CHAPTER 1.

OF THE ARTICLES OF ASSOCIATION, AND OF THE FORMATION OF RAILROAD CORPORATIONS.

§ 4. *Company, how formed; articles of association.*—Any number of persons, not less than twenty-five, may form a company for the purpose of constructing maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for like public use, and for that purpose may make and sign articles of association. (*Laws* 1850, *chap.* 140, § 1.)

Under the act of 1866 (chap. 697), any number of persons, not less than ten, may form themselves into a company for constructing, maintaining and operating a railway by means of a propelling rope or cable attached to stationary power. (See chap. 3, *post*; see, also, *post*, Narrow Guage Railroads, Elevated Railroads, Underground Railroads and Tunnel Companies, and Street Railroads in Cities, and Construction of Roads in Foreign Countries.)

§ 5. *Articles of association, what to contain.*—There shall be stated therein the name of the company; the number of years the same is to continue; the places from and to which the road is to be constructed, or maintained and operated;

the length of such road as near as may be, and the name of each county of this State through or into which it is made, or intended to be made; the amount of the capital stock of the company, which shall not be less than ten thousand dollars for every mile of road constructed, or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of thirteen directors of the company, who shall manage its affairs for the first year, and until others are chosen in their places. (*Laws* 1850, *chap.* 140, § 1.)

Chapter 280 of the Laws of 1876 provides for the assumption of another corporate name, upon an application to be made to a special term of the Supreme Court. One of the termini was located by the company at an eligible point in Brooklyn, under its charter, and the particular location was adhered to for some years, *held*, that the company was concluded by its acts. (*Brooklyn Central R. Co.* v. *Brooklyn City R. Co.*, 32 Barb., 358; see *Hudson &c. Co.* v. *N. Y. and Erie R. Co.*, 9 Paige, 323.) The articles of association of a railroad company declared that it was organized to construct a railroad in the counties of Kings and Queens, to commence at Brooklyn, and "terminate *at* Newtown, Queens county," and to be about twenty-five miles long. The *town* of Newtown borders upon the city of Brooklyn, but the *village* of that name (included in the town) is some miles from the boundary, and twenty-five miles from the starting point of the road. *Held*, that the articles contemplated the construction of a road running into the town of Newtown, and not merely to its boundary. (*Supreme Court; see also Mohawk Bridge Co.* v. *Utica and Schenectady R. Co.*, 6 Paige, 554.) The general law for the incorporation of railroad companies (*chap.* 140, *Laws of* 1850) requires in the articles of association only such approximative estimate of the length of the proposed road as may be made in good faith without an actual survey and location thereof. The precise length is not required to be stated, but only the length as near as may be. The act contemplates the formation of the company before the route is surveyed and the length actually known. (*Buffalo and Pittsburgh R. R. Co.* v. *Hatch*, 20 N. Y., 157.) Where there is no fraud, one who signs the articles of association to organize a railroad corporation cannot, in an action for the calls, show that the road is in fact longer than the distance stated in the articles. (*Troy and Rutland R. R. Co.* v. *Kerr*, 17 Barb., 581.) *Held*, no defense to action upon stock subscription that the articles of association were defective in not definitely stating the termini of the road or the counties through which it passed, as, notwithstanding the defect, the road had been built, put in operation and recognized by the Legislature. The shares of stock to which defendant was entitled were shares of stock in a corporation *de facto*. (*C. J. R. R. Co.* v. *Kyle*, 64 N. Y., 185.)

§ **6.** *When company may assume another corporate name.*—Any incorporation, incorporated company, society or association organized under the laws of this State, excepting banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, may apply at any special term of the Supreme Court sitting in the county in which shall be situated its chief business

office, for an order to authorize it to assume another corporate name. (*Chap.* 280, *Laws* 1876, *amending chap.* 322, *Laws of* 1870.)

Railroad companies were especially exempted from the operation of the statutory provision authorizing corporations organized under New York laws, to change their names by petition to the general term of the Supreme Court (*Laws* 1870, *chap.* 322), of which the above section in the text is an amendment. A corporation organized under a special charter, and reorganized subsequently under a general law, with a change of its name, and, to some extent, of its powers, is essentially still the same; and a judgment in an action brought against it by its latter name, to adjudge it dissolved for forfeiture of its charter, may appropriately cover the acts of the original corporation. (*Supreme Ct., Sp. T.*, 1862; *People ex rel. Barton* v. *Rensselaer Ins. Co.*, 38 Barb., 323.) A corporation cannot be known by two names. (*McGary* v. *People*, 45 N. Y., 153.)

