

Still, I do not think that that would render the re-issued bonds invalid.

I have not thought it necessary to take further time for the purpose of giving my general views in relation to the validity of these bonds. If I took more time, and looked into the case more fully, I might go more into detail than I have; but the equity of the holders of these bonds does seem so strong that no court, unless under a sort of moral or legal compulsion, would feel inclined to say, under all the circumstances of this case, that these bonds were invalid. Having been issued for so long a time, the interest on them having been paid, and their validity having been recognized again and again in after years by the city authorities, it does seem as though it is too late now, under all the circumstances of this case, for the city to question their validity. I therefore hold that they are valid, and the city is liable. It has issued the bonds, obtained the money and the benefits it has conferred, and law and equity declare that the debt should be paid.

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STEBBINS v. THE BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY.

(Circuit Court, D. Colorado. ———, 1880.)

1. STATUTE CONSTRUING STATUTE—WHEN VALID.—A statute construing and explaining a prior statute is valid, in so far, at least, as future transactions are concerned.
2. STATUTE—RAILROAD—STOCK.—A statute authorizing counties to take stock in railroads is applicable to a railroad duly organized under a subsequent statute.

———, for plaintiff.

———, for defendant.

MILLER, C. J. The case of Stebbins against the board of county commissioners is submitted, and at Judge Hallett's request I have examined it, and pronounced the result. This is a suit on bonds issued by Pueblo county in aid of a rail-

road called the Pueblo & Salt Lake Railroad, or some such name as that, that were issued in 1874. The defence to them is that the county had no authority to subscribe to stock in any railroad at that time. An act of the territorial legislature of 1868 does authorize counties to take stock in railroad companies, but the argument is, and the plea is, that at that time there existed no law by which any railroad company could be organized in the manner that this company has been organized; that the act of congress of March 2, 1867, impliedly forbade such organization; and probably that is a fair construction of that act. But, by a subsequent act of 1872, congress, as the defendant alleges, undertook to construe that act, and in their construction of it they declare that it should be held to extend to the right to organize railroad companies. It is denied that congress has any right to give a construction to the statute which will bind the court, and therefore that act of 1867 remains, and this railroad has no competent organization which will enable it to take subscriptions to stock. But, in a case which came up concerning taxation under the internal revenue law, which I decided myself in the supreme court, a very similar statute, construing a former statute, is made the subject of consideration, and in that case the court held that, while it might not be true that rights existing prior to the explanatory or declaratory statute will be affected by that declaratory statute, yet, inasmuch as congress or any legislative body has a right to pass a law for the future that such a statute shall be held to mean so and so, while it may not affect past transactions, it is equivalent to the passage of a statute of that character for the future; and, while it is not necessary for us to decide here whether that declaratory statute would affect any contracts or transactions prior to its passage, it is sufficient to say that after its passage it became a part of the law of 1867, and it was a declaration by congress that railroad companies might be organized in the manner that this was organized, after that period. That was passed in 1872, and this corporation filed its certificate of organization in 1873; it therefore was organized after the declaratory act, and, so far as that is

concerned, or any other that I know of, it was a valid organization.

It is said, nevertheless, that the act of 1868, which authorized the counties to take stock in railroads, was wholly void, because this railroad was not organized according to the law as it then stood; but that act of 1868 was a continuing act—was not made with reference to this. There were railroad corporations then in existence to whom it might apply, and it would apply to any future railroad corporation properly organized. Therefore, that act of 1868 authorized the county of Pueblo to subscribe to the stock of a railroad properly organized in 1873; as it did at the time, 1874.

I think, therefore, all the objections taken to the bonds on account of the invalidity of the subscription are ineffectual; and as that is the only question, the demurrer will be sustained, and plea held bad.

An appeal has been taken from this ruling to the United States supreme court.

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WESTERN UNION TELEGRAPH CO. *v.* KANSAS PACIFIC RAILWAY  
Co. and others.

(District Court, D. Colorado. ———, 1880.)

1. RAILROAD—TELEGRAPH FRANCHISE—CONTRACT.—A railroad, authorized and required by the act of its organization to construct a telegraph line, entered into a contract with a telegraph company for the construction of such line. *Held*, such contract could not be avoided by the railroad company, either as a usurpation of its function or for want of capacity to make it.
2. SAME—SAME—SAME—ILLEGAL CLAUSE.—A clause of such contract contained an agreement, upon the part of the railroad company, not to transport men or materials for any other telegraph company at less than the regular rates for passengers and freight, and not to give permission to any such company to erect another line on its lands or roadway. *Held* that, if such clause was void, as in conflict with the act of 1866, aiding the construction of telegraph lines, it could be eliminated from the contract.