

## CHAPTER 20.

## RAILROAD POLICE.

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§ 331. *Railroad corporation may apply for appointment of police.*—Any railroad corporation on which road steam is used as the motive power and any steamboat company, may apply to the governor to commission such person or persons as the said corporation may designate, to act as policeman for said corporation; but no more than one policeman shall be appointed at any one station of such company. (*Laws 1863, chap. 346, § 1, as amended by Laws of 1866, chap. 259, § 1.*)

The original section was as follows: Any railroad corporation on which road steam is used as the motive power, may apply to the governor to commission such persons as the said corporation may designate, to act as policemen for said corporation.

§ 332. *Governor may appoint police.*—The governor, upon such application, may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to such person or persons so appointed a commission to act as such policemen. (*Laws 1863, chap. 346, § 2.*)

§ 333. *Powers and duties of the railroad police.*—Every policeman so appointed shall, within fifteen days after receiving his commission, and before entering upon the duties of his office, take and subscribe the oath of office prescribed in the case of offices appointed by the governor, in the twelfth article of the Constitution, which oath of office shall be taken and subscribed before the secretary of State, or before the county clerk of the county in which such

policeman resides, which said oath, or duplicate thereof, shall be filed in the office of the secretary of State. And it shall be the duty of the secretary of State, upon the filing of such oath of office, to transmit to the county clerk of each county through or into which the railroad or steamboat for which said policeman is appointed may run, and in which the said policeman is herein authorized to act, a certificate under his hand and the seal of his office, setting forth the appointment of said policeman by the governor, and that his commission is recorded and oath of office filed in the office of said secretary of State, which certificate shall be filed by each county clerk receiving the same. Such policeman shall thereupon severally possess all the powers of policeman in the several towns, cities, and villages in which they shall be so authorized to act as aforesaid. (*Laws 1863, chap. 346, § 3, as amended by Laws of 1866, chap. 259, § 2, as amended by Laws of 1875, chap. 193, § 11.*)

The original section and previous amendment was as follows: Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed in the twelfth article of the constitution; such oath, with a copy of the commission, shall be filed with the secretary of State, and a certificate thereof by said secretary be filed with the clerk of each county through or into which the railroad for which such policeman is appointed may run, and in which it is intended he shall act; and such policemen shall severally possess all the powers of policemen in the several towns, cities and villages in which they shall so be authorized to act as aforesaid. (*Original section, Laws 1863, chap. 346.*)

The amendment of 1866, chapter 259, was as follows: Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed in the twelfth article of the constitution; such oath, with a copy of the commission, shall be filed with the secretary of State, and a certificate thereof, by said secretary, be filed with the clerk of each county through or into which the railroad or steamboat for which such policeman is appointed may run, and in which it is intended the said policeman shall act; and such policemen shall severally possess all the powers of policemen in the several towns, cities and villages in which they shall be so authorized to act as aforesaid.

**§ 334.** *Police to wear shield, etc.*—Such police shall, when on duty, severally wear a metallic shield, with the words "railway police," or "steamboat police," as the case may be, and the name of the corporation for which appointed, inscribed thereon, and said shield shall always be worn in plain view, except when employed as detectives. (*Laws 1863, chap. 346, § 4, as amended by Laws 1866, chap. 259, § 3.*)

This section before amended read as follows: Such railroad police shall, when on duty, severally wear a metallic shield with the words "railway

police" and the name of the corporation for which appointed, inscribed thereon; and said shield shall always be worn in plain view except when employed as detectives. (*Laws 1863, chap. 346, § 4.*)

§ 335. *Compensation of police.*—The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them. (*Laws 1863, chap. 346, § 5.*)

§ 336. *Police, how discontinued.*—Whenever any company shall no longer require the service of any policeman so appointed as aforesaid, they may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of such officer shall cease and be determined. (*Laws 1863, chap. 346, § 6.*)

§ 336(a). *Governor to appoint conductors and brakemen special policemen.*—The governor is hereby authorized in his discretion to appoint all or any conductors and brakemen of any trains of any steam railroad in this State, conveying passengers, for the purposes of this act, policemen having all the powers for the purposes of this act with which policemen of villages and cities are clothed, and each and every such conductor and brakeman shall take and file the usual oath of office, in the office of the clerk of the county in which he resides, or in the office of the clerk of the county in this State in which either terminus of such road may be. (*Laws 1880, chap. 223, § 1.*)

§ 336(b). *Power to arrest.*—All such conductors and brakemen acting as policeman under this act, upon any such railroad shall have full power, and it shall be their duty to arrest and hold in custody, and deliver to any magistrate, having jurisdiction in such cases, at either terminus of such road in this State, or at any intermediate station, any or all persons whom they may find engaged in, or endeavoring to entice others to engage in any game of cards or any other game of chance whatever, in which money or any representative of money, or any other valuable thing is to be lost or won, and to enter complaint to such magistrate for any violation of the law governing in such cases. (*Laws 1880, chap. 223, § 2.*)

§ 336(c). *Penalty for failure to act.*—Any conductor or brakeman, refusing or neglecting to perform the duty imposed upon him by this act, shall be liable

to a fine not exceeding two hundred and fifty dollars, to be sued for by and in the name of any superintendent of the poor of any county where such refusal or neglect may have occurred in any court of competent jurisdiction at any place on the line of said railroad, or to imprisonment not less than six months, or to both, in the discretion of the court. (*Laws 1880, chap. 223, § 3.*)

§ 336(d). *Disposition of fines.*—Any fine so imposed, when collected, shall be placed in the treasury of the county where recovered, for the use of the poor of said county. (*Laws 1880, chap. 223, § 4.*)

§ 336(e). *Superintendents of railroads must post copy of act.*—It shall be the duty of every superintendent or manager of every steam railroad in this State, immediately after the passage of this act, to post a copy of this law in some conspicuous place in each and every car used for the conveyance of passengers, under a penalty of not to exceed five dollars for each and every such car in which such notice shall not be posted. (*Laws 1880, chap. 223, § 5.*)

## CHAPTER 21.

## ANNUAL REPORTS TO BE MADE BY RAILROAD COMPANY.

- § 337. Annual reports by railroad corporations other than street or horse railroads.
- § 338. Annual reports by street or horse railroad companies.
- § 339. Lessees of railroads to make reports.
- § 340. Penalty for neglect to file report.

*Preliminary note.*—Section 31 of the general railroad act, Laws of 1850, chap. 140, required every railroad corporation to make certain annual reports of their operations to the state engineer and surveyor. By chapter 526 of the Laws of 1855 a board of railroad commissioners were established, and their powers and duties were defined by said act. Under section 21 of the last named act the said board were authorized to require from the said railroad companies in the State, in addition to the annual reports then required to be made to the state engineer and surveyor by section 31 of the general railroad act, such other reports, returns, or information, from time to time, amendatory of or in addition to such annual report, as the board might deem necessary. The act creating the board of railroad commissioners was by chapter 633 of the Laws of 1857, repealed, and all property, maps and papers belonging to or on file in the office of the board of railroad commissioners ordered to be transferred to the office of the state engineer and surveyor. Chapter 526 of the Laws of 1855 (now repealed), section 8, provided that the expenses of the commissioners thereby created should be paid and refunded to the State treasury by the railroad companies in proportion to their gross receipts, and the annual appropriation bills now passed by the Legislature provide that the expenses of the railroad reports, and of the printing and binding of the same, shall be refunded to the State treasury in the same manner. By resolution of the assembly, passed February 3, 1843, prior to the passage of the general railroad act, railroad companies were required to make their annual reports to the secretary of state by the first day of February in each year. This resolution specified the particulars in which the reports should consist. The monthly statements of the property carried on the railroad, which the company was formerly required to make to the comptroller, were dispensed with by the act abolishing tolls on railroads. (*Laws 1851, chap. 497, § 2.*)

§ 337. *Annual reports by railroad corporations, other than street or horse railroad companies.*—Every railroad corporation formed under this act\* shall make an annual report to the State engineer and surveyor of its operations for the year ending with the thirtieth day

\* Laws 1850, chap. 140.

of September, and of its condition on that day; which report shall be verified by the oaths of the president or treasurer and the general manager or acting superintendent of its operations, and shall be filed in the office of the State engineer and surveyor by the twentieth day of December in each year, and shall state :

## TABLE A.

## STOCK AND DEBT.

1. Capital stock as authorized by charter.
2. Capital stock as since fixed.
3. Capital stock subscribed.
4. Capital stock paid in.
5. Funded debt.
6. Unfunded debt.
7. Total funded and unfunded debt.
8. Average rate per annum of interest on funded debt.

The several amounts shall be stated in two columns, one of which shall be headed and contain "as by last report," and the other "by this report."

9. Number of shares of ordinary stock.
10. Number of shares of preferred stock.
11. Total shares of stock, of par value of \$        per share.
12. Number of stockholders.
13. A tabular statement of the funded debt as "by this report," shall be given, showing,
  - (1) Each kind of bonds or obligations.
  - (2) If and how secured.
  - (3) Date of issue.
  - (4) When due.
  - (5) Rate of interest.
  - (6) Amount of authorized issue.
  - (7) Amount actually issued.
  - (8) The total amounts.
14. The amount of unfunded debt as "by this report" shall be stated under the following classification :
  - (1) Notes and acceptances.
  - (2) Pay rolls and operating expenses unpaid.
  - (3) Amounts due other railroad corporations.
  - (4) Interest due and unpaid.
  - (5) Dividends unpaid.
  - (6) Open accounts.
  - (7) Other items (if any).

## TABLE B.

## COST OF ROAD AND EQUIPMENT.

15. Grading and masonry.
16. Bridges.

17. Superstructure including rails.
18. Passenger and freight stations, buildings and fixtures.
19. Engine and car-houses, machine shop, machinery and fixtures.
20. Land, land damages and fences.
21. Locomotive engines and fixtures.
22. Passenger and baggage cars.
23. Freight and other cars.
24. Engineering and agencies.
25. Any other items entering into the cost or value.
26. Total.

The several amounts shall be extended into three columns; the first to be headed and to contain "amount of last report;" the second, "amount since charged;" and the third, "amount by this report."

27. A statement shall be given showing briefly (by numbers, by quantities, or by descriptions) the additions, or betterments made to the road and equipment, representing the several amounts that may appear in the column headed "amount since charged."

### TABLE C.

#### CHARACTERISTICS OF ROAD.

28. Main line of road (stating termini).
29. Main line laid.
30. Branches owned.
31. Lines leased or operated.
32. Total main line, branches owned, and lines leased or operated.
33. Second track on main line.
34. Second track on branches owned, or lines leased or operated.
35. Total second track.
36. Third track on main line.
37. Fourth track on main line.
38. Third and fourth track on branches owned, or on lines leased or operated.
39. Sidings and turnouts on main line.
40. Sidings and turnouts on branches owned, and on lines leased or operated.
41. Total sidings.
42. Aggregate of all tracks on main line, branches owned, and lines leased or operated, including all siding and turnouts.

The amount shall be extended into three columns; the first headed and to contain "length in this State;" the second "length out of this State," and the third "total length."

43. A tabular statement shall be given, showing the termini of each branch, and of each line leased or operated, its length, and the length of double track, including sidings and turnouts on each.
44. Gauge of track.
45. Miles of steel rails (reduced to single track) in main line.
46. Same in branches owned, and lines leased or operated.
47. Weight per yard of steel rails in main line.
48. Weight per yard of iron rails in main line.
49. Weight per yard of steel rails in branches.
50. Weight per yard of iron rails in branches.
51. Length in feet of iron bridges on all lines.
52. Length in feet of wooden bridges on all lines.
53. Length in feet of pile or trestle work in wood on all lines.
54. Miles of telegraph wire owned and operated.

## TABLE D.

## EQUIPMENT.

55. Number of locomotive engines for passenger service.
56. Number of locomotive engines for freight service.
57. Number of locomotive engines for switching service.
58. Total number of locomotive engines owned.
59. Average weight (with tender and fuel and water) of each kind of locomotive engines.
60. Number of engine-houses.
61. Aggregate number of stalls in same.
62. Number of first-class passenger cars.
63. Number of second-class and emigrant passenger cars.
64. Number of baggage, mail and express cars.
65. Number of freight and other cars owned, namely:
- (1) Box freight.
  - (2) Platform or flat.
  - (3) Cattle.
  - (4) Oil.
  - (5) Coal.
  - (6) Service.
  - (7) Other kinds.
66. Number of above freight cars with eight wheels.
67. Number of above freight cars with four wheels.
68. Number of locomotive engines controlled by the corporation for use, but leased instead of owned.
69. Number of freight cars controlled by the corporation for use, but leased instead of owned.



## TABLE E.

## MISCELLANEOUS.

70. Number of machine and car shops.
71. Number of elevators or grain houses.
72. Aggregate capacity of same in bushels.
73. Number of freight or cattle yards, of two acres or more in area.
74. Aggregate area of same in acres.
75. Miles of track laid in same.
76. Average number of persons directly employed by the company during the year.
77. Aggregate amount of salaries and wages paid to same for the year.

## TABLE F.

## DOINGS OF THE YEAR IN TRANSPORTATION AND TOTAL MILES RUN.

78. Number of miles run by passenger trains.
79. Number of miles run by freight trains.
80. Number of passengers (all classes) carried in cars.
81. Number of tons, of 2,000 pounds, of freight carried in cars.
82. Number of miles traveled by passengers, or number of passengers carried one mile ("total movement of passengers").
83. Number of miles one ton of freight was carried, or number of tons carried one mile ("total movement of freight").
84. Average rate of speed (miles per hour) adopted by ordinary passenger trains, including stops.
85. Rate of speed of same when in motion.
86. Average rate of speed adopted by express passenger trains, including stops.
87. Rate of speed of same when in motion.
88. Average rate of speed adopted by freight trains, including stops.
89. Rate of speed of same when in motion.

## TABLE G.

## DESCRIPTION OF FREIGHT MOVED.

90. Products of the forest (tons).
91. Products of animals.
92. Vegetable food.
93. Other agricultural products.
94. Manufactures.
95. Merchandise.
96. Other articles.
97. Total number of tons.

## TABLE H.

AMOUNTS MOVED OF CERTAIN SPECIFIED ARTICLES INCLUDED IN FOREGOING DESCRIPTION.

- 98. Flour (tons).
- 99. Grain.
- 100. Live stock.
- 101. Fresh or pickled meats and provisions.
- 102. Petroleum and other oils.
- 103. Lumber.
- 104. Pig and bar iron and steel, and iron and steel rails.
- 105. Iron and other ores.
- 106. Coal.

## TABLE I.

DIRECTION AND DESTINATION OF FREIGHT MOVED.

- 107. Tons of through, going east and south.
- 108. Tons of through, going west and north.
- 109. Total tons through.
- 110. Tons of way, going east and south.
- 111. Tons of way, going west and north.
- 112. Total tons way.

## TABLE J.

DESTINATION OF PASSENGERS CARRIED.

- 113. Number of through passengers.
- 114. Number of way passengers.

## TABLE K.

AVERAGE RATE CHARGED PER TON PER MILE ON FREIGHT.

- 115. On first class.
- 116. On second class.
- 117. On third class.
- 118. On fourth class.
- 119. On all other classes.
- 120. Average on all classes.

The amounts shall be stated in two columns; one headed and to contain "rate on through;" and the other "rate on way;" and the "average on all classes," shall be stated with reference to the respective amounts of each class actually moved.

- 121. General average of through and way.

## TABLE L.

AVERAGE RATE CHARGED FOR PASSENGERS PER MILE.

- 122. For first class.
- 123. For second class.

124. For emigrants.

125. Average for all classes.

The amounts shall be stated in two columns; one headed and to contain "rate for through," and the other "rate for way;" and the "average for all classes," shall be stated with reference to the number of each class actually carried.

126. General average for through and way.

### TABLE M.

#### EXPENSES OF MAINTAINING ROAD AND REAL ESTATE.

127. Repairs of road-bed and railway other than cost of rails.

128. Repairs of bridges.

129. Repairs of telegraph lines.

130. Cost of rails used in repairs.

131. Tons of steel rails used in repairs.

132. Length of same (miles and fractions).

133. Tons of iron rails used in repairs.

134. Length of same (miles and fractions).

135. Repairs of buildings.

136. Repairs of fences and gates.

137. Taxes on real estate.

138. Total expenses of maintaining road and real estate.

### TABLE N.

#### EXPENSES OF REPAIRS OF MACHINERY AND CARS.

139. Repairs of engines and tenders.

140. Repairs of passenger and baggage cars.

141. Repairs of freight cars.

142. Repairs of tools and machinery in shops,

143. Incidental expenses, including oil, fuel, clerks, watchmen, and other expenses about shops.

144. Total expenses of repairs of machinery and cars.

### TABLE O.

#### EXPENSES OF OPERATING THE ROAD.

145. Office expenses, stationery and other expenses about office.

146. Agents and clerks.

147. Labor in loading and unloading freight.

148. Porters, watchmen, flagmen and switchmen.

149. Fuel and water station attendance.

150. Conductors, baggagemen and brakemen.

151. Enginemen and firemen.

152. Fuel, cost and labor in preparing for use.

153. Oil and other lubricants, and waste.

- 154. Loss and damage of goods and babbage.\*
- 155. Damages for injuries of persons.
- 156. Damages to property, including damages by fire and cattle killed on road.
- 157. General superintendence, or salaries of general officers.
- 158. Hire of cars.
- 159. All other items.
- 160. Total expenses of operating the road.