§ 7. *Articles of association to be subscribed.*—Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in said company. (*Laws* 1850, *chap.* 140, § 1.)

It was held under the General Railroad Act of 1848, for which the present law is a substitute, that one who merely signs a preliminary subscription paper, previous to the organization of a company under the general railroad act of 1848, by which he agrees to take the amount in capital stock placed against his name, but who does not subsequently sign the articles of association, or subscribe to the capital stock in the books directed by statute to be opened after the corporation is formed, does not become a stockholder within the statute, and is not liable to the company on the preliminary subscription. [Distinguishing *Stanton* v. *Wilson*, 2 Hill, 153; *Hamilton and Dansville Plank-road Co.* v. *Rice*, 7 Barb., 157. *Supreme Ct.*, 1854, *Troy and Boston R. R. Co.* v. *Tibbitts*, 18 Barb., 297.] (This doctrine was disapproved of and doubted in *Poughkeepsie and Salt Point Plank-road Co.* v. *Griffin*, 21 Barb., 454, but on a comparison of the facts in the two cases, it will be seen that the statutory methods prescribed for the organization of railroad and plank-road companies and associations are dissimilar; but in the same case on appeal, in 24 N. Y., 150, it was held that the preliminary subscription and other steps, prior to the signing of the articles of association, are provisional, and without creating no fixed right and imposing no obligation on the parties.)

(*Contra.*) An agreement to take a certain number of shares of the capital stock subscribed previously to the incorporation of the company, creates, if not an express, an implied promise to pay, which will sustain an action by the company after its complete incorporation, to recover calls on the stock.) (*Ct. of Appeals*, 1856, *Buffalo and N. Y. City R. R. Co.* v. *Dudley*, 14 N. Y. [4 Kern.], 336; *see, also, Lake Ontario, etc., R. R. Co.*, v. *Mason*, 16 N. Y. [2 Smith], 451; to the contrary, *Supreme Ct.*, 1854, *Troy and Boston R. R. Co.* v. *Tibbitts*, 18 Barb. 297.) The only modes prescribed by statute for becoming a corporator and stockholder in a railroad company are originally subscribing the articles of association, or, after the company is incorporated, by the filing of the articles by subscribing to the capital stock in the books opened by commissioners.

(*Troy and Boston R. R. Co.* v. *Tibbitts, supra*; to this same effect, see, also, *T. and B. R. R. Co.* v. *Warren*, 18 Barb. 310, *infra*.) An informal subscription or promise to take stock prior to the signing of the articles of association, has no legal vitality standing alone. It is a mere provisional act, inoperative unless pursued through the remaining forms of the statute. Of itself it secures no right of membership, present or future, to the subscription, as it is not essential to a regular organization of the company, and imposes no legal obligation upon the company to issue stock to the amount named therein or upon the subscription to pay for it. (*T. and Boston R. R. Co.* v. *Tibbitts*, 18 Barb., 297; *approved*, 24 N. Y., 150.) The General Railroad Act (of 1848) conferred no powers to make conditional subscriptions, and such a subscription is contrary to public policy. (Idem.; 1 Hill, 518.)

