and detailed study of the Railroad Commission of every factor which enters into the problem and the establishment thereafter by order of the Railroad Commission of a fundamental plan, adapted to meet the needs not merely

of the present but also of the years to come and calculated best to advance the comfort, convenience and safety not merely of the people of the City of Los Angeles, but also of the millions of passengers who in ever increasing number will continue to travel between other parts of California and elsewhere, and the City of Los Angeles, of the countless shippers who will continue to ship freight in ever increasing volume to, from and through the City of Los Angeles, and of the railroads themselves which are engaged in the transportation of such passengers and freight.

Counsel for the City of Los Angeles, while urging that the Railroad Commission does not have jurisdiction over a portion of the subject matter of these proceedings, joins all the other parties in admitting that the particular problems herein presented can best be solved, in their entirety, by the Railroad Commission.

However, the issue of the Railroad Commission's jurisdiction has been presented herein and this issue must be decided. Unless the Railroad Commission has jurisdiction, the Commission, of course, cannot and will not enter upon a consideration of the problems herein presented.

2. POSITION OF PARTIES.

The Municipal League, Central Development Association of Los Angeles, Civic Center Association of Los Angeles, City of Pasadena, City of Alhambra, City of San Gabriel and City of South Pasadena all urge that the Railroad Commission has jurisdiction to proceed and to grant the relief herein prayed for.

The Chamber of Commerce of Los Angeles, intervener herein, takes the same position in so far as the elimination of railroad grade crossings is concerned.

Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, defendants

herein, all urge that the Railroad Commission has exclusive jurisdiction over the subject matter of these complaints. While each of these defendants, except Pacific Electric Railway Company, filed a pleading herein denying the Railroad Commission's jurisdiction, these defendants explained at the hearing herein that the preliminary investigations in connection with the comprehensive plans herein involved, would require the expenditure of thousands of dollars and the execution of such plans probably millions of dollars more and that they desire to be protected in the expenditure of their funds and to know definitely at the outset what public authority has jurisdiction in these proceedings. They explained that they had raised the issue of jurisdiction for the purpose of having this issue decided before they are called upon to incur any large expenditure of money and effort. At the hearing herein, all these defendants strongly urged that the Railroad Commission has exclusive jurisdiction over the entire subject matter of the complaints herein.

The City Attorney of Los Angeles took the position that the Railroad Commission has exclusive jurisdiction over the establishment of union passenger and freight depots in the City of Los Angeles, but that the Commission does not have jurisdiction to grant any other relief herein asked, the jurisdiction with reference to such other relief being vested exclusively in the City of Los Angeles.

3. ARGUMENT OF PROPONENTS OF RAILROAD COMMISSION'S JURISDICTION.

The proponents of the Railroad Commission's jurisdiction herein draw attention to the fact that in important, well recognized matters, the State and Federal governments and not the City of Los Angeles clearly have jurisdiction over railroads in the City of Los Angeles.

Attention is drawn to the fact that the Federal government has exclusive jurisdiction over the rates for transportation of passengers and freight between the City of Los Angeles and points outside the State of California, over the accounting systems of all carriers engaged in interstate commerce, even though their rails run in or through the City of Los Angeles, and over the safety appliances of all carriers engaged in interstate commerce, even in the City of Los Angeles.

Attention is further drawn to the fact that the Railroad Commission of California has undoubted exclusive jurisdiction even as to railroads operating in the City of Los Angeles, over rates for passengers and freight moving between points in California, over the systems of accounts of all such railroads, except to the extent to which the field is occupied by the Federal government, over the issue of capital stock by all such railroads if incorporated under the laws of California, over the issue of bonds of such railroads if California property is affected, and over the consolidations, mergers, mortgages and encumbrances, involving California property, of all such railroads.

Attention is further directed to the fact that the taxation of all operative property of railroads in the City of Los Angeles is exclusively in the hands of the State, and that in important matters affecting the railroad employees working in the City of Los Angeles, such as compensation for injuries, the size of train crews and other matters, the State claims and exercises unquestioned jurisdiction in the City of Los Angeles.