The amount stated under the several subdivisions of "expenses of maintaining road and real estate," "expenses of repairs of machinery and cars," and "expenses of operating the road," are to be those chargeable against the year's business, and are to be stated without reference (other than the weight and length of rails) to the sums actually paid therefor during the year. The amounts shall be tabulated and divided between "passenger transportation" and "freight transportation," and so far as items do not pertain specifically to either one particular kind of transportation the division shall be made in the ratio of the "total movements" of passengers and freight.

#### TABLE P.

AMOUNTS PAID FOR CERTAIN SPECIFIC PURPOSES INCLUDED IN FOREGOING.

- 161. Stationery and printing.
- 162. Advertising.
- 163. Legal expenses and counsel fees.
- 164. Insurance.
- 165. Rents.
- 166. Tolls.
- 167. Contributions and subscriptions.

#### TABLE Q.

TRANSPORTATION EXPENSES FOR THE YEAR.

- 168. Expenses of maintaining road and real estate (Table M.)
- 169. Expenses of repair of machinery and cars (Table N).
- 170. Expenses of operating the road (Table O).
- 171. Total transportation expenses.

The division between "passenger transportation" and "freight transportation," hereinbefore provided for, shall be brought forward with the subdivisions of "transportation expenses," and the resulting division of "transportation expenses" shall be shown.

\* So in original.

## TABLE R.

## RESULT OF THE BUSINESS OF THE YEAR.

The earnings are to be stated without reference to the sums actually received during the year.

## 172. Earnings.

- (1) From passengers.
- (2) From freight.
- (3) From mails.
- (4) From rents.
- (5) From other sources (in detail).
- (6) Total earnings.

## 173. Charges against earnings:

- (1) Transportation expenses (171).
- (2) Interest.
- (3) Rental of leased lines.
- (4) Dividends—date, and rate per centum.
- (5) Other items (in detail).
- (6) Total charges against earnings.

## 174. Resulting surplus (or deficiency) for the year.

## TABLE S.

## "INCOME" OR "PROFIT AND LOSS" ACCOUNT.

175. Balance, surplus (or deficiency) from previous year.

176. Surplus (or deficiency) for this year as shown by Table R.

177. Any other items of gain or loss (to be added or deducted).

178. Balance, surplus (or deficiency) now.

This balance of "income," or "profit and loss," must be that which appears on the proper side of the "balance sheet" hereinafter provided for.

## TABLE T.

## BALANCE SHEET, AT THE END OF YEAR.

179. The "balance sheet" must be tabulated, and contain on the one side a statement of the assets of the company at the close of the year, as follows:

- (1) Cost of road and equipment, as shown "by this report" in Table B.
- (2) Cost of other lines owned, which may not have been included in preceding; stating each line separately.
- (3) Permanent investments (in detail).
- (4) Cash on hand.
- (5) Cash assets (classified).
- (6) Due from other railroad corporations.
- (7) Fuel and supplies on hand.

(8) Sinking fund (if any).

(9) Other assets (classified and in detail).

And on the other side a statement of the liabilities of the company at the same time, as follows :

(1) Capital stock (as "by this report" in Table A).

(2) Funded debt (as "by this report" in Table A).

(3) Unfunded debt (as "by this report" in Table A).

(4) Other liabilities classified.

The balance of "income," or "profit and loss," must appear on the side on which it may fall, according to whether it be "surplus" or deficiency, and the two sides of the "balance sheet" must then be equal in footing.

The "balance sheet" in each report, after the first one shall have been made under the provisions of this act, shall be tabulated with double columns on each side ; in one of which columns, properly headed, shall appear the amounts at the end of the year for which such report is made, and in the other the amounts of the corresponding items as they appear in the report for the previous year.

180. The number of persons injured in life or limb, and the cause of the injury, and whether passengers or persons employed, and whether any such accidents have arisen from carelessness or negligence of any persons in the employment of the corporation, and whether such persons are retained in the service of the corporation.

181. The names and residences of the directors of the corporation.

182. The names and official addresses of the executive and general officers of the corporation.

183. It shall be the duty of each corporation to transmit to the State engineer and surveyor the following maps, profiles and drawings exhibiting the characteristics of their roads ; the map to show the length and direction of each straight line, and the length and radius of each curve ; also the point of crossing of each town and county line, and the length of line in each town and county, accurately determined by measurements to be taken after the completion of the road. The profiles to be on the map, and shall show the grade line and surface of ground in the usual method, also the elevation of grades above tides at each change in the inclination thereof. The maps and profile to be made on a scale of five hundred feet to one-tenth of a foot ; vertical scale of profiles to be one hundred feet to one-tenth of a foot. For all roads or parts of roads now done, or in operation, and for which such maps and profiles have not already been returned, they shall be returned on or before the first day of January next ; and for all roads now in progress, or which may hereafter be constructed, the said maps

and profiles shall be returned within three months after the same or any portion thereof shall be in use.

184. It shall be the duty of the State engineer and surveyor to arrange the information contained in such report in tabular form, and prepare the same, together with the said reports, in a single document, for printing, for the use of the Legislature, and report the same to the Legislature as early as may be practicable in each year.

185. The provisions of this section shall apply to all existing railroad corporations; and the report of the said existing railroad corporations, made in pursuance of the provisions of this section, shall be deemed to be a full compliance with any existing law or resolution requiring annual reports to be made by such corporations, or either of them. (*Laws 1850, chap. 140, § 31, as amended by Laws 1880, chap. 575.*)

The foregoing requirements are not applicable to horse railroad companies. (*See post, Laws 1867, chap. 906, § 1.*) For the previous legislation upon this subject, see *Laws 1850, chap. 140, § 31.*

**§ 338.** *Annual Report of street or horse railroad companies.*—The requirements of section thirty-one of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, shall not apply to street or horse railroads, except as hereinafter provided. (*Laws 1867, chap. 906, § 1.*)

Every railroad corporation in this State whose road is operated by horse power exclusively, or by steam dummy cars exclusively, or partly by horse power and partly\* steam dummy cars, and every such railroad corporation which shall hereafter be organized, shall make an annual report to the state engineer and surveyor, of the operations of the year ending on the thirtieth day of September; which report shall be verified by the oaths of the treasurer or president and acting superintendent of operations, and be filed in the office of the state engineer and surveyor by the first of December in each year, and shall state;

1. The amount of capital stock.
2. The amount of stock subscribed.
3. The amount paid in as by last report.
4. The total amount now of capital stock paid in.
5. The funded debt as by last report.
6. The total amount now of funded debt.
7. The floating debt as by last report.
8. The amount now of floating debt.

\*So in original.

9. The total amount now of funded and floating debt.
10. The average rate per annum of interest on funded debt.

*Cost of road and equipment.*

11. For road bed and superstructure, including iron, by last report.
12. The total amount now expended for the same.
13. For land, buildings and fixtures, including land damages, by last report.
14. The total amount now expended for the same.
15. For dummy cars, horses, mules and harness, by last report.
16. The total amount now expended for the same.
17. For cars and sleighs, by last report.
18. The total amount now expended for the same.
19. Total cost of road and equipment.

*Characteristics of road.*

20. Length of road, in miles.
21. Length of road laid.
22. Length of double track, including sidings.
23. Weight of rail, by yard.
24. The number of dummy cars, of cars, and of horses and mules.
25. The total number of passengers carried in cars.
26. The total number of tons of freight carried in cars.
27. The rates of fare for passengers.
28. The average time consumed by passenger cars in passing over the road.

*Expenses of maintaining the road and real estate.*

29. Repairs of road bed and railway (including iron), and repairs of buildings and fixtures.
30. Taxes on real estate (to include all taxes except for United States revenue.)
31. Total cost of maintaining road and real estate.

*Expenses of operating road, and for repairs.*

32. General superintendence.
33. Officers, clerks, agents and office expenses.
34. Conductors, drivers and engineers on dummy cars.
35. Watchmen, starters, switchmen, roadmen, etc.
36. Repairs of dummy cars.
37. Repairs of cars and sleighs.
38. Repairs harness, including material and labor.
39. Horseshoeing including materials and labor.
40. Horses and mules.



41. Stable expenses.
42. Feed, grain, hay, etc., including expense of grinding.
43. Fuel, gas and lights.
44. Oil and waste.
45. Water tax.
46. Damages to persons and property, including medical attendance.
47. Law expenses.
48. Rents, including use of other roads, ferries, etc.
49. Insurance.
50. Advertising and printing.
51. United States tax on earnings.
52. Contingencies.
53. Total expense of operating road and repairs.
54. Receipts from passengers.
55. Receipts from freight.
56. Receipts from all other sources, specifying what, in detail.
57. Total receipts from all sources during the year.
58. Payments for transportation, maintenance and repairs.
59. Payments for interest.
60. Payments for dividends on stock, amount and rate per cent.
61. All other payments, specifying what, in detail.
62. Total payments during the year.
63. The number of persons injured in life and limb; the cause of the injury, and whether passengers, employees or other persons. Also whether such accidents have arisen from carelessness or negligence of any person in the employment of such corporation, and whether such person is retained in the service of the corporation. (*Laws 1867, chap. 906, § 2.*)

**§ 339.** *Lessees of railroads to make reports.*—Any railroad corporation which may be lessee of any other railroad shall, in addition to the powers and duties conferred and imposed by the act, entitled "An act in relation to railroads held under lease," passed April three, one thousand eight hundred and sixty-seven, be required to make to the state engineer and surveyor a report of such facts concerning the operations of said leased road or roads as the lessors would otherwise be required to make, and the lessors shall not be required to make such report. (*Laws 1869, chap. 844, § 1.*)

**§ 340.** *Penalty for neglect to file report.*—Section thirty-two of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the

same," passed April second, eighteen hundred and fifty, is hereby amended so as to read as follows:

Any railroad corporation which shall neglect to make the report, as is provide\* in the preceding section, shall be liable to a penalty of two hundred and fifty dollars, and an additional penalty of twenty-five dollars for each day after the first day of December, on which they shall neglect to file said report, as provided in said section, to be sued for in the name of the people of the State of New York, for their use. (*Laws 1850, chap. 140, § 32, as amended by Laws of 1867, chap. 906, § 3.*)

The provisions of section thirty-two of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, as herein amended, shall apply to all railroad corporations referred to in section two of this act. (*Laws 1867, chap. 906, §§ 3, 4.*)

The act above referred to as amended, is the general railroad act (*chap. 140, Laws of 1850*). The amendment to the second section consisted in an additional penalty of twenty-five dollars, and the third section of the act of 1867 makes the penalty applicable to corporations operating their road by horse power or dummy cars.

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\*so in original.

## CHAPTER 22.

## STREET RAILROADS IN CITIES.

341. Restrictions contained in the State constitution.  
 342. When common council shall not permit construction of railroads in cities.  
 343. Conditions upon which authority to construct road is granted.  
 344. Confirmation of grants to city railroads.  
 345. Restrictions contained in the general railroad act.  
 346. Railroads in the streets and avenues of New York.  
 347. Street railroads in the city of Buffalo.  
 348. Car fares on street railroads in Buffalo.  
 349. Obstruction of railway tracks by processions and parades forbidden.  
 350. Obstruction of horse or street railroad cars.  
 351. Obstructing horse or street cars a misdemeanor.  
 352. The use of improved motive power in street railroads permitted.  
 353. Provisions of last section not to authorize increase of fare, etc.  
 354. Street railroads may extend route over bridges crossing streams.

§ 341. *Restrictions contained in the State constitution; consent of property owners to be first obtained.*—No law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. (*Constitution of State of New York, art. 3, § 18.*)

Under the provision of the State constitution (*art. 3, § 18*) prohibiting the construction of a street railroad without the consent of a specified portion of adjacent property owners, or, in lieu thereof, a determination of commissioners appointed by the General Term of the Supreme Court, that such railroad ought to be constructed, and a confirmation thereof by the court, the determination of commissioners is inoperative until so confirmed. The General Term has not a mere formal function, and while the proceeding before it is in the nature of an appeal, it has original jurisdiction so far that it has the power and it is its duty to review the whole case, and to pass upon the sufficiency of the facts to

warrant the determination; and it is in the discretion of the said court whether or not to confirm the commissioners' report. (*Matter of Kings County Elevated R. R. Co.*, 82 N. Y., 95.) The exercise of that discretion is not reversible by the Court of Appeals. (*Id.*)

§ 342. *When common council shall not permit construction of railroads in cities.*—The common councils of the several cities of this State shall not hereafter permit to be constructed in either of the streets or avenues of said city a railroad for the transportation of passengers, which commences and ends in said city, without the consent thereto of a majority in interest of the owners of property upon the streets in which said railroad is to be constructed being first had and obtained. For the purpose of determining what constitutes said majority in interest, reference shall be had to the assessed value of the whole located upon such street or avenue. (*Laws 1854, chap. 140, § 1.*)

See subdivision 5 of section 28 of chapter 140, Laws of 1850, as re-enacted and amended by chapter 133, Laws of 1880, that nothing in said act contained shall be construed to authorize the construction of any railroad not already located in, upon, or across any streets in any city, without the assent of the corporation of such city.

§ 343. *Conditions upon which authority to construct road is granted.*—After such consent is obtained, it shall be lawful for the common council of the city in which such street or avenue is located, to grant authority to construct and establish such railroad upon such terms, conditions and stipulations in relation thereto as such common council may see fit to prescribe. But no such grants shall be made except to such person or persons as shall give adequate security to comply in all respects with the terms, conditions and stipulations so to be prescribed by such common council, and will agree to carry and convey passengers upon such railroad at the lowest rates of fare. Nor shall such grants be made until after public notices of intention to make the same, and of the terms, conditions and stipulations upon which it will be given, and inviting proposals therefor at a specified time and place, shall be published under the direction of the common council in one or more of the principal newspapers published in the city in which said railroad is proposed to be authorized and constructed. (*Laws 1854, chap. 140, § 2.*)

§ 344. *Confirmation of grants to city railroads.*—This act shall not be held to prevent the construction, extension or use of any railroad in any of the cities of this State

which have already been constructed in part, but the respective parties and companies by whom such roads have been in part constructed and their assigns are hereby authorized to construct, complete, extend and use such roads in and through the streets and avenues designated in the respective grants, licenses, resolutions or contracts under which the same have been so in part constructed, and to that end the grants, licenses and resolutions aforesaid are hereby confirmed. (*Laws 1854, chap. 140, § 3.*)

§ 345. *Restrictions contained in the general railroad act.*—Nothing in this act\* contained shall be construed to authorize the erection of any bridge, or any other obstruction across, in or over any stream or lake navigated by steam or sail boats, at the place where any bridge or other obstructions may be proposed to be placed; nor to authorize the construction of any railroad not already located in, upon or across any streets in any city, without the assent of the corporation of such city. (*Laws 1850, chap. 140, § 28, subd. 5, as amended by Laws 1880, chap. 133.*)

§ 346. *Railroads in the streets and avenues of New York.*—It shall not be lawful hereafter to lay, construct or operate any railroad in, upon or along any or either of the streets or avenues of the city of New York, wherever such railroad may commence or end, except under the authority and subject to the regulations and restrictions which the Legislature may hereafter grant and provide. This section shall not be deemed to affect the operation, as far as laid, of any railroad now constructed and duly authorized. Nor shall it be held to impair, in any manner, any valid act for or relating to any railroad in said city, existing on the first day of January, eighteen hundred and sixty. (*Laws 1860, chap. 10, § 1.*)

For an act for transporting passengers, etc., in certain streets and avenues in the upper part of New York city, see *Laws 1873, chap. 825, amended by chap. 483 of Laws of 1875.*

§ 347. *Street railroads in the city of Buffalo.*—The said park commissioners shall have power upon such terms, or upon the payment of such yearly license fee or per capita tax as the park commissioners may prescribe, to grant to any street railway company in said city the privilege of laying down and operating a railway, for the carriage of passengers only, through the said connecting streets and ap-

\* *Laws 1850, chap. 140.*

proaches; but no street or other railway shall enter upon' in or through the said park or parks. (*Laws 1869, chap. 165, § 25.*)