A condition annexed to a subscription, imposing an unauthorized limitation of the directors' statute power to call in stock, or which provides for a dividend by way of interest, to each paying subscriber, until the full completion of the road, is illegal and void, as contravening public policy. (*Supreme Ct.*, 1854, *Troy and Boston R. R. Co.* v. *Tibbitts*, 18 Barb., 297.) The statute prescribes a particular mode of subscription, viz., that the associates shall severally subscribe the articles, etc., and that method must be followed. Therefore a subscription to the preliminary papers by one of same being as follows: "Estate of N. W., 100 shares, $10,000," is not binding either upon himself or his heirs. (*T. and B. R. R. Co.* v. *Warren*, 18 Barb., 310.) The subscription carries with it in all cases a promise to pay, unless, indeed, the obligation to pay is plainly excluded by the language of the subscription. (*Palmer* v. *Lawrence*, 3 Sandf. 161; *Hartford and N. H. R. Co.* v. *Croswell*, 5 Hill, 383; *Spear* v. *Crawford*, 14 Wend., 20; *Stanton* v. *Wilson*, 2 Hill, 153; *Northern R. Co.* v. *Miller*, 10 Barb., 260; *Rensselaer etc., Plank-road Co.* v. *Barton*, 16 N. Y., 457, *note*; *Buffalo, etc., R. Co.* v. *Dudley*, 14 N. Y., 336.) The advantages to be derived from being a member of a corporation formed for profit, and of the consequent right to participate in the pecuniary dividends, is a positive benefit; and where the agreement secures that advantage to the subscriber, on the organization of the company, the objection of a want of consideration cannot be made with success. (2 Hill, 153; 2 Den., 45, 417; 14 Mass., 172; *Supreme Ct.*, 1849, *Hamilton and Deansville Plank-road Co.* v. *Rice*, 7 Barb., 157; 1856, *Poughkeepsie and Salt Point Plank-road Co.* v. *Griffin*, 21 id., 454; S. P., *Ct. of Appeals*, 1854, *Schenectady and Saratoga Plank-road Co.* v. *Thatcher*, 11 N. Y., [1 Kern.], 102; 1857 [citing, also, 2 Kern., 18], *Lake Ontario, etc., R. R. Co.* v. *Mason*, 16 N. Y. [2 Smith], 451.)

Where all the capital stock of a corporation is subscribed for and taken at the time of filing the articles of incorporation, and the certificate of incorporation names all the stockholders, no subsequent subscribers, by merely writing their names in the corporation book, and affixing a number of shares to their respective names, can acquire a right to any shares of stock, or become stockholders, and liable as such for its debts. (*Supreme Ct.*, 1866, *Lathrop* v. *Kneeland*, 46 Barb., 432.)

When the stock is once all taken, the corporation has no more at its disposal, unless it regains a portion of that so taken, by forfeiture; and no person can become a stockholder except by purchase from one of the original subscribers, or his assignee, and by assignment of stock. (Ib.)

A subscription by a partnership name is a compliance with the provision in

the general railroad act—requiring each subscriber to the articles of association to subscribe thereto "*his name*, place of residence, and amount by him subscribed"—especially where the subscription was made by one partner in the name of both, and the other subsequently ratified it. (*Supreme Ct.*, 1856, *Ogdensburgh, Rome and Clayton R. R. Co.* v. *Frost*, 21 Barb., 541.)

Where defendant subscribed in his own name for fifty shares of railroad stock, and at the same time subscribed for fifty more, signing his own name again, adding thereto the letters "Exr." to indicate that he took the additional fifty shares for an estate for which he was executor,—*Held*, that these were separate contracts, upon which separate actions would lie; and that the pendency of the action to enforce payment of the first subscription, formed no sufficient ground for abating the action to enforce the second subscription. (*Ct. of Appeals*, 1865, *Erie, etc., R. R. Co.* v. *Patrick*, 2 Keyes, 256.)

A railroad corporation formed under the general railroad act, is not formed, and does not become a legal body, until all the requirements of the statute have been complied with, and the articles filed in the office of the secretary of state. Until this has been done, the subscription of any person to the articles is a mere proposition to take the number of shares specified of the capital stock of the corporation thereafter to be formed, which is revocable, and not a binding promise to take and pay. (*Supreme Ct.*, 1857, *Burt* v. *Farrar*, 24 Barb., 518.)

It is no defense to an action to recover on a subscription, that the name of another subscriber was erased from the articles of association before they were filed, where it appears that the erasure was made with the knowledge of the defendant and of all the directors, and at the request of the person whose name was erased, and without fraudulent intent. (*Supreme Ct.*, 1855. *Rensselaer and Washington Plank-road Co.* v. *Wetsel*, 21 Barb., 56.)

§ 8. *Articles of association to be filed and corporation created.*—On compliance with the provisions of the next section, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to corporations, and be subject to the provisions contained in title three of chapter eighteen of the first part of the Revised Statutes, except the provisions contained in the seventh section of the said title. (*Laws of* 1850, *chap.* 140, § 1.)