The proponents of the Railroad Commission's jurisdiction herein insist, as will more fully appear hereinafter, that the State of California, by its Constitution and statutes, has clearly committed itself to the policy that the regulation of its railroads is a state affair and not, except in minor particulars, a matter for regulation by our cities and towns.

Referring specifically to the issues herein presented the proponents of the Railroad Commission's jurisdiction rely on certain constitutional and statutory provisions in support of their claim that the Railroad Commission has exclusive jurisdiction.

Section 17 of Article XII of the State Constitution was adopted in 1879 and has never been amended. This section reads as follows:

"Sec.17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

This section provides, in part, that all railroad companies shall be subject to legislative control and that every such company shall have the right to intersect, connect with or cross any other railroad.

Section 22 of Article XII of the State Constitution was adopted in 1879 and amended on October 10, 1911. This section creates the Railroad Commission and provides, in part as follows:

"Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

"No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Railroad Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Railroad Commission in this Constitution, and powers the Authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution.

"The provisions of this section shall not be construed to repeal in whole or in part any existing laws not inconsistent herewith, and the 'Railroad Commission Act' of

this State approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the Constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein."

It will be observed that in addition to specific powers conferred by this section on the Railroad Commission, the Legislature is authorized to confer upon the Railroad Commission any additional powers considered to be desirable, not inconsistent with the powers conferred by the Constitution. We assume that this power of the Legislature is limited to the subject matter of the section, which is the regulation and supervision of railroads and other transportation companies.

We desire also to draw attention to the fact that this section, as amended on October 10, 1911, ratifies and confirms the Railroad Commission Act of February 10, 1911, to which matter we shall hereinafter make further reference.

Section 25 of Article XII of the Constitution was adopted in 1879, and entirely revised by amendments of October 10, 1911, and November 3, 1914. This section/^{now}reads as follows:

"Sec. 25. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this State, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the Legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities."

in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this State, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further, that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner prescribed by the Legislature; and provided, further, that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith."

This section declares that certain classes of private corporations, associations and individuals, including the owners and operators of commercial, ~~interurban~~, interurban and street railroads shall be public utilities, subject to such control and regulation by the Railroad Commission as may be provided by the Legislature and that after the enactment by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities theretofore vested in local authorities, with certain exceptions to which

specific reference will hereinafter be made, shall be vested in the Railroad Commission.

As we are now considering constitutional and statutory provisions at present in effect, we shall not, at the present time, refer to the Railroad Commission Act approved February 10, 1911, this act having been repealed.

The Public Utilities Act was approved on December 23, 1911, and became effective on March 23, 1912. The Act was revised and reenacted on April 23, 1915, and as thus revised and reenacted, became effective on August 8, 1915. The proponents of the Railroad Commission's jurisdiction herein rely on certain sections of the Public Utilities Act as affirmatively establishing the Railroad Commission's power to grant the entire relief herein asked.

Section 30 of the Public Utilities Act reads as follows:

"Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees."

This section requires each public utility to obey every order made by the Railroad Commission in any matter in any way relating to or affecting such public utility's business.

Section 31 of the Public Utilities Act reads as follows:

"The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

This section gives the Railroad Commission power and jurisdiction to supervise and regulate every public utility in the State and to do all things necessary and convenient in the

exercise of such power and jurisdiction.

Section 36 of the Public Utilities Act reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

This section gives the Railroad Commission power to direct public utilities to make any necessary changes in their existing plant and facilities, including the erection of new structures and including specifically joint action by two or more public utilities. The Railroad Commission is given specific power to fix the site of such new structures as it may order one or more public utilities to erect. All parties agree that under this section the Railroad Commission has exclusive jurisdiction to grant the relief herein requested in so far as union passenger and freight depots are concerned.

Section 37 of the Public Utilities Act reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

This section provides in part that the Railroad Commission shall have jurisdiction over the frequency of train movements, time schedules and the places at which stops shall be made.