**§ 348.** *Car fares on street railroads in Buffalo.*—The several street railroad companies in the city of Buffalo shall keep for sale on all cars running on its road, passenger tickets in packages of not more than five each, which shall be sold at the rate of five cents for each ticket, and each ticket shall entitle the passenger to ride any distance over the road or roads of said company, issuing the same, except as hereinafter provided, and said railroad companies shall cause to be posted in a conspicuous place in every car running upon its road, printed notices which can be easily read in every part of such car, that such tickets, stating the number and price as aforesaid, will be sold by the conductor of such car on the application of any passenger; and in case such company shall omit to keep such tickets for sale as aforesaid, or shall refuse to sell the same on the application of any passenger, or shall omit to keep posted such notice, it shall not be lawful for said company to ask or receive from any passenger riding on such car a greater sum than five cents fare for each passage so long as such refusal or omission shall continue. (*Laws 1875, chap. 600, § 1.*)

The ticket of the Buffalo street railroad company, shall entitle the holder thereof to one passage between the foot of Main street and Amherst street, or for any distance upon Main street; and the ticket of the Buffalo East side railway company, shall entitle the holder thereof to one passage between Main street and the easterly terminus of any one of its roads, now or hereafter to be constructed and its connections with Main street. (*Laws 1875, chap. 600, § 2.*)

It shall be unlawful for any street railroad company in Buffalo to ask or receive from any passenger desiring to be transferred from the cars of another street railroad company, or from the cars of the same street railroad company, more than three cents in addition to the fare already paid by said passenger, which additional fare shall entitle such passenger to a passage for any distance on the road of such company, by or on whose account such fare shall be received, and the several street railroad companies are required to so run their cars, that persons desiring to be transferred from the cars of one company to the cars of another, may not be delayed, nor shall it be lawful for any street railroad company in Buffalo to ask or receive more than three cents for carrying children under ten years of age, nor children of any age going to or returning from any public or private school, riding any distance in one direction on the road or roads of

any company herein mentioned, except that in case of transfer as above provided, two cents in addition thereto, may be charged as the fare of the company receiving such passenger, by or on account of the company receiving the same, and which shall entitle such passenger to ride any distance in one direction on such road. The provisions of this section, shall apply to passengers on the Buffalo street railroad from Niagara street to Main street, and going north on Main street, and to passengers from Main street to Niagara street and going up Niagara street, and such passengers may remain upon the cars upon which they have taken passage until they meet a car going upon the road to which they would be transferred. (*Laws 1875, chap. 600, § 3.*)

**§ 349.** *Obstruction of railway tracks by processions and parades forbidden.*—No procession or parade shall use any street upon the surface of which is a railway track or tracks by marching upon the said track or tracks, and a free passage of cars upon railway tracks shall not be interfered with by the formation, halt or march of any such procession or parade, or of the persons composing it. Whenever any procession shall find it necessary to march across a railway track, the portion of said procession which in so marching is likely to stop the passage of any car or cars upon said track shall come to a halt in order to permit said car to proceed. (*Laws 1872, chap. 590, § 1.*)

All processions or parades, occupying or marching upon any street of any city to the exclusion or interruption of other citizens in their individual right of use thereof (excepting the national guard and the police and fire departments), are forbidden, unless written notice of the object, time and route of such procession or parade be given by the chief officer thereof, not less than six hours previous to its forming or marching, to the police authorities of said city; and it may be lawful for said police authorities to designate to such procession or parade how much of the street in width it can occupy with especial reference to crowded thoroughfares through which said procession may move; and when so designated, the chief officer of said procession or parade shall be responsible that the designation is obeyed; and it shall be the duty of the police authorities to furnish such escort as may be necessary to protect persons and property, and maintain the public peace and order. (*Laws 1874, chap. 590, § 2.*)

All processions and parades on Sunday, in any street or public place of any city, excepting only funeral processions engaged in the actual burial of the dead, and processions to and from any place of worship in connection with a religi-

ous service there celebrated, are forbidden; and in no such excepted case shall there be any music, fireworks, discharge of cannon or fire-arms, or other disturbing noise; provided, that in any military funeral music may be played while escorting the body, but such music shall not be played within one block of any place of worship where worship is being celebrated.

Every person willfully violating any provision of this act shall be guilty of a misdemeanor, punishable with a fine not exceeding twenty dollars, or imprisonment not exceeding ten days, or both at the discretion of the court. (*Laws 1872, chap. 590, § 3.*)

**§ 350.** *Obstruction of horse or street railroad cars.*—Every person who shall willfully obstruct, hinder, or delay the passage or running of any car lawfully running upon any horse or street railroad in this State, shall be deemed guilty of a misdemeanor. (*Laws 1879, chap. 474*)

**§ 351.** *Obstructing horse or street cars a misdemeanor.*—A person who willfully obstructs, hinders or delays the passage of any car lawfully running upon any horse or street railway, is guilty of a misdemeanor. (*Penal Code, chap. 426, § 3.*)

**§ 352.** *The use of improved motive power in street railroads permitted.*—The mayor and common council of any city, the board of trustees of any village, and, as to streets and roads outside of any such city or village, the board of supervisors of any county of this State, are hereby authorized to permit the use of any improved motive power for the traction or propelling of cars on any city or street railroad which is or may be constructed and operated by horse power within their respective jurisdiction, such permission to be subject to such restrictions, regulations and conditions as the said local authorities may impose, and subject to revocation at any time by the authority granting the same by a two-thirds vote of its members. (*Laws 1873, chap. 432, § 1.*)

**§ 353.** *Provisions of last section not to authorize increase of fare, etc.*—Nothing contained in this act shall authorize an increase in the rate of fare, nor allow the transportation of freight in any city, nor allow the use of the ordinary dummy or box car, engine, or of locomotives of the kind now used for the traction of cars on steam railroads of this State. Nothing in this act contained shall affect



any contract in relation to the removal of steam power on any street in any city of this State. (*Laws 1873, chap. 432, § 2.*)

§ 354. *Street railroads may extend route over bridges crossing rivers.*—Any street railroad now in operation in this State, which shall, by a two-thirds vote of its directors, decide to extend the route of such road, so as to cross the Hudson river over and by any bridge now or hereafter constructed under the provisions of any law of this State, may so extend their route over and across such bridge upon such terms as may be mutually agreed upon between such railroad and bridge company, and may locate the terminus of their road in the county adjoining the one in which their road is now located and in operation, provided they shall first obtain the consent of such bridge company or its lessees, and shall obtain the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained; or in case the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. This act shall not affect any street railroad now or hereafter constructed in either of the counties of New York or Kings. (*Laws 1880, chap. 415, § 1.*)

*The use of streets in cities.*

(See notes to section 183, *ante*, in regard to the taking of streets and highways for railroad purposes.) Railroads in cities are not *per se* nuisances. (*Chancery*, 1841, *Hamilton v. N. Y. and Harlem R. R. Co.*, 9 Paige, 171; *Supreme Ct.*, 1849, *Drake v. Hudson R. R. Co.*, 7 Barb., 508; 1850, *Plant v. Long Island R. R. Co.*, 10 id., 26; S. C., 9 N. Y. Leg. Obs., 53; *Sp. T.*, 1852, *Hentz v. Long Island R. R. Co.*, 13 Barb., 646; *Gen. T.*, 1853, *Milbau v. Sharp*, 15 id., 193; 1854, *Anderson v. Rochester, etc., R. R. Co.*, 9 How. Pr., 553; *Ct. of Appeals*, 1857, *Williams v. N. Y. C. R. R. Co.*, 16 N. Y. [2 Smith], 97; 1856, *Davis v. Mayor, etc., of N. Y.*, 14 N. Y. [4 Kern.], 506; To the same effect, *Supreme Ct.*, 1850, *Harris v. Thompson*, 9 Barb., 350; see, also, *Wetmore v. Story*, 22 Barb., 414. But an individual owner of real property, upon the public street of a city, may maintain an action to enjoin the construction there of a railway, which would be a nuisance. (*Supreme Ct.*, 1858, *Milbau v. Sharp*, 28 Barb., 228; S. C., 7 Abbotts' Pr., 220; affirming S. C., 17 Barb., 435, and 9 How. Pr., 102; to similar effect, *Ct. of Appeals*, 1858, *Davis v. Mayor, etc.*)

of N. Y., 14 N. Y. [4 Kern.], 506; see, also, *Stuyvesant v. Pearsoll*, 15 Barb., 244.)

The interest which a city railroad company has in the streets or avenues through which its track is laid, consists in a right of way. Its franchise consists in its right to lay and use exclusively a railroad, subject to the duty of running public cars thereon. It has no interest in, or control over, that part of the street or avenue not occupied by its own road, except that common to the rest of the community, viz.: that it shall be kept free and clear of public use. Hence, such a company is not entitled to an injunction to restrain another railroad company from laying a double track through the same avenue occupied by the plaintiffs' road—one track on each side of the plaintiffs' double track—leaving the plaintiffs' track in the center of the avenue, and a single track of the defendants on either side, at a sufficient distance not to injure or practically interfere with the running of the plaintiffs' road. (*Supreme Ct., Sp. T., 1864, N. Y. and Harlem R. R. Co. v. Forty-second St. etc., R. R. Co.*, 50 Barb., 285.) The principle which has been settled in reference to railroads operated by steam, that the occupation and use of a street by a railroad company, in the ordinary manner in which such roads are constructed and carried on, is in the ordinary manner in which such roads are constructed and carried on, is an appropriation of the highway for a new and distinct purpose, entirely foreign from its original object, and entitles the owner to compensation, applies as well to those roads which are simply used with horses as a motive power, in the streets of populous cities. In either case the use of the land imposes a new burden upon the owner of the fee. (*Court of Appeals, 1868, Craig v. Rochester City and Brighton R. R. Co.*, 39 N. Y. 404.) The owner of the fee of a highway, may maintain ejectment to recover the street, against a railroad company who, without making compensation, use the street for their roadway. (16 N. Y., 97; 24 id., 655; id., 658; *Court of Appeals, 1862, Wager v. Troy Union R. R. Co.*, 25 N. Y., 526; compare *Lozier v. N. Y. C. R. R. Co.*, 42 Barb., 465.)

A city railroad company is entitled to the unrestricted use of its rails, for the progress of its cars, within that limit of speed which the law allows them, and the driver of any other vehicle who may be upon their track, is bound to use greater care than if upon the common pavement, and if collision ensues by his negligence in this respect, he cannot recover, even if the company are also in fault (*N. Y. Superior Ct., 1858, Wilbrand v. Eighth Ave. R. R. Co.*, 3 Bosw., 314; but compare *Fettritch v. Dickenson*, 22 How. Pr., 248.) The mere crossing of the track of a horse railroad company by the track and cars of a similar company (both being authorized to lay rails on the same place, by the Legislature, and both running on a public highway), is not an appropriation of the property of the former company, but only a mode of exercising the public right of transit on the highway. (*Supreme Ct., 1861, Brooklyn Cent. R. R. Co. v. Brooklyn City R. R. Co.*, 33 Barb., 420; compare S. C., 32 id., 358.)

Where a railroad has been laid down in a public street of a city, in pursuance of a grant from the Legislature and the assent of the municipal authorities, it does not become a part of the street, so as to authorize the public at large, or other railroad corporations, with the consent of the Common Council, to use the road with their rail-cars or carriages for the transit of passengers in common with the owners of the franchise. (*Supreme Ct., 1860, Brooklyn Cent. R. R. Co., v. Brooklyn City R. R. Co.*, 32 Barb., 358; see, also, *Davis v. the Mayor of New York*, 14 N. Y., 506.) The act of 1860, 1045, chapter 513—au-

thorizing the defendants to lay a street railroad in the city of New York—provided that “should any real estate” be required, and the grantee could not agree with the owners for its use or purchase, they might take it under the general railroad act, and declared that the use of the street for the purpose of their road, “shall be considered” a public use, consistent with the uses for which the mayor, etc., hold the streets. *Held*, that under this statute the grantees were not required to make compensation to the owners of lots bounding on a street for their use of the land in the street. (*Supreme Ct.*, 1862, *People v. Kerr*, 37 Barb., 357; reversing S. C., 20 How. Pr., 130; affirmed in 27 N. Y., 188; S. C., 25 How. Pr., 258; see, also, *Drake v. H. R. R. Co.*, 7 Barb., 508, *N. Y. and H. R. R. Co., v. Fifty-second and Grand St., R. R. Co.*, 50 Barb., 285.)

One who dedicates land to the purpose of a highway does not relinquish to the public anything more than the right of way, and the municipal or State authorities have no power to authorize the taking of such highway by a railroad company, without his consent or making compensation to him. The taking and use of the street for a railroad is not one of the modes of enjoying the public easement, but imposes an additional burden upon the soil, for which the owner is entitled to damages, and he may recover them in an action against the company if the road is taken without compensation. (3 Hill, 567; 4 Cush., 63; *Ct. of Appeals*, 1857, *Williams v. N. Y. C. R. R. Co.*, 16 N. Y. [2 Smith], 97; reversing S. C., 18 Barb., 222.)

A municipal corporation authorized to make ordinances for the purpose of regulating city railroad cars, prohibiting nuisances, and preventing and removing obstructions on the streets, is not thereby authorized to interfere at a specific point, with the tracks or business of a railroad which is established and conducted under a legislative grant. (14 N. Y. [4 Kern.], 524; 5 Dutch., 170; *Supreme Ct. Sp. T.*, 1867, *Brooklyn City R. R. Co. v. Furey*, 4 Abb. Pr. [N. S.], 364; compare *Schuster v. Metropolitan Board of Health*, 49 Barb., 420.) The question whether the tracks and arrangements of the company are within the authority granted by the Legislature, is not to be determined summarily by the officers of the corporation, under ordinances giving them supervision of the streets, and power to prohibit and remove obstructions, but must be determined by a legal or equitable remedy. (*Id.*) Using a street for a railroad track, either upon its natural surface or by tunnelling, is not a misappropriation of it, if it do not substantially interfere with its use as a street. (*Supreme Ct.*, 1851, *Adams v. Saratoga and Washington R. R. Co.*, 11 Barb., 414; to the same effect, 1850, *Plant v. Long Island R. R. Co.*, 10 id., 26; S. C., 9 N. Y. Leg. Obs., 53; 1851, *Chapman v. Albany and Schenectady R. R. Co.*, 10 Barb., 360.) The State Legislature has original authority to regulate the uses to which the streets shall be placed, since the interest in the use of such street is *publici juris* (*People v. New York and Harlem R. R. Co.*, 45 Barb., 73; S. C., 26 How. Pr., 44; *People v. Kerr*, 27 N. Y., 188; S. C., 25 How. Pr., 230; affirming S. C., 37 Barb., 357; reversing S. C., 20 How. Pr., 130.) The local government has no right to grant railroad privileges or establish railroads in cities, independent of legislative action and approval. (*Supreme Ct., Sp. T.*, 1864, *People v. N. Y. and Harlem R. R. Co.*, 45 Barb., 73; S. C., 26 How. Pr., 41; see also *Davis v. The Mayor, etc.*, 14 N. Y., 506; see also *Melhan v. Sharpe*, 17 Barb., 435; 28 id., 228.)

A railroad company, on purchasing land, has the right to pay a part of the consideration therefor, by keeping open portions of the same as public streets.

A condition in the deed that certain portions of the land conveyed shall be kept open as public streets, is not void as imposing a duty or trust upon the corporation, inconsistent with its business, and outside of the objects for which it was formed. (*Supreme Ct.*, 1866, *Tinkham v. Erie R'way Co.*, 53 Barb., 393.) The Legislature may authorize one company to use any portion of another company's track, upon making due compensation. (*Matter of Kerr*, 42 Barb., 119.) An unauthorized act of the common council, permitting the construction of a railroad in certain streets may be legalized by a subsequent act of the Legislature ratifying and confirming the same. (*People v. Law*, 34 Barb., 494; *Wetmore v. Same*, id., 515.) An injunction cannot be properly granted for the purpose of restraining the city government from giving its assent to the construction of a horse railroad. (*People v. Mayor, etc., of N. Y.*, 20 How. Pr., 144; see also *Whitney v. Same*, 28 Barb., 233.)

(In regard to *Davis v. Mayor, etc.*, *supra*, for the complaint in the action, see 1 Duer, 453-464; see also 1 id., 451-512; 9 N. Y., 263; 3 Duer, 121; 14 N. Y., 506; 15 Barb., 193; 17 id., 435; 28 id., 228.)