The "next section" mentioned in the text above is § 2 of chapter 140 of the Laws 1850 (§ 10 *post*), and has reference to the payments made upon the capital stock as the same has been subscribed, and to the annexing of the affidavit required by the statute to the articles of association. (For the powers or privileges of railroad companies mentioned in the above section, *see* § 118, *post.*) The railroad company is not created, and does not become a legal body, until the articles of association are duly filed, and until the requirements of the statute

are complied with. (*Burt* v. *Farrar*, 24 Barb., 518.) One who has signed articles of association under the general railroad act, before the association was incorporated, is not a corporator, nor bound by his subscription, unless such articles, with his signature, are filed with the secretary of state, pursuant to the statute. Filing a duplicate of such articles, without his signature, does not make him liable. (18 Barb., 298. *Supreme Ct.*, 1860, *Erie and N. Y. City R. R. Co.* v. *Owen*, 32 Barb., 616.) Where the articles of association filed with the secretary of state, consist of separate but exact copies of each other, each being signed by a different portion of the members of said company, the several papers are to be regarded as one instrument. (*Lake Ontario, etc., R. Co.* v. *Mason*, 16 N. Y., 451.) The subscriber is not bound by his subscription unless the articles with his signature are filed with the secretary of state, pursuant to statute. (*Erie and N. Y. City R. R. Co.* v. *Owen*, *supra*.)

The seventh section, referred to in the text, reads as follows: "If any corporation hereafter created by the Legislature shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease." In addition to the provisions stated in the text of the last section, the laws of 1845 (chap. 156, § 1), also provided that the foregoing seventh section should not be applicable to any act for incorporating a railroad company which has or shall have in its own provisions the terms and the time in which it shall be forfeited for non-user. These powers, privileges and provisions contained in title three of chapter eighteen of the first part of the Revised Statutes which are mentioned in the text, will be found stated at length in the subsequent chapter entitled "Of the General Powers of the Corporation." (*Chap.* 9.) The declaration in the general railroad act that the railroad corporation shall be subject to the provisions of title three, chapter eighteen of the first part of the Revised Ststutes, does not by implication exempt it from the operation of title four of the same chapter; and the company may still be liable under the provisions of title four. (*Boomen* v. *Lease*, 5 Hill, 221.) *For the powers and disabilities of the corporation, as stated in title* 4, *chapter* 18 *of the R. S.*, last above referred to, see *post* (*chap.* 9), *wherein are stated those statutory provisions in regard to the powers, duties and disabilities of the directors of the corporation.*

§ 9. *Certificates of incorporations to be recorded.*—All certificates of incorporations hereafter incorporated under any of the laws of this State, required by law to be filed in the office of the secretary of state, or in the office of any county clerk, shall be duly recorded in the office where the same shall be filed, in books specially provided therefor, which books of record shall be properly indexed. The same fees shall be charged for the recording of such certificates as are now provided by law for the recording of deeds. And the secretary of state and such county clerk shall neither file nor record any such certificate in their office unless the fees therefor are first duly paid. (*Laws*, 1881, *chap.* 22, § 1.)

It is doubtful whether the above statute was intended to or does apply to articles of association of railroad companies; yet, as a recent enactment, it was thought best to incorporate it into the text.

§ 10. *When articles of association shall not be filed and recorded.*—Such articles of association shall not be filed and recorded in the office of the secretary of state, until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and ten per cent paid thereon in good faith, and in cash, to the directors named in said articles of association; nor until there is indorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed, and ten per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid. (*General Railroad act, Laws*, 1850, *chap.* 140, § 2.)