Section 38 of the Public Utilities Act reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two or more railroad or street railroad corporations, so that cars may readily be transferred from one to the other, at any of the points hereinafter in this section specified, the commission may order any two or more such corporations owning, controlling, operating or managing tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin or terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the city and county, or city or town, the commission may likewise order such physical connection, within such city and county, or city or town, between two or more railroads which enter the limits of the same. The commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise."

This section gives the Railroad Commission power over connections between the tracks of any two or more railroad or street railroad corporations, with

authority to compel physical connections within any city or town between the tracks of two or more railroads which enter the limits of the same.

Section 41 of the Public Utilities Act reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use be permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof, and the commission shall have power to ascertain and direct the payment, prior to such use, of fair and just compensation for damage suffered, if any."

This section gives the Railroad Commission authority to compel a public utility to permit another public utility to use, on equitable terms, its conduits, subways, tracks and other equipment, on, over or under any street or highway. By amendment of April 23, 1915, the Railroad Commission is given power "to ascertain and direct the payment, prior to such use, of fair and just compensation for damage suffered, if any."

Section 42 of the Public Utilities Act reads as follows:

"The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other

protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of construction and equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand."

This section gives the Railroad Commission authority to require every public utility to construct, maintain and operate its property so as to promote and safeguard the health and safety of its employees, passengers, customers and the public and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions, and block or other systems of signalling. As originally enacted, this section did not give to the Railroad Commission jurisdiction over the construction of public utility properties. The section was amended by Chapter 553, Laws of 1913, approved June 14, 1913, so as to give to the Railroad Commission authority over the construction, in addition to authority over the maintenance and operation of all public utility plants.

Section 45 of the Public Utilities Act reads as follows:

"(a) No public road, highway or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

"(b) The commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public road or highway by a railroad or street railroad and of a street by a railroad

or vice versa, subject to the provisions of section 2694 of the Political Code, so far as applicable, and to alter or abolish any such crossing, and to require where, in its judgment, it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the state, county, municipality or other public authority in interest."

This section gives the Railroad Commission authority over the construction, maintenance, operation, change and elimination of grade crossings under all the circumstances specified by the section, with specific power to require the elimination of such railroad grade crossings and the establishment of a separation of grades and to determine the portion of the expense to be borne by each of the parties affected. The section does not include the crossing of a street railroad by a street or of a street by a street railroad, presumably on the theory that these are matters of local concern which may properly be left to the various cities and towns.

The proponents of the Railroad Commission's jurisdiction claim that under the foregoing constitutional and statutory provisions, the Railroad Commission has exclusive jurisdiction over the entire subject matter of the complaints herein. This contention is unquestionably correct if these constitutional and statutory provisions apply within the limits of the city of Los Angeles.

4. ARGUMENT OF COUNSEL FOR CITY OF LOS ANGELES
IN OPPOSITION TO RAILROAD COMMISSION'S JURISDICTION.

As already indicated, counsel for the City of Los Angeles admits that the Railroad Commission has exclusive jurisdiction to grant the relief herein requested in so far as union passenger and freight terminal stations are concerned. Counsel, however,

takes the position that with reference to the track layouts, including railroad grade crossing eliminations, immediately connected with such union terminals and with reference to all other relief asked in these proceedings, the City of Los Angeles has exclusive jurisdiction. In other words, the counsel for the City of Los Angeles admits that in so far as the foregoing provisions of the Public Utilities Act relate to union passenger and freight terminal stations, the Public Utilities Act applies within the City of Los Angeles, but that in so far as affects the railroad tracks entering these terminals and all other matters set forth in the complaints herein, the Public Utilities Act does not apply within the City of Los Angeles.