#### *Liability of street railroad companies.*

A carrier of passengers by railroad is bound to exercise, at least, great care and caution in his business. (*Clark v. Eighth Ave. R. R. Co.*, 32 Barb., 657.) Negligence of passenger in mounting an overcrowded car. (*Treager v. Dry Dock, etc., R. R. Co.*, 14 Abb. Pr. [N. S.], 49.) Accident caused by hoop skirt catching. (*Coit v. Sixth Ave. R. R. Co.*, 33 Supr. Ct. [J. & S.], 189; *Powlin v. Broadway and Seventh Ave. R. R. Co.*, 34 id., 296.) Negligence of one mounting horse car. (*Dole v. Brooklyn, Hunter's Point and Prospect Park R. R. Co.*, 1 Hun, 146.) Liability for injury of infant, when mounting car, and falling because of embankment of snow. (*Mowry v. Central Riv.*, 66 Barb., 43.) Passenger who has alighted from car no longer a passenger. (*Platt v. Forty-second St. and Grand St. Ferry R. R. Co.*, 2 Hun, 124.) Entering by front platform, when negligence on part of passenger; starting horses, when negligence on part of driver. (*Maher v. Central Park, etc., R. R. Co.*, 39 Supr. Ct. [7 J. & S.], 155.) Liability for driver ejecting passenger by unnecessary force. (*Shea v. Sixth Ave. R. R. Co.*, 5 Duly, 221.) Injury to school boy by driver when drivers were changing places. (*Thurber v. Harlem Bridge, M., etc., R. R. Co.*, 60 N. Y., 326.) Injury to boy by whip of driver. (*Ryan v. H. R. R. Co.*, 33 Supr. Ct. [1 J. & S.], 137.) Evidence of negligence in running over foot passenger. (*Squire v. Cent. Park, etc., R. R. Co.*, 36 Supr. Ct. [4 J. & S.], 436.) Liability for injury to passer-by from defect in track of street. (*Rockwell v. Third Ave. R. R. Co.*, 64 Barb., 438.) Duty to keep track in repair, and liability without notice of defect. (*Worster v. Forty-second St. R. R. Co.*, 50 N. Y., 203.) Right of way in cars of street railroad, and negligence in collision with other vehicles. (*Adolph v. Cent. Park R. R. Co.*, 33 Supr. Ct. [1 J. & S.], 186.) Negligence by reason of switch too high above pavement; switch covered by melted snow from salt put on track, and plaintiff's sleigh upset. (*Wooly v. Grand St. R. R. Co.*, 83 N. Y., 121.) When street car is so crowded that one cannot, without great and unreasonable discomfort, enter the car and the conductor accepts fare without insisting that the passenger enter the car, and he is thrown off and injured, the fact that he was standing upon the platform does not, of itself, constitute contributory negligence. (*Ginua v. Second Ave. R. R. Co.*, 67 N. Y., 596.) It is not negligence, *per se*, for one riding upon the

platform of the car to omit to take hold of the iron bar or rail to prevent being thrown from the platform. (*Id.*)

(For the collection of a large number of authorities upon the question whether or not it is negligence for a person to ride upon the platform of a street car, and of a statement of the facts in particular cases, *vide* Alb. Law Jour., vol. 25, No. 5, Feb. 4, 1882, p. 84.)

One traveling upon a city street has a right to drive his wagon upon or across the track of a street railroad, and this right is not confined to occasions where the other portions of the street are crowded or obstructed. The only limitation of the right is, that he must not unnecessarily interfere with the passage of the cars; these have the preference in the use of the track. (*Adolph v. C. P. N. and E. R. R. Co.*, 65 N. Y., 554.)

Power of common council to pass ordinance compelling company to furnish guards and signals (*Long Island City v. L. I. R. R. Co.*, 79 N. Y., 561.) A reasonable and lawful speed for a street car in the absence of statute or ordinance upon the subject is the average rate of carriages used to convey passengers by horse power. (*Adolph v. C. P. N. and E. R. R. Co.*, 76 N. Y., 530.) The right of a street railroad company to the use of a street for the purpose of its business is a property right subject to condemnation for public use, and the Legislature may authorize other persons, either natural or artificial, to do a similar business in the same street, or to use the tracks of the company by making compensation to it, whenever in their judgment the public good requires. (*Sixth Avenue R. R. Co. v. Kerr*, 72 N. Y., 320.) Driver of street car recklessly drove on railroad track in front of approaching train, passenger in trying to escape was injured, case submitted to the jury and verdict justified. (*Tomley v. C. P. N. and E. R. R. Co.*, 69 N. Y., 158.) Blocade in street and driver run horse car against plaintiff's buggy. (*Cohen v. D. B. and C. R. R. Co.*, 69 N. Y., 170.) It is not, under all circumstances, negligence as a matter of law for a person to get upon a street car while in motion. In exceptional cases where the conditions are unfavorable it may be so, but ordinarily it is a question of fact for a jury. (*Eppendorff v. B. C. and N. R. R. Co.*, 69 N. Y., 195.) Circumstances of a particular case stated. (*Id.*) The driver told a boy about to get on a street car to jump on front platform; he did so, upon the first step, and was getting on second step when the driver struck the horses, giving the car a jog, knocking the boy off, and he was injured. *Held*, the evidence justified a verdict for the plaintiff. (*Maher v. C. P. N. and E. R. R. Co.*, 67 N. Y., 52.) When a street car is stopped so as to obstruct the passage of a traveler on foot, desiring to cross the street, it is not a trespass or wrongful act on his part to step upon and pass over the platform of the car in order to avoid the obstruction; he has the right to do so. (*Shea v. Sixth Ave. R. R. Co.*, 62 N. Y., 180.) It is the duty of the conductor of a street car to give passengers a reasonably safe opportunity to alight, he must stop the car for a reasonable time to enable the passenger to do so, and if he starts it before the passenger has stepped down, or had reasonable time for that purpose, it is negligence. (*Poulin v. B. and Seventh Ave. R. R. Co.*, 61 N. Y., 621.)

A regulation of a city railroad company issuing tickets signed by their officers, with numerous coupons annexed, that such coupons are not good unless torn off by the conductor, is a reasonable regulation; and a coupon detached by the holder, not in the presence of the conductor, is not good for a passage. (*N. Y. Com. Pl. 1867, Walker v. Dry Dock, etc., R. R. Co.*, 33 How. Pr., 337.)

A condition in the deed that certain portions of the land conveyed shall be kept open as public streets, is not void as imposing a duty or trust upon the corporation, inconsistent with its business, and outside of the objects for which it was formed. (*Supreme Ct.*, 1866, *Tinkham v. Erie R'way Co.*, 53 Barb., 393.) The Legislature may authorize one company to use any portion of another company's track, upon making due compensation. (*Matter of Kerr*, 42 Barb., 119.) An unauthorized act of the common council, permitting the construction of a railroad in certain streets may be legalized by a subsequent act of the Legislature ratifying and confirming the same. (*People v. Law*, 34 Barb., 494; *Wetmore v. Sime*, id., 515.) An injunction cannot be properly granted for the purpose of restraining the city government from giving its assent to the construction of a horse railroad. (*People v. Mayor, etc., of N. Y.*, 20 How. Pr., 144; see also *Whitney v. Sime*, 28 Barb., 233.)

(In regard to *Davis v. Mayor, etc.*, *supra*, for the complaint in the action, see 1 Duer, 453-464; see also 1 id., 451-512; 9 N. Y., 263; 3 Duer, 121; 14 N. Y., 506; 15 Barb., 193; 17 id., 435; 28 id., 228.)

#### *Liability of street railroad companies.*

A carrier of passengers by railroad is bound to exercise, at least, great care and caution in his business. (*Clark v. Eighth Ave. R. R. Co.*, 32 Barb., 657.) Negligence of passenger in mounting an overcrowded car. (*Treager v. Dry Dock, etc., R. R. Co.*, 14 Abb. Pr. [N. S.], 49.) Accident caused by hoop skirt catching. (*Colt v. Sixth Ave. R. R. Co.*, 33 Supr. Ct. [J. & S.], 189; *Poulin v. Broadway and Seventh Ave. R. R. Co.*, 34 id., 296.) Negligence of one mounting horse car. (*Dole v. Brooklyn, Hunter's Point and Prospect Park R. R. Co.*, 1 Hun, 146.) Liability for injury of infant, when mounting car, and falling because of embankment of snow. (*Mowry v. Central Ric.*, 66 Barb., 43.) Passenger who has alighted from car no longer a passenger. (*Platt v. Forty-second St. and Grand St. Ferry R. R. Co.*, 2 Hun, 124.) Entering by front platform, when negligence on part of passenger; starting horses, when negligence on part of driver. (*Maher v. Central Park, etc., R. R. Co.*, 39 Supr. Ct. [7 J. & S.], 155.) Liability for driver ejecting passenger by unnecessary force. (*Shea v. Sixth Ave. R. R. Co.*, 5 Daly, 221.) Injury to school boy by driver when drivers were changing places. (*Thurber v. Harlem Bridge, M., etc., R. R. Co.*, 60 N. Y., 326.) Injury to boy by whip of driver. (*Ryan v. H. R. R. Co.*, 33 Supr. Ct. [1 J. & S.], 137.) Evidence of negligence in running over foot passenger. (*Squire v. Cent. Park, etc., R. R. Co.*, 38 Supr. Ct. [4 J. & S.], 436.) Liability for injury to passer-by from defect in track of street. (*Rockwell v. Third Ave. R. R. Co.*, 64 Barb., 438.) Duty to keep track in repair, and liability without notice of defect. (*Worster v. Forty-second St. R. R. Co.*, 50 N. Y., 203.) Right of way in cars of street railroad, and negligence in collision with other vehicles. (*Adolph v. Cent. Park R. R. Co.*, 33 Supr. Ct. [1 J. & S.], 186.) Negligence by reason of switch too high above pavement; switch covered by melted snow from salt put on track, and plaintiff's sleigh upset. (*Wooly v. Grand St. R. R. Co.*, 83 N. Y., 121.) When street car is so crowded that one cannot, without great and unreasonable discomfort, enter the car and the conductor accepts fare without insisting that the passenger enter the car, and he is thrown off and injured, the fact that he was standing upon the platform does not, of itself, constitute contributory negligence. (*Ginua v. Second Ave. R. R. Co.*, 67 N. Y., 596.) It is not negligence, *per se*, for one riding upon the

platform of the car to omit to take hold of the iron bar or rail to prevent being thrown from the platform. (*Id.*)

(For the collection of a large number of authorities upon the question whether or not it is negligence for a person to ride upon the platform of a street car, and of a statement of the facts in particular cases, *vide* Alb. Law Jour., vol. 25, No. 5, Feb. 4, 1882, p. 84.)

One traveling upon a city street has a right to drive his wagon upon or across the track of a street railroad, and this right is not confined to occasions where the other portions of the street are crowded or obstructed. The only limitation of the right is, that he must not unnecessarily interfere with the passage of the cars; these have the preference in the use of the track. (*Adolph v. C. P. N. and E. R. R. Co.*, 65 N. Y., 554.)

Power of common council to pass ordinance compelling company to furnish guards and signals (*Long Island City v. L. I. R. R. Co.*, 79 N. Y., 561.) A reasonable and lawful speed for a street car in the absence of statute or ordinance upon the subject is the average rate of carriages used to convey passengers by horse power. (*Adolph v. C. P. N. and E. R. R. Co.*, 76 N. Y., 530.) The right of a street railroad company to the use of a street for the purpose of its business is a property right subject to condemnation for public use, and the Legislature may authorize other persons, either natural or artificial, to do a similar business in the same street, or to use the tracks of the company by making compensation to it, whenever in their judgment the public good requires. (*Sixth Avenue R. R. Co. v. Kerr*, 72 N. Y., 320.) Driver of street car recklessly drove on railroad track in front of approaching train, passenger in trying to escape was injured, case submitted to the jury and verdict justified. (*Tomley v. C. P. N. and E. R. R. Co.*, 69 N. Y., 158.) Blocade in street and driver run horse car against plaintiff's buggy. (*Cohen v. D. B. and C. R. R. Co.*, 69 N. Y., 170.) It is not, under all circumstances, negligence as a matter of law for a person to get upon a street car while in motion. In exceptional cases where the conditions are unfavorable it may be so, but ordinarily it is a question of fact for a jury. (*Eppendorff v. B. C. and N. R. R. Co.*, 69 N. Y., 195.) Circumstances of a particular case stated. (*Id.*) The driver told a boy about to get on a street car to jump on front platform; he did so, upon the first step, and was getting on second step when the driver struck the horses, giving the car a jog, knocking the boy off, and he was injured. *Held*, the evidence justified a verdict for the plaintiff. (*Muher v. C. P. N. and E. R. R. Co.*, 67 N. Y., 52.) When a street car is stopped so as to obstruct the passage of a traveler on foot, desiring to cross the street, it is not a trespass or wrongful act on his part to step upon and pass over the platform of the car in order to avoid the obstruction; he has the right to do so. (*Shea v. Sixth Ave. R. R. Co.*, 62 N. Y., 180.) It is the duty of the conductor of a street car to give passengers a reasonably safe opportunity to alight, he must stop the car for a reasonable time to enable the passenger to do so, and if he starts it before the passenger has stepped down, or had reasonable time for that purpose, it is negligence. (*Porslin v. B. and Seventh Ave. R. R. Co.*, 61 N. Y., 621.)

A regulation of a city railroad company issuing tickets signed by their officers, with numerous coupons annexed, that such coupons are not good unless torn off by the conductor, is a reasonable regulation; and a coupon detached by the holder, not in the presence of the conductor, is not good for a passage. (*N. Y. Com. Pl. 1867, Walker v. Dry Dock, etc., R. R. Co.*, 33 How. Pr., 327.)

An action lies against a city railroad company for the negligence of their driver in respect to stopping the car and assisting young and infirm persons to get on. (*Ct. of Appeals*, 1867, *Drew v. Sixth Ave. R. R. Co.*, 3 Keyes, 429.) It is not proper to charge the jury in such a case that the responsibility of the carrier only commences when the passenger is actually on board the vehicle. (*Id.*) Where the driver of a street car has been notified by a passenger to stop the car, and does so partially, and then starts on again without notice, he is chargeable with negligence. (*Ct. of Appeals*, 1868, *Nichols v. Sixth Ave. R. R. Co.*, 38 N. Y., 131; affirming S. C., 10 Bosw., 260.) The conductor of a city railroad car stopped the car under circumstances when it was not prudent to do so, and led a passenger to the platform to dismount; and while standing on the platform she was injured by a collision with an approaching fire engine truck. *Held*, that the company was liable for the conductor's negligence. (*Ct. of Appeals*, 1867, *Maverick v. Eighth Ave. R. R. Co.*, 36 N. Y., 378.)