The payment of ten per cent upon the subscription is not required to be made by each subscriber to the capital stock at the time of his subscription, nor is such payment a condition precedent to the right of action by the company for calls. If $1,000 of stock for every mile of the proposed road is subscribed and ten per cent paid thereon in good faith before the articles are filed, that is sufficient. It is not material that there were some subscriptions upon which the ten per cent has not been paid. The fourth section of the general railroad act, requiring every subscriber to pay the ten per cent in money, and forbidding the reception of any subscription without such payment, relates exclusively to proceedings for filling up the stock by means of new subscriptions after the articles have been filed and the company has assumed an authorized corporate existence. (*Ogdensburgh, Rome and Clayton R. R. Co.* v. *Frost*, 21 Barb., 541.) It is not necessary to the incorporation of a railroad company under the general act that ten per cent be paid upon the amount of each subscription at the time of making the same or previous to the filing of the articles of association with the secretary of state. It is sufficient if the cash payments, by whomsoever made, amount in the aggregate to ten per cent upon one thousand dollars for each mile of road proposed to be constructed. (*Lake Ontario, Auburn and N. Y. R. R. Co.* v. *Mason*, 16 N. Y., 451.) The requirement that ten per cent must be paid in before organization (§ 2), means not ten per cent upon each separate share subscribed; for the word "thereon" does not refer to the shares separately: but ten per cent upon such a sum of subscriptions as in the aggregate would make a total subscription of one thousand dollars for every mile of road proposed to be made. (*Idem; Rensselaer and Washington Plank-road Co.* v. *Barton*, *Id.*, 457, *note*. The provision of section four, requiring ten per cent to be paid on every subscription, does not apply to subscriptions before organization under section two, but only to those made after organization under section four. (*Ct. of Appeals*, 1857, *Lake Ontario, etc., R. R. Co.* v. *Mason*, 16 N. Y. [2 Smith], 451; *Supreme Ct.*, 1856, *Ogdensburgh, Rome and Clayton R. R. Co.* v. *Frost*, 21 Barb., 541.) The affidavit of the directors that $84,100 had been in good faith subscribed to the capital stock annexed and referring to the articles which state the termini of the road and that its length is about seventy-five miles, is sufficient evidence that at least one thousand dollars of stock for every mile of road

proposed is subscribed. The statement in such affidavit, that "ten per cent has been paid in cash on said subscription," is sufficient, without adding that it was paid to the directors in good faith. The act plainly shows that none but the directors can receive payment upon the preliminary subscriptions previous to the filing of the articles with the secretary of state. Delivering money to any other persons would not be payment upon the stock. When therefore the affidavit states that ten per cent had been paid upon the subscription in cash, it plainly implies that the money has been paid to the directers named in the articles. The affidavit also necessarily implies that the payment has been made in good faith, that the money has been delivered by the subscribers to apply as payment upon the subscription, and that the title to the money will vest in the directors as trustees of the corporation when the papers are filed and recorded by the secretary of state. (*The Buffalo and Pittsburgh R. R. Co.* v. *Hatch*, 20 N. Y., 160.)

§ 11. *Amended articles of association may be filed to cure irregularities in original articles.*—The directors of any corporation, organized under any general act for the formation of companies, in whose original certificate of incorporation any informality may exist by reason of an omission of any matter required to be therein stated, are hereby authorized to make and file an amended certificate or certificates of incorporation to conform to the general act under which said corporation may be organized; and upon the making and filing of such amended certificate, the said corporation shall, for all purposes, be deemed and taken to be a corporation from the time of filing such certificate.

§ 2. Nothing in this act contained shall, in any manner, affect any suit or proceeding at the time of filing such amended certificate pending against said corporation, or impair any rights already accrued. (*Chap.* 135, *Laws of* 1870.)

The regularity of the proceedings taken to organize a corporation cannot be questioned collaterally. (26 N. Y., 75; *N. Y. Superior Ct.*, 1863, *Persse and Brooks' Paper Works* v. *Willett*, 19 Abb. Pr., 416; *Supreme Ct.*, 1865, *Doyle* v. *Peerless Petroleum Co.*, 44 Barb., 239.)

Irregularities in the articles of association may be cured by a special act of the legislature, recognizing the existence of the corporation. Thus when it was claimed that all the requirements of the statute necessary to the due organization of the company as a railroad corporation had not been complied with, it was held that where the proceedings for the organization of a railroad corporation are regular upon their face, and the company in the actual exercise of all the corporate functions is recognized by the legislature as a corporation, it becomes by such recognition *ipso facto* a legal corporation. Any defect or irregularity in the proceedings required by law to be taken for its organization, should be deemed to be waived by such recognition. The power which prescribes the formalities to be observed in order to create a corporation, is able to dispense with them. (*Black River and Utica R. R. Co.* v. *Barnard*, 31 Barb., 258; see, also, *White* v. *Coventry*, 29 id., 305; 15 Abb. Pr. R. 66; *White* v. *Ross*, 15 id., 66.)