Counsel for the City refers to that portion of Section 23 of Article XII of the State Constitution which provides, in effect, that notwithstanding the powers over public utilities therein conferred upon the Legislature and the Railroad Commission, the various cities and towns of the State should retain the powers over public utilities vested in them, at least until they might voluntarily elect to vote such powers into the Railroad Commission. Counsel for the City contends that by reason of certain provisions in the Charter of the City of Los Angeles, hereinafter set forth and claimed to have been in effect on October 10, 1911, the City had and now has exclusive jurisdiction over railroads in the City of Los Angeles with reference to all matters herein presented, with the exception of union passenger and freight terminals.

The provisions of the Charter of the City of Los Angeles on which counsel for the City relies are subdivision 13, section 2, Article I, and subdivision 30 of the same section as amended in 1911 and filed with the Secretary of State on March 25, 1911 (St. 1911, pp. 2051, 2061, 2063).

Subdivision 13 and subdivision 30 (in so far as applicable to these proceedings) of section 2, Article I, of the Charter of the City of Los Angeles, as amended in 1911, read as follows:

"Sec. 2. The City of Los Angeles, in addition to any other powers now held by, or that may hereafter be granted to it under the constitution or laws of the State, shall have the right and power

(13) To establish, lay out, open, extend, widen, narrow, or vacate, pave or repave, or otherwise improve the streets, lanes, alleys, boulevards, crossings, grades and other highways and public places."

(30) To regulate, subject to the provisions of the constitution of the State of California, the construction and operation of railroads, interurban railroads, street railways, or other means of transportation****.

Counsel for the City relies on these charter provisions and on the decision of the Supreme Court of this State in City of Los Angeles vs. Central Trust Company of New York, et al., rendered on September 11, 1916 (Cal. Dec., Vol. 52, p. 298).

5. CENTRAL TRUST COMPANY CASE.

In the Central Trust Company case, supra, the City of Los Angeles brought a proceeding, under the street opening act of 1903 (St. 1903, p. 376) to condemn a right of way across a certain parcel of land in the City of Los Angeles, owned by the Southern Pacific Railroad Company, on which land were located certain railroad tracks owned by Southern Pacific Railroad Company and operated by Southern Pacific Company. The acquisition of the right of way across such parcel of land was desired by the City for the purpose of extending across such land and railroad tracks a public street of the City of Los Angeles, known as Arlington Street.

There is nothing in the pleadings to show whether the railroad tracks were used to carry passengers or property to or from points outside the City of Los Angeles. The pleadings pre-

sented no issue with reference to the safety of any passengers or freight or the service rendered by the defendant railroads to any point outside the City of Los Angeles. The pleadings presented no issue with reference to union passenger or freight terminals, track layouts in connection with such terminals, the crossing of one railroad track by another railroad track, the separation of any railroad grade, the protection of any railroad grade crossing or the safety, comfort or convenience of any passenger or the safety of any property being transported over any railroad track, at any railroad grade crossing or otherwise in the City of Los Angeles, these being the issues presented in the present proceedings. The Central Trust Company case was simply an isolated case of the extension of a street across a parcel of land on which there was located a railroad track, with nothing, however, concerning the construction, maintenance, operation or use of such railroad track, except simply a stipulation by the parties that such land and tracks might continue to be used for railroad purposes.

The sole question in the Central Trust Company case was whether the Superior Court had the jurisdiction to enter a decree condemning a right of way for the extension of a public street across a parcel of land and a railroad track in the City of Los Angeles. The attention of the Supreme Court was not directed to important provisions of the Constitution and statutes of this State which, in our opinion, are clearly controlling in reaching a conclusion on the issues presented in the present proceedings. A careful examination of the complaints herein fails to reveal any reference whatsoever to any proposed extension of any public street in the City of Los Angeles over a parcel of land and tracks owned by any railroad company.

Both on the facts presented and the questions of law decided, the Central Trust Company case cannot be considered as an

authority in these proceedings.

6. EXCLUSIVE JURISDICTION VESTS IN RAILROAD COMMISSION.

(a) Sections 17, 22 and 23 of Article XII of the Constitution of this State, together with the Railroad Commission Act of 1911 and the Public Utilities Act passed thereunder, vest exclusive jurisdiction in Railroad Commission.