The following notes are from vol. 24, No. 19, of the Albany Law Journal:

*Passengers standing on platform.*

Passengers standing on the platform of street cars are guilty of negligence when there is room inside. (*Clark v. Eighth Ave. R. R. Co.*, 32 Barb., 657; S. C., 36 N. Y., 135; *Solomon v. Cent. Park R. R. Co.*, 1 Sweeney, 298; *Maguire v. Middlesex R. R. Co.*, 115 Mass., 239 [1874]; *Ginna v. Second Avenue*, 67 N. Y., 596 [1876]). But the presumption of negligence is rebutted on showing that the car is full and no room inside, and that the conductor received the fare from the passenger (*Clark v. Eighth Ave. R. R. Co.*, 36 N. Y., 135, and cases *supra*; also, *Augusta, etc., R. R. Co. v. Renz*, 55 Ga., 126; *Meesel v. Lynn, etc., R. R. Co.*, 8 Allen, 234; *Huelsenkamp v. Citizens' R. R. Co.*, 37 Mo., 537; S. C., 34 id., 45), and standing on the front platform, even when there is room inside, does not constitute *per se* negligence, when the injury is incurred by the fault of the company's servant. (*Burns v. Bellefontaine R. R. Co.*, 60 Mo., 139; *Maguire v. Middlesex R. R. Co.*, *supra*.) So where one was compelled to ride on the platform of a car by a conductor, being ordered to give up his seat inside, the company was held liable for an injury incurred by careless driving (*Sheridan v. Brooklyn, etc., R. R. Co.*, 36 N. Y., 39), or was induced to ride there by the invitation of the conductor without pay. (*Wilton v. Middlesex R. R. Co.*, 107 Mass., 108; *contra*, *Baltimore, etc., R. R. Co. v. Wilkinson*, 30 Md., 224.) But standing in an unsafe position upon the platform of a car after an opportunity is afforded the passenger of exchanging it for a safer one is contributory negligence (*Ward v. Central Park, etc., R. R. Co.*, 11 Abb. Pr., 411 [N. C.]; S. C., 42 How. Pr., 289), though it is not negligence *per se* to omit to take hold of the railing to prevent being thrown off. (*Ginna v. Second Avenue, supra.*)

*Passengers alighting.*

Passengers in getting off street cars must have a reasonable time to alight, and when requested the conductor must stop the car long enough to allow them to do so. (*Coll v. Sixth Ave. R. R. Co.*, 33 N. Y. Sup. Ct., 189; *Poulin v. Broadway, etc. R. R. Co.*, 61 N. Y., 621.) But if the conductor is not notified of passengers' intention to alight, and if he does not know or have the means of knowing the fact, the passenger so injured is guilty of contributory negligence. (*Nichols v. Middlesex R. R. Co.*, 106 Mass., 463; *Cram v. Metropolitan R. R. Co.*, 112 id., 38; but see *Mulhado v. Brooklyn City R. R. Co.*, 80 N. Y., 370.) A re-



fusal however to stop the car would not justify the passenger in getting off the front platform of the car while it is in motion. (*Crain v. Metropolitan R. R. Co.*, *supra*.) But where a boy of ten years wrongfully got on a car and was allowed to remain without paying his fare, and while the car was going at a dangerous speed was ordered off, and accordingly jumped off and was injured the company was held liable. (*Lovett v. Salem, etc., R. R. Co.*, 9 Allen, 557.) It was left to the jury in another case where plaintiff requested the conductor to stop the car, but he refused and ordered him to jump off. (*Wyatt v. Citizens R'way Co.*, 55 Mo, 485.) It is usually a question of fact for the jury whether those in charge of a car are negligent in allowing a passenger to stand upon or get on or off the front platform, and in not sooner stopping the car. (Thompson's Carriers of Passengers, 445; *Crissey v. Hestonville, etc., R. R. Co.*, 75 Penn. St., 83; *Mather v. Central Park R. R. Co.*, 67 N. Y., 52; affirming S. C., Jones & S., 155.) And where plaintiff, a child of five years, with another of eleven years, got on the front platform of a street car and the driver allowed them to continue in that position, and in attempting against the remonstrance of the driver to get off while the car was in motion the plaintiff was hurt, it was held negligence as matter of law in the driver to allow children so young to ride on the platform, and that the company was liable. (*Pittsburgh, etc., R. R. Co. v. Caldwell*, 74 Penn. St., 421; *Brennan v. Fairhaven, etc., R. R. Co.*, 45 Conn., 284; *Philadelphia, etc., R. R. Co. v. Hassard*, 75 Penn. St., 367; *East Saginaw City R. R. Co. v. Bohn*, 27 Mich., 503; *Wilton v. Middlesex R. R. Co.*, 107 Mass., 108; S. C., 125 id., 130; *Day v. Brooklyn, etc., R. R. Co.*, 12 Hun, 435.)

#### Ejection.

For non-payment of fare, for disorderly conduct, passengers may be removed from street cars. Even though the person has not committed any act of offense, if he is so intoxicated that he is likely to become offensive to other passengers he may be ejected from the car. (*Vinton v. Middlesex R. R. Co.*, 11 Allen, 304.) Whether it is due care and a proper exercise of the right to do so while the car is in motion is a question of fact for the jury, and not of law for the court. (Thompson's Carriers of Passengers; *Lovett v. Salem, etc., R. R. Co.*, 9 Allen, 557; *Murphy v. Union R. R. Co.*, 118 Mass., 228; *Healey v. City, etc., R. R. Co.*, 28 Ohio St., 23; *Sanford v. Eighth Ave. R. R. Co.*, 23 N. Y., 343; *Higgins v. Waterliet Turnpike Co.*, 46 id., 23.)

The company is not responsible for the malicious or wanton acts of their servant which have caused injuries by ejecting passengers, as where plaintiff, a female passenger, desiring to alight, passed out upon the platform and requested the conductor to stop the car and refused to get out until the car had come to a full stop, whereupon and while the car was still in motion he threw her from the car with great violence out upon the pavement, it was held that the company could not be bound (*Isaacs v. Third Ave. R. R. Co.*, 47 N. Y., 122), and where a boy riding on a car was willfully struck by the driver and thereby thrown off the car and the wheels passed over him, it was held that the company was not liable for the act of the driver in striking the boy, but was liable for negligently driving over him. (*Pittsburgh, etc., R. R. Co., v. Donahue*, 70 Penn. St., 119.) But the company is of course responsible for the acts of the employee within the scope of his employment, and where plaintiff was a passenger in defendant's horse car, had paid his fare, and was forcibly thrown from the car by the conductor, who claimed that he was drunk and disorderly when

the evidence showed that he was not. "The duty of deciding," said the court, "is cast upon the conductor. He represents the defendant. He may misunderstand or misjudge the facts; he may act unwisely and imprudently, but the business of preserving order and enforcing the regulations of the company is committed to him; for his acts in that business the company are responsible." (*Higgins v. Waterliet Turnpike Co.*, 46 N. Y., 23.)

## CHAPTER 23.

### RAPID TRANSIT AND ELEVATED RAILROADS.

§ 355. Rapid transit and elevated railroads as prescribed by chapter 606 of Laws of 1878, providing for the construction of steam railways in cities and counties.

§ 356. Restricting the right to use certain streets in the city of New York for an elevated railroad.

§ 357. Elevated railroad companies may increase the number of their directors

§ 358. Prevention of accidents on elevated railways.

§ 359. Elevated railroads, except in the city of New York; time for completion of, extended.

*Preliminary note.*—The act chapter 606, Laws 1875, known as the rapid transit act is not in violation of the provision of the constitution that a private or local bill shall embrace but one subject, it is a general act (*In re Pet. N Y. El. R. R. Co.*, 70 N. Y., 327.) Section 36 of the act authorizing elevated roads in actual operation to construct connections with other roads, depots and ferries, etc., is not unconstitutional. (*Id.*) The provision of section 26 of that act authorizing companies to construct railways in streets designated by the commissioners only gives the public consent, without which a railway could not be built in a street, it does not authorize interference with the rights of private property. (*Id.*) Notice of application to the Supreme Court under the rapid transit act (section 4) for the appointment of commissioners to determine whether the proposed railway ought to be constructed, is not required, either by said act or by the constitution. (*Id.*) Personal notice to the property owners of the hearing before said commissioners is not required, the method of giving notice is left by the act and by the constitution to be prescribed by the court. (*Id.*) Notice of the time and place of hearing by publication and posting held sufficient. (*Id.*) Action of the commissioners. (*Id.*) Section 36, rapid transit act, not violation of article 3, section 18 of State constitution, relative to private bill granting corporation right to lay down railroad tracks. (*Id.*) Provision of constitution requiring consent of majority of property owners, or certificate of Supreme Court, commissioners, and consent of local authorities, does not apply to New York Elevated Railroad Company. (*Id.*)

§ 355. *Rapid transit and elevated roads as prescribed by chapter 606 of the Laws of 1875, providing for the construction of steam railways in cities and counties.*—*Appointment of commissioners.*—Whenever it shall appear, by the application of fifty reputable householders and taxpayers of any county in this State, verified upon oath before a justice of the Supreme Court, that there is

need in such county of a steam railway or railways for the transportation of passengers, mails or freight, the board of supervisors of said county may, within thirty days after presentation to them of such application, duly verified as aforesaid, appoint five commissioners who shall be residents of the said county, and who shall have full power and authority to do and provide all that they are hereinafter directed to do and provide, and a certificate of whose appointment, signed by the chairman and clerk of such board, shall be filed in the office of the secretary of State, and a duplicate thereof in the office of the clerk of such county. But whenever any such proposed railway shall be wholly within the limits of any city in the State, then such application shall be made only to the mayor of said city, and such mayor shall appoint such commissioners as aforesaid. (*Laws 1875, chap. 606, § 1.*)

*Oath of board of commissioners.*—Within ten days after their appointment, each of said commissioners shall take and subscribe an oath, faithfully to perform the duties of his office, the said oath to be filed in the office of the secretary of State, and a duplicate thereof in the office of the clerk of such county, and shall give a bond to the people of the State of New York, in the penal sum of twenty-five thousand dollars, conditioned for the faithful performance of the duties required by this act, which bond shall have two or more sureties, to be approved by a justice of the department of the supreme court including such county, and shall be filed in said clerk's office, before said commissioner shall assume or perform any of the duties of his office. (*Id.*, § 2.)

*Meeting of commissioners.*—Within fifteen days after their appointment, the said commissioners shall meet at some convenient place in such county, and organize themselves as a board with appropriate officers. (*Id.* § 3.)

*Commissioners to determine upon necessity of roads.*—Said commissioners shall within thirty days after such organization determine upon the necessity of such steam railway or railways, and if they find such railway or railways to be necessary in such county, they shall, within sixty days after such organization, fix and determine the route or routes for such steam railway or railways, and the said commissioners shall have the exclusive power to locate the route or routes of such railway or railways over, under, through or across the streets, avenues, places or lands in such county, except Broadway and Fifth avenue below Fifty-ninth street, Fourth avenue and Forty-second street, in the city of New York, and except over, under, through or across those portions of Grand, Classon and Franklin

avenues, and Downing street, in the city of Brooklyn, lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue and over, under, through or across that portion of Classon avenue, in said city, lying between the northerly line of Lexington avenue and the southerly line of Park avenue, and over, under, through or across that portion of Washington avenue in said city lying between Park and Atlantic avenues, and except over, under, through or across De Bevoise place, Irving Place and Lefert's Place in said city of Brooklyn; and except such portions of streets and avenues as are already legally authorized for or occupied by an elevated or underground railway, and except such as are contained in public parks or occupied by buildings belonging to such county or to this State, or to the United States, and except that portion of the city of Buffalo lying between Michigan and Main streets; and to provide for the connection or junction with any other railway or bridge, provided that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railway or railways be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners appointed by the general term of the supreme court in the district of the proposed construction, given after a due hearing of all parties interested, and confirmed by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners. But nothing herein contained shall prevent the construction of an elevated railway across such excepted streets, places and avenues in the city of Brooklyn at their intersection only with other streets, places and avenues.

Wherever any street or part of a street, by this act exempted from the provisions of the acts hereby amended, has, by commissioners appointed by the mayor as in said amended acts provided, been designated or determined upon, as a portion of the route of a steam railway, and a corporation has been formed under said acts to construct a railway over or on such exempted streets, the said commissioners shall have the power to fix, determine and locate a route for the railway of such corporation over, under, through or across the streets, avenues, places or lands not exempted, in the city where such exempted street is located, as may by such commissioners be deemed to be necessary or proper on account of such street having been exempted as aforesaid, but in the same general direction as such exempted street. Nothing in this act contained shall affect

any rights or proceedings of such corporation in or to the remaining portion of its route, and all such proceedings may be continued, and such commissioners may strike from the route of such corporation all portions thereof which they deem have been rendered inappropriate or inapplicable by this act. The term street in this section shall be deemed to include avenue or place.

The said commissioners shall also have the power, at the same time, to fix the plan or plans for the railway to be built upon the route by them fixed as herein provided, but such plans shall be of the same general character as those by them theretofore for the railway of such company provided, and they shall certify and verify by affidavit their proceedings had under this and the preceding section, and file such certificate and affidavit in the office of the secretary of state with and as a part of the articles of incorporation of such corporation theretofore filed, and a copy of such certificate and affidavit certified to be a copy by the secretary of state or his deputy, shall be presumptive evidence of the facts therein stated. Such corporation shall have the right to build and operate its railway upon the route fixed therefor (as in this and the preceding section provided), subject to the provisions and requirements contained in the section amended by the first section of this act, and all the provisions of the acts by this act amended not inconsistent herewith, shall apply to the route fixed as in this and the preceding section provided, and the route under such sections fixed and the portion remaining of the route originally fixed, shall be and be deemed to be the route for the railway of such corporation. (*Laws of 1875, chap. 606, § 4, as amended by Laws 1880, chap. 417, § 1, as amended by Laws 1881, chap. 485, §§ 1-3.*)

Strictly speaking the first paragraph in the text, consisting of section 1 of chapter 485 of the Laws of 1881, is the amendment to section 4 of the original act (*chap. 606, Laws of 1875*), but sections 2 and 3 of the act of 1881, although not amendments of said section 4, are inserted in this section of the text as the most appropriate place for the same.

Previous to the above amendment, section 4 read as follows: Said commissioners, shall, within thirty days after such organization, determine upon the necessity of such steam railway or railways, and if they find such railway or railways to be necessary in such county, they shall, within sixty days after such organization, fix and determine the route or routes for such steam railway or railways, and the said commissioners shall have the exclusive power to locate the route or routes of such railway or railways, over, under, through or across the streets, avenues, places or lands in such county, "except Broadway and Fifth avenue, below Fifty-ninth street, and Fourth avenue, above Forty-second street, in the city of New York," and except such portions of streets and avenues as are already legally designated for the main line of, or occupied by, an ele-

vated or underground railway, in actual operation, and except such as are contained in public parks, or occupied by buildings belonging to such county, or to this State, or to the United States, and except that portion of the city of Buffalo lying between Michigan and Main streets, and to provide for the connection or junction with any other railway or bridge, provided that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railway or railways be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners, appointed by the general term of the Supreme Court in the district of the proposed construction, given after a due hearing of all parties interested and confirmed by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners. (*Laws 1875, chap. 606, § 4.*)

Said commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railway or railways, and if they find such railway or railways to be necessary in such county, they shall, within sixty days after such organization, fix and determine the route or routes of such steam railway or railways, and the said commissioners shall have exclusive power to locate the route or routes of such railway or railways, over, under, through or across the streets, avenues, places or lands in such county, "except Broadway and Fifth avenue, below Fifty-ninth street, and Fourth avenue above Forty-second street, in the city of New York, and except over, under, through or across those portions of Grand, Classon and Franklin avenues, in the city of Brooklyn, lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue, and over, under, through or across that portion of Classon avenue, in said city, lying between the northerly line of Lexington avenue and the southerly line of Park avenue;" and except such portions of streets and avenues as are already legally authorized for or occupied by an elevated or underground railway, and except such as are contained in public parks or occupied by buildings belonging to such county, or to this State, or to the United States, and except that portion of the city of Buffalo lying between Michigan and Main streets; and to provide for the connection or junction with any other railway or bridge, provided that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railway or railways, be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners appointed by the general term of the Supreme Court in the district of the proposed construction given after a due hearing of all parties interested, and confirmed by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners (*Laws 1875, chap. 606, § 4, as amended by chap. 417, § 1, of the Laws of 1880.*)

*Plans of construction decided upon.*—The said commissioners having, by such public notice, as they may deem most proper and effective, under such conditions and with such inducements as to them may seem most expedient, in-

vited the submission of plans for the construction and operation of such railway or railways, the said commissioners shall meet at a place and upon a day, in such public notice named, not more than ninety days after their organization, and decide upon the plan or plans for the construction of such railway or railways with the necessary supports, turn-outs, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances upon the route or routes, and in the locations determined by them. (*Laws 1875, chap. 606, § 5.*)

*Time for construction determined.*—The said commissioners shall, within the like period of ninety days after their organization, fix and determine the time within which such railway or railways, or portions of the same, shall be constructed and ready for operation, together with the maximum rates to be paid for transportation and conveyance over such railway or railways, and the hours during which special cars or trains shall be run at reduced rates of fares. The said commissioners shall also, within the like period of ninety days after their organization, fix and determine the amount of the capital stock of the company to be formed for the purpose of constructing, maintaining and operating such railway or railways, for public use in the conveyance of persons and property, the number of shares into which such capital stock shall be divided, and the per centage thereof to be paid in cash on subscribing for such shares. (*Id.*, § 6.)

*Articles of association and subscription to stock.*—The said commissioners shall prepare appropriate articles of association for the company, in the last section mentioned, in which said articles of association shall be set forth and embodied as component parts thereof, the several conditions, requirements and particulars by said commissioners determined pursuant to sections four, five and six of this act, and which further shall provide for the release and forfeiture, to the supervisors of the county, of all rights and franchises acquired by such corporation in case such railway or railways shall not be completed within the time and upon the conditions therein provided; and the said commissioners shall, thereupon, and within one hundred and twenty days after their organization as aforesaid, cause a suitable book of subscription to the capital stock of such company to be opened, pursuant to due public notice, at a banking office in such county. (*Id.*, § 7.)

*Meeting for organization and election of directors.*—Whenever the whole capital stock of such company, or an amount of such capital stock proportioned to the part of



such railway or railways directed by said commissioners to be first constructed, shall have been subscribed by not less than twenty-five persons, and the fixed per centage of such subscriptions shall have been paid in cash, the said commissioners shall, by written or printed notice of ten days, served personally, or by mail, call a meeting of such subscribers for organization. At such meeting, or at any subsequent one to which the same may be adjourned, a majority in number and amount of said subscribers may elect persons, of a number to be theretofore determined by said commissioners, who shall be directors for one year of the corporation formed for the purpose of constructing and operating said railway or railways. (*Id.*, § 8.)