§ **12.** *Articles of association omitting the names of the directors, how amended.*—Whenever any number of persons, not less than twenty-five, shall make and sign, or shall before the passage of this act have made and signed, articles of association, containing the statements required by section one of an act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, except the names and places of residence of thirteen directors of the company as therein provided; and thereafter thirteen directors have been chosen at a meeting of subscribers to such articles, and the names and places of residence of such directors so chosen have been inserted in such articles so subscribed, and there has been indorsed thereon the affidavit prescribed by the second section of said act, and said articles have been filed and recorded in the office of the secretary of state; thereupon the persons who have subscribed such articles, and all persons who shall thereafter become stockholders in such company shall be a corporation by the name specified in such articles of association, and have the same powers and privileges, and be subject to the same liabilities, as though such articles had when signed contained the names and places of residence of such directors. (*Chap.* 829, *Laws of* 1872.)

Where the defendant subscribed articles of association for the purpose of organizing a railroad corporation, and, at the time of signing, the names of the directors were left in blank; *held*, that the instrument was incomplete and inoperative as against the defendant, and that, by the insertion of such names without his consent, the instrument was not made binding upon him. (*Dutchess and Columbia R. R. Co.* v. *Moffit*, 58 N. Y., 397.) This decision was in 1874, but the date at which the articles were signed is not given in the report.

§ **13.** *Amendment of articles of association when two companies construct common line of road.*—Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may, by agreement, provide for the construction of so much of said line as is common to both of them by one of the companies, and for the manner and terms upon which the business therein shall be performed. Upon the making of such agreement, the company that is not to construct the part of the line which is common to both may alter and amend its articles of association so as to terminate its line at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of the road proposed to be constructed in such amended articles of association. (*Chap*, 19, § 1, *Laws of* 1851.)

Section two of this act provides that the directors may, also, upon changing the location of a portion of their line, and constructing it in an adjoining State, reduce the capital specified in the articles of association, to such an amount as may be deemed proper, but not less than $10,000 for every mile of road to be actually constructed within this State. (Laws 1851, chap. 10, § 2; see "Reduction of Capital Stock," *post.*)

§ **14.** *The same.* — Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line; or whenever, by the connection of two or more railroads, the same points of termination are reached by railroad communication, any two of such railroads may, by agreement, provide for the construction of so much of said line as is common to both of them by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Any road so connecting may alter and amend its articles of association so as to terminate at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of the road constructed, or proposed to be constructed, in such amended articles of association. This section shall not be so construed as to apply to any railroad company or companies, so far as its or their line of road or roads are within the bounds of any incorporated city of this State. (*Laws of* 1854, *chap.* 282, § 13.)

§ **15.** *When, also, company may alter and amend its articles of association in other respects.*—Whenever any railroad company shall have located its road so as to terminate at any railroad previously constructed or located whereby communication might be had with any incorporated city of this State, and any other railroad company shall subsequently locate its road so as to intersect the road of said first-mentioned company, and thereby, by itself or its connections, afford communication with such city, then and in such case said first-mentioned company may alter and amend its articles of association so as to have its road terminate at the point of intersection with said road so subsequently located, provided the consent of the stockholders representing or owning two third of the stock of said company shall have been first obtained thereto. (*Laws* 1871, *chap.* 560, § 2.)

§ **16.** *Purchasers of franchise at judicial sale may file articles of association.*—And whenever the purchaser or purchasers of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may be hereafter sold, by virtue of any mortgage executed by such corporation, or execution issued upon any judgment or

decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser or purchasers may associate with him and them any number of persons, and make and acknowledge and file articles of association, as prescribed by this act; such purchaser or purchasers and their associates shall thereupon be a corporation, with all the powers, privileges and franchises, and be subject to all the provisions of said act. (*Laws* 1850, *chap.* 140, § 5; *Am'd Laws* 1854, *chap.* 282, § 1.)

See the two next sections, comprising chap. 469, Laws of 1873, and chap. 710, Laws of 1873.

§ **17.** *Articles of association by purchasers of the franchises and property of railroads sold under mortgage sale.*—Whenever the franchises, privileges, easements, rights and liberties of any corporation, created by an act of the Legislature of this State, or formed and incorporated under or by virtue of any general act thereof, and empowered by said act to mortgage its property or franchises, and the property, estate and effects of any such corporation, have been heretofore, or may be hereafter, sold by virtue of any mortgage executed by such corporation; and whenever the purchaser or purchasers thereof shall have acquired title to the same, in the manner prescribed by law, such purchaser or purchasers may associate with him or them any number of persons, and upon making and filing articles of association, as prescribed by this act, such purchaser or purchasers and his or their associates, and their successors and assigns, being residents of this State, shall thereupon become and be a body politic and corporate, and may take and receive a conveyance of, and shall thereupon succeed to, possess and exercise and enjoy all the rights, powers, franchises, privileges, easements, liberties, property, estate and effects of which the title shall have been acquired and conveyed as aforesaid. (*Laws* 1873, *chap.* 469, § 1.)