As hereinbefore indicated, counsel for the City of Los Angeles relies on two provisions of the Charter of the City of Los Angeles, as amended on March 25, 1911, namely, subdivisions 13 and 30 of section 2, Article I. We shall now consider these two charter provisions.

Subdivision 13 is clearly not applicable to these proceedings, for the reason that it relates solely to the power of the City of Los Angeles to "establish, lay out, open, extend, widen, narrow or vacate, pave or repave, or otherwise improve streets, lanes, alleys, boulevards, crossings, grades, and other highways and public places." As hereinbefore pointed out, no such issues are involved in these proceedings. Hence, no further consideration need be given herein to this subdivision.

Subdivision 30 of section 2, Article I, in so far as involved herein, gives to the City of Los Angeles the power:

"To regulate, subject to the provisions of the Constitution of the State of California, the construction and operation of railroads, interurban railroads, street railways, or other means of transportation."

We direct particular attention to the fact that the powers thus granted are by the terms of the charter itself, expressly "subject to the provisions of the Constitution of the State of California."

It seems entirely clear to us that the freeholders who framed the charter amendments of 1911 and the Legislature which

approved them, must have contemplated that under the Constitution of California, the power to regulate the construction and operation of railroads, interurban railroads and street railways, even in the City of Los Angeles, was, or thereafter might be, vested in some public authority other than the City of Los Angeles.

At the time subsection 30 was adopted and for many years prior thereto, the Constitution of California, in Sections 17, 20, 21, 22 and 23, of Article XII, provided for the regulation of railroad and other transportation companies by the State itself.

Without at the present moment referring to the other sections, we draw attention to the provisions of Section 17 of Article XII of the State Constitution, reading in part as follows:

"All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control."

At the very time the 1911 amendment of subdivision 30, section 2, Article I, of the Charter of the City of Los Angeles became effective (being March 25, 1911), the Legislature had already provided that the construction and operation of railroads in every matter herein relied upon by counsel for the City of Los Angeles should be subject to the jurisdiction of the State Railroad Commission and not of any local authority. The Legislature accomplished this result by the enactment of the Railroad Commission Act, approved February 10, 1911, and effective immediately (St. 1911, p. 13).

Section 15 of the Railroad Commission Act provided, in part, as follows:

"The commission shall likewise have the exclusive power to determine and prescribe the manner, including the particular point of crossing of any crossing of a railroad or other transportation line by another such line, and also the terms of the installation, maintenance, use and protection of such crossing, and to require at any crossing of one railroad by another, where the same is practicable, a separation of their grades and to prescribe the terms upon which such separation shall be made and to proscribe, abolish or change any crossing of a railroad by a public road or highway, and to fix the terms of the construction, maintenance, use

and protection of such crossing, and to require that such crossing be either at grade, or above or beneath the tracks of the railroad, and the proportion in which the expense of installing and maintaining such crossing shall be divided between the railroad company and the county or other public authority in charge of the public highway."

The Railroad Commission was thus vested exclusively with authority, among other matters, as follows:

1. To prescribe the manner, including the particular point of crossing of one railroad track by another railroad track.
2. To prescribe the terms of the installation, maintenance, use and protection of each crossing of one railroad track by another railroad track.
3. To require in the crossing of one railroad track by another railroad track, where practicable, a separation of grades and to prescribe the terms upon which such separation shall be made.
4. To prescribe, abolish or change any crossing of a railroad track by a public road or highway, to prescribe the conditions of construction, maintenance, use and protection of such crossings and to require that they be at grade or above or beneath the tracks of the railroad, and the proportion in which the expense should be borne by the parties in interest.

We draw attention further to the following points:

(a) The powers thus conferred upon the Railroad Commission cover every issue raised by counsel for the City of Los Angeles in these proceedings.

(b) Over these matters the Railroad Commission was given exclusive jurisdiction.

(c) The Railroad Commission Act was effective forty-two days prior to the effective date of the amendments of 1911 to the City Charter of Los Angeles.