*Certificate of organization and construction, when perfected.*—Within ten days after the election of said directors, said commissioners shall deliver to said directors a certificate in duplicate, verified by the oath of three commissioners, before a justice of the supreme court, setting forth the said articles of association and the organization of the company for the purposes in this act mentioned and provided for; and within five days after the reception by them of such certificate, three of the directors so elected shall make affidavit, in duplicate, that the full amount of stock has been subscribed in good faith, and the prescribed per centage paid in cash thereon, and that it is intended, in good faith, to construct, maintain and operate the railway or railways in such articles of association mentioned, and the said directors shall file said certificates and articles in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railway or railways shall be located, 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 duties and restrictions of corporations. A copy of such certificate and affidavit, certified to be a copy by the secretary of this State, or his deputy, shall be presumptive evidence of the incorporation of such company and of the facts therein stated. (*Id.*, § 9.)

*Directors, how chosen: inspectors of first election and officers of corporation.*—Said directors shall be chosen annually, by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places. In the election of directors, each stockholder shall be enti-

tled to one vote for each share of stock held by him. Vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. Every corporation formed under this act shall be subject to the regulations concerning the election of directors of moneyed corporations, contained in article second of the second title of the eighteenth chapter of the first part of the Revised Statutes.\* The inspectors of the first election of directors shall be appointed by the commissioners. No person shall be a director unless he shall be a stockholder owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen. At every election of directors the books and papers of such company shall be exhibited to the meeting, provided a majority of the stockholders present shall require it. The directors shall appoint one of their number president; they may also appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws. (*Id.*, § 10.)

*Payment of subscriptions to capital stock.*—The directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installments as required by a resolution of the board of directors, the said board shall be authorized to declare his stock, and all previous payments thereon, forfeited for the use of the company; but they shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, postage prepaid, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice; and that if he fails to make the same, his stock, and all previous payments thereon, will be forfeited for the use of the company; which notice shall be served as aforesaid, at least sixty days previous to the day on which such payment is required to be made. (*Id.*, § 11.)

*Personal liability of stockholders.*—Each stockholder of any company formed under this act shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole amount of the capital stock so held by him shall have been paid to the company, and all the stockholders of any such company shall be jointly and severally liable for the debts

\* See note page 71, *ante*.

due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days' service performed for such company, but shall not be liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such executions shall be the amount recoverable, with costs against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' service, he shall give him notice in writing twenty days after the performance of such service, that he intends so to hold him liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have have\* been had, shall have a right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of the stock they shall respectively hold with himself. (*Id.*, § 12.)

*Stock deemed personal estate.*—The stock of every company formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until the previous calls thereon shall have been fully paid in. (*Id.*, § 13.)

*Increase of capital stock.*—In case the capital stock of any company formed under this act is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purpose aforesaid. Such increase must be sanctioned by a vote in person, or by proxy, of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders, called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him personally, or by depositing the same, properly folded and directed to him at the post-office nearest his usual place of residence, in the post-office, postage pre-paid, at least twenty days prior to such meeting. Such notice must state the time and place of the meeting, and its object, and the amount to which it is proposed to increase the capital stock. The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all stockholders of the company as aforesaid. (*Id.*, § 14.)

*Stock held by executor, etc.*—No person holding stock in

\*So in original.

any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name. (*Id.*, § 15.)

*Company, when liable to laborer.*—As often as any contractor for the construction of any part of a railroad, which is in progress of construction, shall be indebted to any laborer for thirty or any less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said company in the manner herein provided; and said company shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and number of days' labor, and the time when the same was performed for which the claim is made, and the name of the contractor from whom due, and shall be signed by such laborer or his attorney; and shall be served on an engineer, agent or superintendent employed by such company having charge of the section of the road on which such labor was performed personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent with some person of suitable age. But no action shall be maintained against any company under the provisions of this section, unless the same is commenced within thirty days after notice is given to the company by such laborer as above provided. (*Id.*, § 16.)

*Right to acquire and hold real estate.*—Every such corporation shall have the right to acquire and hold such real estate, or interest therein, as may be necessary to enable them to construct, maintain and operate the said railway or railways, and such as may be necessary for stations, depots, engine-houses, car-houses and machine shops; and, in case any such corporation cannot agree with the owner or owners of any such real estate, or of any interest therein, it shall have the right to acquire title to the same in the man-

ner and by the special proceedings prescribed in this act. (*Id.*, § 17.)

*Title to real estate, how acquired.*—For the purpose of acquiring such title, the said company may present a petition praying for the appointment of commissioners of appraisal to the supreme court, at any general or special term thereof held in the judicial district in which the real estate described in the petition is situated. Such petition shall be signed and verified according to the rules and practice of such court. It must contain a description of the real estate which the company seeks to acquire; and it must, in effect, state that the company is duly incorporated, and that it is the intention of the company, in good faith, to construct and finish a railroad from and to the places named for that purpose in its articles of association; that the whole capital stock of the company has been in good faith subscribed as required by this act; that the land described in the petition is required for the purpose of constructing or operating the proposed road; and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties, so far as the same can, by reasonable diligence, be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate; and, if any such persons are infants, their ages as near as may be, must be stated; and if any of such persons are idiots or persons of unsound mind, or are unknown, that fact must be stated, together with such other allegations and statements of liens or incumbrances on said real estate as the company may see fit to make. A copy of such petition, with a notice of the time and place the same will be presented to the supreme court, must be served on all persons whose interests are to be affected by the proceedings, at least ten days prior to the presentation of the same to the said court. (*Id.*, § 18.)

*Proceedings on presentation of petition and commissioners appointed.*—On presenting such petition to the supreme court as aforesaid, with proof of service of a copy thereof, and notice as aforesaid, all persons whose estates or interests are to be affected by the proceedings, may show cause against granting the prayer of the petition, and may disprove any of the facts alleged in it. The court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of five disinterested and competent persons, who reside in the county where the premises to be appraised are situated, commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate

proposed to be taken in such county for the purposes of the company, and to fix the time and place for the first meeting of such commissioners." (*Id.*, § 19.)

*Proceedings of the commissioners.*—The commissioners shall take and subscribe the oath prescribed by the twelfth article of the constitution. Any one of them may issue subpoenas, administer oaths to witnesses, and any three of them may adjourn the proceedings before them from time to time in their discretion. Whenever they meet, except by the appointment of the court, or pursuant to the adjournment, they shall cause reasonable notice of such meetings to be given to the parties who are to be affected by their proceeding, or their attorney or agent. They shall view the premises described in the petition, and hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing; and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of them, all being present and acting, shall ascertain and determine the compensation which ought justly to be made by the company to the party or parties owning or interested in the real estate appraised by them; and in determining the amount of such compensation, they shall not make an allowance or deduction on account of any real or supposed benefits which the party in interest may derive from the construction of the proposed railroad. They, or a majority of them, shall also determine and certify what sum ought to be paid to a general or special guardian or committee of an infant, idiot, or person of unsound mind, or to an attorney appointed by the court to attend to the interest of any unknown owner or party in interest not personally served with notice of the proceeding, and who has not appeared, for costs, expenses and counsel fees. They shall make a report to the supreme court, signed by them or a majority of them, of the proceedings before them, with the minutes of the testimony taken by them, if any. Said commissioners shall be entitled to three dollars for their expenses and services for each day they are engaged in the performance of their duties, to be paid by the company. (*Id.*, § 20)

*Confirmation of report, etc*—On such report being made by said commissioners, the company shall give notice to the parties, or their attorneys, to be affected by the proceedings, according to the rules and practice of said court, at a general or special term thereof, for the confirmation of such report; and the court shall thereupon confirm such report, and shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal,

and a description of the real estate appraised for which compensation is to be made; and shall also direct to whom the money is to be paid, or in what bank, and in what manner it shall be deposited by the company. (*Id.*, § 24.)

*Appeal and hearing on appeal.*—A certified copy of the order so to be made, as aforesaid, shall be recorded at full length in the clerk's office of the county in which the land described in it is situated; and thereupon, and on the payment or deposit by the company of the sums to be paid as compensation for the land, and for costs, expenses, and counsel fees as aforesaid, and as directed by said order, with interest from the date thereof, the company shall be entitled to enter upon, take possession of and use the said land for the purpose of its incorporation, during the continuance of its corporate existence, by virtue of this or any other act; and all persons who have been made parties to the proceedings shall be divested and barred of all right, estate, and interest in such real estate, during the corporate existence of the company as aforesaid. If the company shall neglect to have such order recorded, and to make the payment or deposit as herein provided, for the period of ten days after the date of such order, any party to such proceedings and interested therein may, at his election, cause a certified copy of the said order to be recorded as aforesaid, and thereupon the moneys therein directed to be paid with interest thereon, from the date of said order, shall be a debt against the company, and the same shall be a lien on such real estate, and may be enforced and collected by action at law or in equity in the supreme court, with costs. All real estate acquired by any company under and pursuant to the provisions, of this act, for the purposes of its incorporation, shall be deemed to be acquired for public use. Within twenty days after the confirmation of the report of the commissioners, as provided for in the twenty-first section of this act, either party may appeal, by notice in writing to the other, to the supreme court, from the appraisal and report of the commissioners. Such appeal shall be heard by the supreme court at any general or special term thereof, on such notice thereof being given according to the rules and practice of said court. On the hearing of such appeal, the court may direct a new appraisal, before the same or new commissioners, in its discretion; the second report shall be final and conclusive on all the parties interested. If the amount of the compensation to be made by the company is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited in the bank, as the court shall direct; and if the amount is diminished, the difference

shall be refunded to the company by the party to whom the same may have been paid ; and judgment therefor may be rendered by the court, on the filing of the second report, against the party liable to pay the same. Such appeal shall not affect the possession by such company of the land appraised ; and when the same is made by others than the company it shall not be heard, except on a stipulation of the party appealing not to disturb such possession. (*Id.*, § 22.)

*Conflicting claimants to money.*—If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid ; and may, in its discretion, order a reference to ascertain the facts on which such determination and order are to be made. The court shall appoint some competent attorney to appear for, and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent. The court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary ; or to cause new parties to be added, and to direct such further notices to be given to any party in interest, as it deems proper ; and also to appoint other commissioners in place of any who shall die, or refuse, or neglect to serve, or be incapable of serving. (*Id.*, § 23.)

*Proceedings when title is defective.*—If, at any time after an attempt to acquire title by appraisal of damages or otherwise, it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect such title, in the same manner as if no appraisal had been made ; and at any stage of such new proceedings, the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession, and use such real estate during the pendency and until the final conclusion of such new proceedings ; and may stay all actions or proceedings against the company on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to pay the compensation therefor when finally ascertained ; and in every such case the party interested in such real estate may conduct the proceedings to a conclusion, if the company delays or omits to prosecute the same. (*Id.*, § 24.)

*Proceedings when title in trustees, infants, etc.*—In case



any title or interest in real estate required by any company formed under this act, for the purpose of its incorporation, shall be vested in any trustee not authorized to sell, release and convey the same, or in any infant, idiot, or person of unsound mind, the supreme court shall have power, by a summary proceeding on petition, to authorize and empower such trustee, or the general guardian or committee of such infant, idiot, or person of unsound mind, to sell and convey the same to such company, for the purposes of its incorporation, on such terms as may be just; and in case any such infant, idiot, or person of unsound mind, has no general guardian or committee for the purpose of making such sale, release or conveyance, the said court may appoint a general guardian or committee and may require such security from such general or special guardian or committee as said court may deem proper. But before any conveyance or release authorized by this section shall be executed, the terms on which the same is to be executed, shall be reported to the court, on oath; and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report, and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of said land having legal power to sell and convey the same. (*Id.*, § 25.)

*Powers of the corporation.*—Every corporation formed under this act shall have power:

1. To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as repealing, or in any way affecting the act entitled "An act authorizing the construction of railroads upon Indian lands," passed May twelve, eighteen hundred and thirty-six.

3. To cross, intersect, join and unite its railroad with any other railroad before constructed at any point on its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects or its connections. And every company whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two

corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court, as is provided in this act in respect to acquiring title to real estate.

4. To take and convey persons and property on their railroad by the power or force of steam, or by any motor other than animal power, and to receive compensation therefor.

5. To enter upon and underneath the several streets, avenues, public places and lands designated by the said commissioners, and enter into and upon the soil of the same; to construct, maintain, operate and use in accordance with the plan adopted by said commissioners a railway or railways upon the route or routes and to the points decided upon, and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon the plan adopted by the said commissioners, and for operating the same; except that nothing in this act shall authorize the construction of a railway crossing the track of any steam railway now in actual operation at the grade thereof, or the erection of piers or supports for an elevated railway upon a railway track now actually in use in any street or avenue; and it shall be lawful to make such excavations and openings along the route through which such railway or railways shall be constructed as shall be necessary from time to time; in all cases the surface of said streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and shall avoid any interference with or change in the water-mains, or in the sewers or lampposts, except such changes as may be made with the concurrence of the proper department or authority; and in all cases the use of the streets, avenues, places and lands designated by the said commissioners, and the right of way through the same, for the purpose of a railway or railways, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held; but no such corporation shall have the right to acquire the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction.

6. From time to time to borrow such sums of money as

may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt. (*Id.*, § 26.)

*Employees to wear badge.*—Every conductor, baggage-master, engineer, brakeman or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector, without such badge, shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge, shall have authority to meddle or interfere with any passenger, his baggage or property. (*Id.*, § 27.)

*Transportation of the mails.*—Any such corporation shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case such corporations shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of carrying the same, it shall be lawful for the governor of this State to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains, than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mails, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services, to be fixed as aforesaid. (*Id.*, § 28.)

*Ejecting passenger from car.*—If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at

any usual stopping place, or near any dwelling-house, as the conductor shall elect, on stopping the train. (*Id.*, § 29.)

*Running of trains.*—Every such corporation shall start and run their cars for the transportation of passengers and property, at regular times, to be fixed by public notice; and shall furnish sufficient accommodations for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junctions of other railroads, and at usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor; and shall be liable to the party aggrieved, in an action for damages, for any neglect or refusal in the premises. (*Id.*, § 30.)

*Intoxication.*—If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor. (*Id.*, § 31.)

*Willful injury to property.*—If any person or persons shall willfully do, or cause to be done, any acts or act whatever, whereby any building, construction or work of any railroad corporation, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of such offense. (*Id.*, § 32.)

*Penalties, recovery of.*—All penalties imposed by this act may be sued for in the name of the people of the State of New York; and if such penalty be for a sum not exceeding one hundred dollars, then such suit may be brought before a justice of the peace, and may be commenced by serving a summons on any director of such company. (*Id.*, § 33.)

*Dissolution by Legislature.*—The Legislature may, at any time, annul or dissolve any incorporation formed under this act; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers for any liability which shall have been previously incurred. (*Id.*, § 34.)

*Removal of horse railway track.*—Whenever the route selected by the said commissioners for the construction of said railway shall intersect, cross or coincide with any horse railway track occupying the surface of said street or ave-

nues, the said railway corporation is hereby authorized to remove, for the purpose of constructing the said work, the tracks of said horse railway; but the same shall be done in such manner as to interfere as little as possible with their practical operation or working, and upon the construction of said railway, where such removals or changes have been made, the same shall be restored, as near as may be, to the condition in which they were previous to the construction of said railroad. All such removals and restorations shall be made at the proper cost and charges of the said corporation. Nothing contained in this act shall authorize any corporation formed thereunder to use the track of any horse railway. (*Id.*, § 35.)

*Powers made applicable to existing corporations; elevated roads.*—Whenever the route or routes determined upon by said commissioners coincide with the route or routes covered by the charter of an existing corporation formed for the purpose provided for by this act, provided that said corporation has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time prescribed by its charter, such corporation shall have the like power to construct and operate such railway or railways, upon fulfillment of the requirements and conditions imposed by said commissioners as a corporation specially formed under this act; and the said commissioners may fix and determine the route or routes by which any elevated steam railway or railways now in actual operation may connect with other steam railways or depots thereof, or with steam ferries; upon fulfillment by such elevated steam railway company, so far as it relates to such connection, of such of the requirements and conditions imposed by said commissioners under section four of this act, as are necessary to be fulfilled in such cases; under section eighteen of article three of the constitution of this State, and such connecting elevated railway shall in such case possess all the powers conferred by section twenty-six of this act; and when any connecting route or routes shall be so designated, such elevated railway company may construct such connection, with all the rights, and with like effect as though the same had been a part of the original route of such railway. (*Id.*, § 36.)