In case the said corporation, whose franchises, privileges, easements, rights, powers, liberties, property, estate and effects shall have been so sold as aforesaid, shall have been incorporated under or by virtue of the provisions of any general statute or statutes of this State for the formation of corporations, the certificates so to be made and filed shall be in form of, and shall state and set forth the particulars which in and by such statute or statutes were required to be stated and set forth in the original certificate of incorporation or articles of association of the said corporation. (*Laws* 1873, *chap.* 469, § 2.)

In case the corporation whose franchises, privileges, easements, rights, powers, liberties, property, estate and effects

shall have been so sold as aforesaid shall have been created by any special act of incorporation, then and in that case said certificates so to be made and filed shall state and set forth the following particulars, namely:

1. The name of the body politic and corporate so to be formed as aforesaid.

2. The amount of capital stock thereof, which shall not exceed the amount of the capital stock of the said former or pre-existing corporation authorized by law at the time of such sale as aforesaid, and the number of shares of which the said stock shall consist.

3. The title and time of the passage of the said original act creating the said former corporation, and any other act or acts relating thereto.

4. The number of directors who shall manage the concerns of the said body politic and corporate, and the names of the first board of directors thereof, and who shall hold their offices for one year and until others are chosen in their places. (*Laws* 1873, *chap.* 469, § 3.)

The said certificate shall be executed in duplicate and acknowledged before some officer competent to take acknowledgment of deeds. One of the said duplicates shall be filed in the office of the secretary of state, and the other thereof shall be filed in the office of the clerk of the county in which the said corporation first mentioned in this act had its principal place of business. And thereupon the said body politic and corporate so formed as aforesaid shall exist for the time, and may and shall possess, exercise and enjoy, all the powers, privileges, rights, liberties, easements and franchise possessed by the said former corporation, and in the same manner and to the same extent, and with the same force and effect as the same could have been exercised by the said former corporation, had not such sale as aforesaid been made. (*Laws* 1873, *chap.* 469, § 4.)

A copy of any articles of association filed in pursuance of this act, and certified by the secretary of state and county clerk, with whom same shall have been filed, or their deputies, to be a true copy of such articles and of the whole thereof, shall be received in all courts and places as legal evidence of the incorporation of the said body politic or corporate, so to be formed as aforesaid. (*Laws* 1873, *chap.* 469, § 5.)

§ 18. *When purchaser of railroad at mortgage or other judicial sale, and his associates, may make and file new articles of association.*—The purchaser or purchasers, or the grantee or grantees of any purchaser or purchasers, of the real estate, tracks and fixtures of any railroad corpora-

tion which has heretofore been sold, or may hereafter be sold by virtue of any mortgage, or by virtue of any judgment, decree, or order of any court having jurisdiction in the premises, may associate with him or them any number of persons, and make, acknowledge, and file articles of association as prescribed by the first section of this act. Such articles shall be entitled to be filed when there is indorsed thereon an affidavit, made by at least three of the directors named in said articles, that it is intended in good faith to maintain and operate the road mentioned in such articles, and, upon the filing thereof, so indorsed, the parties making such articles of association, and their associates, shall thereupon be a corporation, with all the powers, privileges and franchises, and subject to the provisions of this act. Nothing herein contained shall be construed to authorize any company organized under this act to charge any greater rate of fare than they were authorized by law to charge previous to such reorganization. (*General R. R. Act, Laws* 1850, *chap.* 140, § 5; *as amended by chap.* 710 *of the Laws of* 1873.)

In connection with this section, see "*of the rights acquired by purchasers at mortgage foreclosures,*" *post,* chapter 24. The first section of the act referred to in the text is section one of the general railroad act (see § 5, *ante*), and see also Chap. 430, Laws of 1874, Chap. 24, *post.*

§ **19.** *Unauthorized use of names in prospectus.*—A person who, without authority, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor. (*Penal Code,* § 593.)