(d) Subdivision 30 of Section 2, Article I of the Charter of Los Angeles, as amended in 1911, was by its own terms expressly subject to the provisions of the Constitution of the State

of California, including, of course, the Railroad Commission Act of February 10, 1911, which had theretofore been enacted and become effective under direct constitutional authority.

(e) Accordingly, the powers here claimed by counsel for the City of Los Angeles never vested in the City of Los Angeles but were vested in the Railroad Commission exclusively.

(f) Finally, these powers, which were vested in the Railroad Commission exclusively on March 23, 1912, the effective date of the Public Utilities Act, and prior thereto since February 10, 1911, have been continued in the Railroad Commission by subsequent legislation, have never become vested in the City of Los Angeles, and are now vested in the Railroad Commission.

As bearing on the effect of the Railroad Commission Act of February 10, 1911, we desire to refer further to Section 22 of Article XII of the State Constitution as amended on October 10, 1911.

This section provides in part as follows:

"The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the 'Railroad Commission Act' of this State approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision become operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the Constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein."

The Constitution itself thus ratifies, confirms and approves the Railroad Commission Act of February 10, 1911.

It is urged, however, that under the provisions of Section 23 of Article XII of the State Constitution, referring to the retention by cities and towns of the powers over public utilities vested in them, the powers herein under consideration were retained by the City of Los Angeles. The conclusive answer

to this claim, as already shown, is that by the very terms of the Charter of the City of Los Angeles in effect at the time Section 23 of Article XII of the State Constitution was amended, the City of Los Angeles never became vested with these powers. What the City did not have it could not retain.

Finally, on this point, we desire to draw attention to the last sentence in Section 23 of Article XII of the State Constitution, as amended on October 10, 1911, reading as follows:

"Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith."

Those portions of Section 22 of Article XII of the State Constitution which ratify, approve and confirm the Railroad Commission Act of February 10, 1911, were adopted concurrently with the amendment of Section 23 of Article XII of the State Constitution. Accordingly, the last sentence of Section 23 of Article XII of the State Constitution has the effect of declaring that nothing contained in Section 23 of Article XII of the State Constitution shall be construed as any limitation upon the effect of Section 22 of Article XII, as amended on October 10, 1911, in ratifying, approving and confirming the Railroad Commission Act, effective February 10, 1911, forty-two days prior to the 1911 amendment of the City Charter of Los Angeles, relied upon by counsel for the City of Los Angeles herein.

Under the constitutional and statutory provisions hereinbefore referred to and the specific language of the charter provision relied upon by counsel for the City of Los Angeles, we are driven irresistibly to the conclusion that ever since the enactment of the Railroad Commission Act of February 10, 1911, the Railroad Commission has had exclusive jurisdiction

over the subject matter of the powers herein claimed for the City of Los Angeles by its counsel.

(b) Charter provisions of the City of Los Angeles are inoperative on subject matter of present proceedings, because they relate to a "state affair" and not a "municipal affair."

In our opinion, the constitutional and statutory provisions which we have considered conclusively establish the jurisdiction of the Railroad Commission herein.

Furthermore, we are driven to the same conclusion for the additional reason that, in so far as the present proceedings are concerned, the charter provisions of the City of Los Angeles are inoperative because the allegations of the complaints herein refer to "state affairs" and not "municipal affairs." Whatever may be said of the mere extension of a public street within a city over a parcel of land and a track owned by a railroad, with no other consideration presented, as being a "municipal affair", the conclusion reached on such a state of facts can have no applicability herein for the reason that the facts herein presented, their character and effect, are absolutely different from such a state of facts.

Counsel for the City of Los Angeles relies on Section 6 of Article XI of the State Constitution, as amended in 1896, reading in part as follows:

"Cities and towns hereafter organized under charter framed and adopted by authority of this constitution are hereby empowered, and cities and towns heretofore organized by authority of this constitution may amend their charters in the manner authorized by this constitution so as to become likewise empowered hereunder, to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to and controlled by general laws."