*Plans, specifications, etc., transferred to corporation.*—Within one month after such corporation shall have been formed and organized in the manner hereinbefore provided, the said commissioners shall transfer and deliver to the said corporation all plans, specifications, drawings, maps, books and papers in their possession. And the said commissioners shall, within like period of one month after the organi-

zation of such corporation, cause to be paid to the treasurer thereof all money collected under the provisions of this act, after deducting therefrom the necessary expenses incurred by said commissioners and the amounts due or to accrue to them for their salaries. (*Id.*, § 37.)

*Compensation of commissioners.*—Each of said commissioners shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, to be paid by such corporation; but if a sufficient amount of capital stock shall not be subscribed within one year after the appointment of such commissioners to authorize the formation of such corporation, the said commissioners shall receive no salary, and shall cause to be returned to the subscribers for said stock the amount paid in by them, after deducting therefrom the necessary expenses incurred by said commissioners; provided, however, that the time, if any, unavoidably consumed by the pendency of legal proceedings shall not be deemed a part of any period or time limited in this act. (*Id.*, § 38.)

*Majority of commissioners to act.*—A majority of the said commissioners shall be deemed and considered sufficient for the transaction of any business, or for the exercise of any of the duties, powers or functions hereby conferred or enjoined upon them. Any of said commissioners may be removed for cause at any time by the power appointing him, but no commissioner shall be removed without due notice and an opportunity of being heard in defense; and no commissioner thus removed shall be again appointed to the office of commissioner. In case of the death, resignation or removal from office of any of the said commissioners, the vacancy shall be filled, within thirty days from such death, resignation or removal, by the power appointing him, and a certificate of such appointment shall be filed as aforesaid. And the terms of office of the said commissioners shall determine and expire with the performance of their functions as herein prescribed. (*Id.*, § 39.)

*Construction of this act.*—This act shall not be construed to repeal or in any manner to affect chapter one hundred and forty of the Laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," or the several acts amendatory thereof or supplementary thereto. None of the provisions of this act shall apply to any railroad company organized under any general or special law of this State, for the purpose of constructing or operating a steam railroad upon the surface of the ground, nor to the operation or management of any such railroad heretofore constructed. (*Id.*, § 40.)

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*Steam railway not to be constructed on certain streets in New York.*—It shall not be lawful for any company organized under the provisions of this act, or under any other act heretofore passed, to construct a steam railway upon St. Nicholas avenue, in the city of New York, or those streets or avenues in said city commonly known as boulevards, except to cross the same, under such regulations as shall be imposed by the commissioners provided for by this act, and every such company shall be bound by the restrictions and limitations as to its route and as to its mode of construction, which shall be established by the commissioners appointed under the acts from which its powers were derived, as far as such restrictions and limitations are consistent with the provisions of this act. The provisions of this section shall not be deemed to apply to any existing horse street railway heretofore authorized to be constructed. (*Id.*, § 41.)

§ 356. *Restricting the right to grant, use or occupy certain streets in the city of New York, for the purposes of an elevated railroad.*—It shall not be lawful to grant, use or occupy for the purposes of an elevated railroad any portion of the following named streets and places in the city of New York, that is to say: Second avenue below Twenty-third street, Nassau street, Printing-House square, so called, south of Frankfort street, Park-row, Broadway south of Murray street, Broad street and Wall street. But nothing herein contained shall be construed to take away any right given by the report of the Rapid Transit Commissioners so called, or any existing right to cross at an elevation any of said streets, or to affect any act heretofore passed restricting the right to use or occupy any of said streets. (*Laws 1879, chap. 529, § 1.*)

§ 357. *Elevated railroad companies may increase the number of their directors.*—Any corporation having the power to construct or operate an elevated railroad shall have authority, at any meeting of the stockholders, by a vote of a majority in interest of the stockholders, to increase the number of its directors to any number not exceeding thirteen. (*Laws 1879, chap. 395, § 1.*)

§ 358. *Prevention of accidents on elevated railways.*—All trains upon elevated railroads shall come to a full stop before any passenger shall be permitted to leave such trains; and no train on such railroad shall be permitted to start until every passenger desiring to depart therefrom shall have left the train, provided such passenger has manifested his or her intention to so depart by moving toward or upon

the platform of any car; nor until every passenger upon the platform or station at which such train has stopped, and desiring to board or enter such cars shall have actually boarded or entered the same; provided that nothing herein contained shall be construed to permit any person to board or enter any train after due notice from an authorized employee of such railroad corporation that such train is full, and that no more passengers can be then received. (*Laws* 1881, *chap.* 399, § 1.)

Every car used for passengers upon elevated railroads shall have gates at the outer edges of its platforms, so constructed that they shall, when opened, be caught and held open by such catch or spring as will prevent their swinging against and obstructing passengers in their egress from or ingress to such cars; and every such gate shall be kept closed while the car is in motion; and when the car has stopped and a gate has been opened, the car shall not start until such gate is again firmly closed. (*Id.*, § 2.)

Any agent, conductor, engineer, brakeman or employee of such railroad corporation, who shall start any train or car, or give any signal or order to any engineer or other person, by signal rope or otherwise, to start any train or car, or who shall obstruct the ingress or egress of any passenger to or from any car, or who shall open or close a platform gate of any car, in violation of this act, shall be deemed guilty of a misdemeanor, and shall upon conviction be held liable to pay a fine of not less than twenty-five nor more than one hundred dollars, or be imprisoned for not less than ten nor more than ninety days, or both; and any elevated railroad corporation that shall fail or neglect to comply with, or enforce the provisions of this act, shall, upon the petition of any citizen to any court of record, and upon due notice to such corporation and proof of such failure or neglect, pay to the clerk of the court wherein such petition is made a sum not less than two hundred and fifty nor more than one thousand dollars, as such court may direct by its order; and the sum so ordered to be paid shall be paid by such clerk of the court to the county treasurer, and shall be distributed by such treasurer equally among the public hospitals of the county in which such proceeding is had, at such times as the board of supervisors or board of aldermen in such county shall direct. (*Id.*, § 3.)

Nothing in this act shall be construed to relieve the elevated railroad companies from any liability under which they may now be held by existing laws for damages to persons or property. (*Id.*, § 4.)

The officers and board of directors of such railroad corporations shall immediately cause copies of this act to be

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printed conspicuously and posted in the depots or stations and in each car belonging to them. (*Id.*, § 5.)

§ 359. *Elevated railroads, except in the city of New York; time for completion of, extended.*—Any railroad company heretofore organized or incorporated under or by the laws of this State, for the purpose of constructing or operating an elevated railway (except such as may have been organized for the purpose of constructing or operating a railroad in the city of New York) which from any cause has failed or which within sixty days from the passage of this act may fail to comply with the requirements or conditions of its charter, or of any law in regard to the commencement, completion or construction of its road within the period prescribed by its charter, articles of association or any law, but which has actually constructed a portion of the railroad, track, or other works, it was authorized to construct, shall hereby have the time for the construction or completion of the railroad it was authorized to construct, extended for the further period of two years from the passage of this act. Any failure to begin the construction of, or complete the construction of, its railroad within the time heretofore limited shall not cause, or be deemed to cause, or to have caused, a forfeiture or loss or termination of any of its corporate rights and powers. In the event of any delay in construction occasioned by legal proceedings, the time for completion is extended for a further period equal to the time of such delay. But nothing herein contained shall have the effect of reviving any corporation whose corporate powers have been adjudged to be forfeited, or to have ceased from any cause. (*Laws 1881, chap. 338, § 1.*)

## CHAPTER 24.

### OF UNDERGROUND RAILROADS.

§ 360. General provisions for acquiring title to land and construction of roads.

§ 361. Consolidation with other companies.

§ 362. Liability for damages.

§ 363. Act not to be construed to allow building of surface or elevated railroads.

§ 364. Repealing clause.

This chapter consists of Laws of 1880, chapter 582, entitled "An act to provide for excavating and bridging for transportation purposes within cities and villages of this State.

§ 360. *General provisions for acquiring title to land, and constructing road.*—Whenever according to the route and plans adopted by any railroad company heretofore or hereafter formed under any special act of the legislature of this State, or under chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and all acts supplementary thereto or amendatory thereof for the building of its railroad, it shall be necessary or proper to build said road, or any part of the same underground, or to tunnel or bridge any river or waters, it shall be lawful for said company to enter upon and acquire title to and use such lands under water and uplands, except on or along any canals owned by the State, as shall be necessary for purposes herein mentioned, and they shall have the power to construct, erect and secure the necessary foundations and other structures which may be required for the operating of such road or connecting the same with another, and for maintaining the same, and purchase or acquire, in the manner now provided by law, such land or rights or easements in land along their said route upon, over or beneath the surface thereof, as may be necessary for the building of their said road and making such connections; provided, however, that where said road runs underneath the ground at such depth as to enable said company to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood

thereof firm and safe for buildings and other erections thereon, and, in case surface excavations are made, as soon as can be done the surface shall be restored to its former condition, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto ; and provided, further that whenever such road, or any part of the same, is intended to be built within the limits of any city or incorporated village of this State and to run by means of a tunnel underneath any of the streets, roads or public places thereof, the said company before building the same underneath any of said streets, roads or public places, shall obtain the consent of the owners of one-half in value of the property bounded on the line, and the consent of the board of trustees of the village by resolution adopted at a regular meeting and entered on the records of said board, and of the proper authorities having control of said streets, roads or public places ; or in case such consent of the owners of property bounded on the line cannot be obtained, the general term of the supreme court in the district in which such city or village is situated may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be allowed to be built underneath said street, roads and public places, or any of them, and in what manner the same may be so built with the least damage to the surface, and to the use of the surface by the public, and the determination by said commissioners, confirmed by the court, may be taken in lieu of the consent of said authorities and property owners. And provided, further, that when any railroad company constructs, under said act, its railroad under any part or within the limits of any city or incorporated village of this State, subject to the provisions and limitations of this act, it shall be lawful for any other railroad company to connect its road therewith at such points or places as such company may elect, and all railroad companies constructing their road or roads under the provision of this act shall be subject to all the provisions of an act entitled "An act to authorize the formation of railroad companies and to regulate the same," passed April second, eighteen hundred and fifty, and all acts supplementary thereto and amendatory thereof ; and further, at such point or points, place or places, where such connections shall be made by connecting roads, the railroad companies owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight as may be required for the convenience of the public. (*Laws 1880, chap. 582, § 1.*)

§ 361. *Consolidation with other companies.*—Any such railroad company, the greater part of whose road-bed according to its said route and plan is to be below the surface of the ground, and whose road does not exceed three miles in length, may at any time after its said route shall have been adopted, and the map thereof shall have been filed as required by law, merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad company organized under the laws of this or any other State, in the manner now provided by law for the consolidation of railroad companies, whenever the railroads of said companies so to be consolidated may together form a continuous line of railroad, provided such consolidation shall not prevent all connecting railroads from having equal rights of transit for their passengers and freight through the tunnel upon the same equitable terms. (*Id.*, § 2.)

§ 362. *Liability for damages.*—All railroad companies constructing any tunnel under this act shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary, in constructing any railroad authorized by this act through any city or incorporated village, to alter the position or course of any sewers or water or gas pipes, the same shall be done at the expense of such railroad company or companies, under the direction of the department or corporation having charge thereof, so as not to interfere with said work. In all cases the use of the streets and docks and lands beneath which said railroad is constructed, and on the route thereof, and the right of way beneath the same for the purpose of said railroad, shall be considered and is hereby declared to be a public use consistent with and one of the uses for which its streets, avenues and docks are publicly held. (*Id.*, § 3.)

§ 363. *Act not to be construed to allow building of surface or elevated road.*—Nothing in this act shall be construed to authorize the building in any city or village of this State of any railroad to run upon the surface of any street or of any elevated railroad not now provided for by law. Nothing in this act shall be construed to repeal or modify any part of chapter three hundred and eighty of the laws of eighteen hundred and seventy-eight, entitled "An act relating to the public place or square known as Washington park in the city of New York," or to authorize the use or occupation by any company or companies of any public park or square in any city or village of this

State for any of the purposes of this act, or to permit the construction of an open cut railroad in or through any street or public place in any such city or village, but every road constructed under the provisions of this act, in or through any such street or public place, shall be wholly underground, and constructed in a tunnel and not otherwise. (*Id.*, § 4.)

§ 364. *Repealing clause.*—All acts and parts of acts inconsistent with this act are hereby repealed. (*Id.*, § 5.)

## CHAPTER 25.

### THE FORMATION OF CORPORATIONS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND OPERATING RAILROADS IN FOREIGN COUNTRIES.

- § 365. Corporators and corporate objects.
- § 366. Articles of association.
- § 367. Certificate to be recorded.
- § 368. Board of directors.
- § 369. Corporate powers.
- § 370. When company may proceed to organize.
- § 371. When to open subscription books.
- § 372. Payment of subscription to stock.
- § 373. Principal office, etc.
- § 374. Meetings of stockholders.
- § 375. Reduction and increase of capital stock.
- § 376. Amended articles of association.
- § 377. Stock to be personal estate.
- § 378. Subject to taxation.

§ 365. *Corporators and corporate objects.*—Any number of persons, not less than ten, a majority of whom shall be inhabitants of this State, may form a company for the purpose of constructing, maintaining and operating in any foreign country a railroad or railroads for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any railroad or railroads already constructed in whole or in part for the like public use, with power to construct, maintain and operate in connection with such railroad or railroads a line or lines of telegraph, and such lines of steamboats or sailing vessels as may be proper or convenient for use in connection therewith; and for that purpose may make and sign articles of association in the form provided by section two of this act; and upon complying with the provisions of the said section shall, with their associates and successors, be and remain a corporation for the purposes aforesaid with the powers given by this act and by the laws of this State. (*Laws 1881, chap. 468, § 1.*)

§ 366. *Articles of association.*—The articles of association, mentioned in the preceding section, shall state the name of the company; the number of years the same is to

continue, not exceeding the term of one hundred years ; as far as practicable the places from and to which the said line or lines shall be constructed, maintained and operated ; the amount of the capital stock of the company and the number of shares of which such capital stock shall consist, and the names and places of residence of not less than seven persons who shall act as a board of directors for the management of the affairs of the company for the first year and until others are chosen in their places. 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. (*Id.*, § 2.)

The said articles of association shall, after the approval by the governor of the same, be filed in the office of the secretary of state, who, upon the payment to him of a fee of fifty dollars, shall indorse thereon the date they are filed and record the same in a book to be provided by him for that purpose, and shall issue a certificate substantially in the following form :

STATE OF NEW YORK :

Be it known that whereas (names of the subscribers to the articles of association) have associated themselves with the intention of forming a corporation under the name of the (name of corporation) for the purpose of locating, constructing or acquiring, maintaining and operating a railroad or railroads (and telegraph) (and shipping lines) (description of the roads, etc., as in the articles of association) and have complied with the statutes of this State in such cases made and provided ; now, therefore, I (name of secretary), secretary of state of the State of New York, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation under the name of (name of corporation) with all the powers and privileges and subject to all the duties, liabilities and restrictions set forth in an act of the Legislature of the State of New York, entitled "An act passed the day of , in the year eighteen hundred and eight-one."

In witness I have hereunto subscribed my official signature and affixed the seal of this State, this day of in the year

Secretary of State.

§ 367. *Certificate to be recorded.*—The certificate executed as provided in the last section shall be recorded with the articles of association, and the original certificate, or a duly certified copy of the record thereof, shall be conclusive evi-

dence of the establishment of the corporation at the date of such certificate. (*Id.*, § 3.)

§ 368. *Board of directors.*—The government and direction of the affairs of every corporation formed under this act shall be vested in its board of directors, who shall hold their offices for one year, and until others are elected in their places. In case of a vacancy occurring in such board of directors by death, resignation or otherwise, the remaining members of the board may fill such vacancy. The board of directors shall have power to make, and from time to time to amend the by-laws of the company, and may, by such by-laws, provide that less than a majority of the board shall constitute a quorum, and may delegate any and all of the powers of the board of directors to an executive committee during the interval between the meetings of the board. The directors shall elect one of their number to be president of their board and of the corporation, and may elect such other officers as shall be provided by the by-laws. (*Id.*, § 4.)

§ 369. *Corporate powers.*—Every corporation formed under this act shall, in addition to the powers conferred on corporations under the laws of this State, have the following powers :

1. To expend such sums of money from its treasury as the directors shall deem proper, in making preliminary examinations and surveys for its proposed railroad or railroads, line or lines of telegraph, and of steamboats or sailing vessels, and in acquiring from foreign countries, nations or governments, the grants, concessions and privileges as below named.

2. To take and receive from foreign countries, nations and governments, such grants, concessions or privileges for the construction, acquisition, maintenance and operation of railroads, telegraph lines and vessels, as may be consistent with the purposes of the corporation, and as may be granted or conceded to such company, and to hold the same under such restrictions and with such duties and liabilities as may be fixed by the laws of such foreign country, nation or government, or as may be annexed to such grants or concessions.