Counsel for the City of Los Angeles urges that on

March 23, 1912, the effective date of the Public Utilities Act, the City Charter contained provisions conferring upon the City the right "to regulate the construction and operation of railroads;" that these provisions were valid as referring to "municipal affairs;" that hence, under Section 23 of Article XII of the State Constitution, the City retained these powers; and, accordingly, that they cannot become vested in the Railroad Commission except by vote of the people of Los Angeles to that effect.

Before analyzing these contentions, we desire again to draw attention to our conclusions that, under the constitutional and statutory provisions hereinbefore discussed, and the very language of the Charter of the City of Los Angeles, the powers herein claimed by counsel for the City of Los Angeles never vested in the City of Los Angeles.

We are of the opinion that said provisions of subsection 30 of section 2, Article I, of the Charter of the City of Los Angeles never became operative in so far as the state of facts herein presented is concerned, for the reason that these facts present a case of "state affairs" and not "municipal affairs." This conclusion applies equally to every other provision of the City Charter, whether adopted in 1911 or prior thereto.

As hereinbefore pointed out, these proceedings do not involve the question of a mere extension of a public street across a railroad track. The complaints herein do not refer to any such state of facts. These proceedings involve the construction, operation and maintenance of union passenger and freight terminals and of extensive track layouts in connection therewith, the crossing of railroad tracks by railroad tracks, the separation of railroad grades both in connection with the union terminal project and otherwise, and the safety, comfort and convenience

of passengers and the safety of freight being transported to and from points outside the City of Los Angeles by railroads operating in the City of Los Angeles only as part of their general operation in the State of California and elsewhere.

Ever since 1872, it has been the policy of the State of California to consider such matters as state affairs subject to regulation and supervision under the Constitution and general laws of this State.

Sections 454 to 494 of the Civil Code consist of general laws enacted in 1872 and subsequent thereto, with reference to the organization, construction and operation of railroads in California.

Section 17 of Article XII of the State Constitution adopted in 1879, provides in part, as hereinbefore indicated, that "all railroad, canal and other transportation companies are declared to be common carriers, and subject to legislative control."

Similarly, Sections 20, 21, 22, and 23 of Article XII of the State Constitution, originally adopted in 1879, have continuously provided for the supervision and regulation of railroad and other transportation companies by the State Railroad Commission under general, statewide powers.

Never before, in so far as we have been able to ascertain, has the supervision and regulation of these great arteries of trade, running into every section of the State, been claimed to be a "municipal affair" except in minor matters not at issue in these proceedings.

By its very terms, subdivision 30 of Section 2, Article I of the City Charter of Los Angeles, as amended in 1911, clearly recognizes that the construction and operation of railroads may not be the proper subject of charter regulation by a city or town. Otherwise, this subsection would not have contained the qualifica-

tion that the powers conferred were subject to the provisions of the Constitution of the State of California.

Section 36-e of the Charter of the City of Los Angeles, as amended in 1909, reads as follows:

"Except as otherwise provided in this Charter, or in the Constitution of the State of California, the Council shall have power, by ordinance, to regulate and control, for any and every purpose, the use of the streets, lanes, alleys, courts and sidewalks, and other public places of the city."

Here is a clear recognition, in the language of the Charter itself, that the power of the City Council to control the use of the streets of the City of Los Angeles may be subordinate to control by some other public authority, as provided by the Constitution. For many years prior to 1909, the Constitution had provided for the regulation and control by the State itself of the railroads which run along and across the streets of Los Angeles.

We believe it is a fair assumption that the limitations in the Charter of Los Angeles both (1) as to the construction and operation of railroads, and (2) the use of the streets - the very issues herein involved - were inserted largely because of the well-known and long established policy of the State to consider the regulation of railroads as a state affair to be conducted under general laws by State agencies.

In this connection, we draw attention to the fact that Section 6 of Article XI of the State Constitution, on which section counsel for the City of Los Angeles herein relies, itself specifically provides that the power of chartered cities over their "municipal affairs" shall be subject to the restrictions and limitations provided in their several charters. Here we find specific restrictions in both charter provisions referred to. Hence, even if the matters herein at issue should be regarded as "municipal affairs", the charter itself contains

the express limitations which make the state policy of state regulation of the railroads prevail over municipal regulation.

It is idle to suggest that all provisions of the Charter of Los Angeles are, in any event, subject to the Constitution of California, and that the limitations in Subdivision 30 of Section 2 and in Section 36-e are surplusage. These are the only two sections of the Charter in which these express limitations occur. They were clearly inserted for a purpose and should not be construed away. That purpose was undoubtedly in part or entirely to preserve the State's policy of state regulation of its railroads, except in minor matters, throughout the length and breadth of the State.

✓ We have pointed out that even if the matters herein at issue should be regarded as "municipal affairs", nevertheless under the limitations in Section 6 of Article XI of the State Constitution and in the applicable provisions of the City Charter, the City received these powers specifically subject to constitutional provisions and particularly to the constitutional provisions providing for state regulation and supervision of railroads.

We are convinced, however, that all the matters to which our attention is drawn in these proceedings are clearly "state affairs" and not "municipal affairs", and that under the provisions of the Constitution and Statutes of this State those powers have vested and now vest in the Railroad Commission.

7.

CONCLUSION.

We are convinced, for the reasons herein set forth, that the Railroad Commission has exclusive jurisdiction over the subject matter of these proceedings.

However, the parties herein, including counsel for the City of Los Angeles, have drawn attention to the desirability

of securing at the earliest possible date a decision from the Supreme Court with reference to the Railroad Commission's jurisdiction on the facts herein presented. They draw attention to the fact that the investigations preliminary to any final order herein must inevitably necessitate the expenditure of a very considerable amount of time and labor and also of thousands of dollars of both public and private funds and that a compliance with such final order as the Railroad Commission may hereafter make herein might involve the expenditure of millions of money. The parties urge and, we think, justifiably, that they should not be compelled to enter upon any such expenditure of labor or money until they know definitely what public authority has jurisdiction in the premises.

If we overrule the objections to our jurisdiction and proceed herein, no ruling as to our jurisdiction can be secured from the Supreme Court, under the decision of the Court in Holabird v Railroad Commission, 171 Cal. 691, until the Railroad Commission has completed its investigations and made its "final order" or "final adjudication" herein. In the very nature of things no final order or final adjudication can be made in these proceedings until a very large amount of effort and money have been expended, all of which would be expended to no purpose unless the Railroad Commission has jurisdiction.

On the other hand, if the Railroad Commission, for the specific purpose of assisting to secure a speedy ruling from the Supreme Court, should dismiss these proceedings, any party aggrieved may, under the provisions of Section 67 of the Public Utilities Act, apply to the Supreme Court for a writ of mandamus to compel the Railroad Commission to proceed. Under

the provisions of Section 69 of the Public Utilities Act, such proceeding would have preference in the Supreme Court above all other civil causes except election causes, irrespective of position on the calendar. Hence, if this course is followed, a speedy determination of the issue of jurisdiction by the Supreme Court can be had.

We are stating the situation with absolute frankness, so that the parties may understand clearly what the Railroad Commission is doing and the reasons for its action.

For the reasons herein indicated, while holding that the Railroad Commission has exclusive jurisdiction in the premises, we shall dismiss these proceedings and decline to proceed therein to a decision on the merits unless and until directed so to do by the Supreme Court.

O R D E R

A public hearing having been held in the above entitled proceedings on the question of the Railroad Commission's jurisdiction to grant the relief prayed for, and these proceedings having been consolidated on said issue for hearing and decision, having been submitted and being now ready for decision on said issue,

IT IS HEREBY ORDERED that the above entitled proceedings be and the same are hereby dismissed.

Dated at San Francisco, California, this 21st
day of October, 1916.

Max Thelen
H. D. Loveland
Wm. G. ...
Edwin O. Edwards
Franz R. ...

Commissioners.