3. To construct, acquire, maintain and operate the lines of railroad, telegraph and shipping provided for by its articles of association, and to take and convey persons and property on their said transportation lines by the power or force of steam or of animals, or by mechanical or other power, and receive compensation therefor, regulating the time and manner in which passengers and property shall be



transported, and the compensation to be paid therefor, in accordance with the laws of the place or country where the same are situated.

4. To take and hold by purchase or by voluntary grant such real estate and other property in foreign countries as may be necessary or convenient for the constructing, maintenance and accommodation of its said lines and to sell and convey, or to mortgage, or to lease such real estate or other property, so acquired in foreign countries; but such corporation shall be subject to such duties, liabilities and restrictions as to the transfer of its property by deed, mortgage, lease or otherwise, in foreign countries, as may be fixed by the country in which the same may be located.

5. To purchase, hold and use such real estate and other property in this State as may be necessary for the conduct of its business, provided that such company shall not hold real estate in this State exceeding in value the sum of one million dollars. (*Id.*, § 5.)

§ 370. *When company may proceed to organize.*—Upon the issue of the certificate named in section two, any corporation formed under the provisions of this act may proceed to organize, and for that purpose the first meeting of such corporation shall be called by a notice signed by a majority of the directors named in such articles, stating the time, place and purpose of such meeting; a copy of which notice shall, at least five days before the day appointed for such meeting, be delivered personally to each subscriber, or left at his usual place of business or residence, or deposited in the post-office prepaid and directed to him at his last known post-office address. There shall be recorded upon the minutes of the corporation an affidavit of such service of the said notice. (*Id.*, § 6.)

§ 371. *When to open subscription books.*—When any corporation formed under this act shall have been organized, the board of directors for the time being of such company may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company in such places and after giving such notices as they may deem expedient, and may continue to receive such subscriptions until the whole capital stock is subscribed. At the time of making subscriptions in pursuance of the provisions of this section, every subscriber shall pay to the directors ten per centum of the amount subscribed by him in money, and no such subscriptions shall be received or taken without such payment. (*Id.*, § 7.)

§ 372. *Payments of subscriptions to stock.*—The board of directors for the time being of any corporation formed under this act may require the subscribers to the capital stock of the company to pay the amounts by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installments as required by resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company; but they shall not declare it so forfeited until they shall have given a notice in writing, to be served upon him personally, or by depositing the same in the post-office, properly directed to him at the post office nearest his usual place of residence stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited to the use of the company, which notice shall be served as aforesaid at least thirty days previous to the day upon which such payment is required to be made. (*Id.*, § 8.)

§ 373. *Principal office, etc.*—Every corporation formed under this act shall maintain its principal office within this State, and shall there have during business hours an officer or agent upon whom service of process may be made, and shall hold in this State at least one meeting of its stockholders in each year, for the choice of directors. Such meeting shall be known as the annual meeting and shall be held at such time and place as shall be established by the by-laws of such company. At such meeting the stockholders shall fix the number of directors for the ensuing year, which number shall not be less than seven; and in the absence of any other direction by the stockholders, seven shall be chosen.

§ 374. *Meetings of Stockholders.*—At all meetings of the stockholders of any corporation formed under this act, each stockholder shall be entitled to one vote personally, or by proxy on every share held by him thirty days previous to such election. The inspectors of each election shall be appointed by the board of directors for the time being, or if no such appointment be made by the board, then by the president. No person shall be elected a director, or continue to be such director, unless he shall be a stockholder, owning stock absolutely in his own right, and at every election of directors the books and papers of such company shall be exhibited to the meeting, if a majority in amount of the stockholders present shall require it. (*Id.*, § 10.)

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§ 375. *Reduction or increase of capital stock.*—Any corporation formed under this act may, from time to time, at any regular or special meeting of the board of directors, reduce the amount of the capital stock or increase the same, or may otherwise alter and amend its articles of association, provided in either case that the consent in writing of the stockholders owning two-thirds of the capital stock of the company shall have been first obtained to such increase or diminution of the capital stock, or to such alteration of the articles of association. If any increase or reduction of the capital stock is made, or any other amendments made to the articles of association, a certificate of the fact, signed by the president and secretary of the corporation, shall, within thirty days thereafter, be filed in the office of the secretary of state. (*Id.*, § 11.)

§ 376. *Amended articles of Association.*—The directors of any corporation organized under this act, in whose original certificate of incorporation any informality may exist, are hereby authorized to make and file amended articles of association to conform to the provisions of this act, and upon making and filing such amended articles of association, such corporation shall for all purposes, be deemed and taken to be a corporation from the time of the filing of the original articles. (*Id.*, § 11.)

§ 377. *Stock to be personal estate.*—The stock of every corporation formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, and it shall not be lawful for such company to use its funds in the purchase of any stock of its own or any other corporation, except so far as the same may be agreed upon in its articles of association. (*Id.*, § 12.)

§ 378. *Subject to taxation.*—All corporations formed under the provisions of this act shall be subject to taxation upon the amount of the real or personal property owned by such corporation, within this State. (*Id.*, § 13.)

## CHAPTER 26.

## OF RAILROADS HELD UNDER LEASE.

- § 379. Corporations authorized to lease another railroad.  
 380. Transfer of capital stock and change of directors of leased railroads.  
 381. The same.  
 382. Lessees to make annual reports.  
 383. Lessee of railroads to maintain fences.  
 384. Assent of stockholders, how given to the lease in certain cases.

§ 379. *Corporation authorized to lease another railroad.*  
 —It shall be lawful hereafter for any railroad corporation to contract with any other railroad corporation for the use of their respective roads, and thereafter to use the same in such manner as may be prescribed in such contract. But nothing in this act contained shall authorize the road of any railroad corporation to be used by any other railroad corporation in a manner inconsistent with the provisions of the charter of the corporation, whose railroad was to be used under such contract. (*Laws 1839, chap. 218, § 1.*)

The right to the rent reserved in a lease of a portion of the track of a railroad company, passes with the title to such track as a necessary appurtenance to the ownership of the land, and the superstructure upon it. (*N. Y. C. R. R. Co. v. Saratoga and Schenectady R. R. Co.*, 39 Barb., 289.) Where a railroad company leases its road, and all its lands upon or across which the road, or any part thereof, or its machine shops, warehouses, freight or passenger depots or buildings are constructed, such lease includes all lands acquired for use in operating the road, and without which the use of the road, or any part thereof, will be less convenient and valuable. (*Matter of N. Y. C. R. R. Co., etc.*, 49 N. Y., 414.) See above case as to condemnation of land by another road, to which the company had acquired title prior to the execution of the lease for the purpose of a street, although such use had not been actually obtained at the time of the execution of the lease, and in which it was held that the lessee was entitled to the use of the money awarded as damages for such taking during the continuance of the lease. (See *Dinsmore v. Atlantic and Pacific R. R. Co.*, 46 How. Pr. R., 193, for an action to avoid a series of railroad leases.) A railroad company which leased its road to an individual; held, liable to the public for manner of operating its road. Lessee regarded as its agent. (*Abbott v. I. G. and K. H. R. R. Co.*, 80 N. Y., 27.)

§ 380. *Transfer of capital stock and change of directors of leased railroads.*—Any railroad corporation created by the laws of this State, or its successors, now being the

lessee of the road of any other railroad corporation, may take, surrender, or transfer of the capital stock of the stockholders, or any of them, in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporations taking such surrender or transfer, shall thereafter, on a resolution electing so to do, to be entered on their minutes, become *ex officio* the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof, as provided by law; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the said corporation, whose stock shall have been so surrendered or transferred, shall thereupon vest in, and be held and enjoyed by the said corporation to whom such surrender or transfer shall have been made, as fully and entirely, and without charge or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said corporation to whom such surrender or transfer of the said stock shall have been made, and in the corporate name of such corporation. The rights of any stockholder, not so surrendering or transferring his stock, shall not be in any way affected hereby; nor shall existing liabilities, or the rights of creditors of the corporation, whose stock shall have been so surrendered, be in any way affected or impaired by this act. (*Laws 1855, chap. 302 § 1.*)

This act shall not be construed as applying to or embracing the Rochester and Genesee Valley railroad, nor any part thereof, and said road is hereby expressly excepted from the operation of the same. (*Laws 1855, chap. 302, § 2.*)

(See chap. 254 of Laws of 1867, as amended by Laws 1829, chap. 503, next section.)

**§ 381.** *The same.*—Any railroad corporation created by the laws of this State, or its successors, being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders, or any of them in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other

terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do, to be entered on their minutes, become *ex-officio* the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof, as provided by law; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of State, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the said corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the said corporation, to whom such surrender or transfer shall have been made, as fully and entirely, and without change or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said corporation, to whom such surrender or transfer of the said stock shall have been made, and in the corporate name of such corporation. The rights of any stockholder not so surrendering or transferring his stock, shall not be in any way affected hereby, nor shall existing liabilities or the rights of creditors of the corporation, where stock shall have been so surrendered or transferred, be in any way affected or impaired by this act. (*Laws 1867, chap. 254, as amended by Laws of 1879, chap. 503, § 1.*)

(46 N. Y., 644.)

The following is a copy of chapter 254 of the Laws of 1867, previous to its amendment, as cited: Any railroad corporation created by the laws of this State, or its successors, now being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders or any of them in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer, shall thereafter, on a resolution electing so to do, to be entered on their minutes, become *ex officio* the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof as provided by law; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of State, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the said corporation whose stock shall have been so surrendered or transferred, shall thereupon

vest in and be held and enjoyed by the said corporation to whom such surrender or transfer shall have been made, as fully and entirely, and without charge or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said corporation to whom such surrender or transfer of the said stock shall have been made, and in the corporate name of such corporation. The rights of any stockholders not so surrendering or transferring his stock, shall not be in any way affected hereby, nor shall existing liabilities or the rights of creditors of the corporation, where stock shall have been so surrendered or transferred, be in any way affected or impaired by this act.

The act of 1867 was a re-enactment of the Laws of 1855, chapter 302, section 1, with but three verbal alterations.

§ 382. *Lessees to make annual reports.*—Any railroad corporation which may be the lessee of any other railroad shall, in addition to the powers and duties conferred and imposed by the act entitled “An act in relation to railroads held under lease,” passed April third, one thousand eight hundred and sixty-seven, be required to make to the State engineer a report of such facts concerning the operation of said leased road or roads as the lessors would otherwise be required to make, and the lessors shall not be required to make such report. (*Laws 1869, chap. 844.*)

§ 383. *Lessee of railroad to maintain fences.*—And when the railroad of any railroad corporation shall be leased to any other railroad company, or to any person or persons, such lessee shall maintain fences on the sides of the road so leased, of the height and strength of a division fence, as required by law, with openings, or gates or bars therein, at the farm-crossings of such railroad, for the use of the proprietors of the lands adjoining such railroads, and shall also construct, where the same has not already been done, and hereafter maintain cattle-guards at all road-crossings, suitable and sufficient to prevent horses, cattle, sheep and hogs from getting on to such railroad. And so long as such fences and cattle-guards shall not be made, and when not in good repair, such lessees and their agents shall be liable for damages, which shall be done by the agents or engineers of any such corporation, to any cattle, horses, sheep or hogs thereon, and when such fences and guards shall have been duly made, and shall be kept in good repair, such lessee shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence, within the provisions of this section, but no lessees of a railroad corporation shall be required to fence the sides of said roads except when such fence is necessary to prevent horses, cattle,

sheep and hogs from getting on to the track of the railroad, from the lands adjoining the same. (*Laws 1864, chap. 582, § 2.*)

(See note to section 207.)

**§ 384.** *Assent of stockholders, how given to the lease in certain cases.*—Whenever any railroad, or railroad route, not exceeding ten miles in length, and its franchises within this State, has been heretofore leased by one railroad company or corporation to any other railroad company or corporation with the assent of a majority in amount of the stockholders of the company owning such leased railroad or railroad route and franchises, it shall be immaterial whether the assent of said stockholders has been obtained at a stockholders' meeting, or has been individually given in writing; and the leases of all such railroads within this State, which have received such assent of a majority in amount of the individual stockholders of the company or corporation owning the leased road, are hereby declared to be as legal and valid as they would have been had such assent been given at a stockholders' meeting regularly called for that purpose. And any railroad company now engaged in operating any railroad so leased may continue to use and operate the same during the term of the lease, upon complying with the terms, covenants and provisions of such lease; and to that end all such leases are hereby ratified and confirmed. (*Laws 1880, chap. 349, § 1.*)



## CHAPTER 27.

### OF THE CONSOLIDATION OF RAILROAD COMPANIES OTHER THAN STREET RAILROADS.

- § 385. When railroad companies may be consolidated.
- 386. The same.
- 387. What companies shall not consolidate.
- 388. Consolidation, how made.
- 389. Consolidation, when perfected.
- 390. Effect of consolidation.
- 391. Fare allowed consolidated company.
- 392. Consolidated company, how taxed.
- 393. Provisions of general railroad act made applicable to consolidated companies.
- § 394. Consolidation of railroad companies of this State with company organized under the laws of the State of Pennsylvania.

**§ 385.** *When railroad companies may be consolidated.*  
 —It shall and may be lawful for any railroad company or corporation, organized under the laws of this State, or of this State and any other State, and operating a railroad or bridge, either wholly within, or partly within, and partly without this State, to merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad company or companies organized under the laws of this State, or under the laws of this State and any other State, or under the laws of any other State or States whenever the railroads or branches, or any part of the railroad or branches of the companies or corporations so to be consolidated, shall or may form a continuous or connected line of railroad with each other, or by means of any intervening railroad bridge or ferry. (*Laws 1869, chap. 917, § 1, as amended by Laws 1881, chap. 685, § 1.*)

This act does not apply to street railroads. (See § 7, *Laws 1869, chap. 917; §§ 389, 391, post.*)

Chapter 278, Laws of 1868, § 4, prohibited a consolidation between the Erie Railway Company and the New York Central, Hudson River and Harlem Railroad companies, but it was repealed by section 3 of chapter 586 of the Laws of 1875.

This section, previous to its amendment, read as follows: It shall and may be lawful for any railroad company or other corporation organized under the laws of this State, or of this State and any other State, and operating a railroad or bridge, either wholly within, or partly within and partly without this State, to

merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad company or companies organized under the laws of this State, or under the laws of this State and any other State, or under the laws of any other State or States, whenever the two or more railroads of the companies or corporations so to be consolidated shall or may form a continuous line of railroad with each other, or by means of any intervening railroad, bridge or ferry. (*Laws 1869, chap. 917, § 1.*)

For consolidation of underground railroads see section 361, *ante*.

§ 386. *The same.*—In any case where two or more railroad companies shall have been, or shall hereafter be, organized under the general laws of this State, the whole of whose lines, as located by them respectively, shall form one continuous and connecting line of road, the said companies may consolidate their lines of road, stock, franchises and property according to the existing laws of this State relating to the consolidation of railroad companies; and any such consolidated company may thereupon construct or finish the construction of such continuous line of railroad and operate the same, subject to all provisions of law applicable to railroad corporations, organized under the said general laws, so far as not inconsistent with this act; but this act shall not in any manner affect the existing laws regulating the rate of fare on any railroad. (*Laws 1875, chap. 108.*)

§ 387. *What companies shall not consolidate.*—No companies or corporations of this State, whose railroads run on parallel or competing lines, shall be authorized by this act\* to merge or consolidate. (*Laws 1869, chap. 917, § 9.*)

§ 388. *Consolidation, how made.*—Said consolidation shall be made under the conditions, provisions and restrictions, and with the powers hereinafter in this act mentioned and contained. That is to say: The directors of the companies proposing to consolidate may enter into a joint agreement, under the corporate seal of each company, for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or rail-

\* Chap. 917, Laws 1869.

roads. But in no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated, at the par value thereof. Nor shall any bonds or other evidences of debt be issued for a consideration for, or in connection with, such consolidation. (*Laws 1869, chap. 917, § 2, as amended by Laws 1873, chap. 352, as amended by Laws 1880, chap. 94, § 1.*)

Said agreement shall be submitted to the stockholders of each of the said companies, or corporations, at a special meeting thereof, called separately, for the purpose of taking the same into consideration; due notice of the time and place of holding said meeting, and the object thereof, shall be given by each company to its stockholders, by written or printed notices addressed to each of the persons in whose names the capital stock of such company stands on the books thereof, and deliver to such persons respectively, or send to them by mail, when their post-office address is known to the company, at least thirty days before the time of holding such meeting, and also by a general notice published daily for at least four weeks in some newspaper printed in the city, town or county where such company has its principal office or place of business; and at the said meeting of the stockholders the agreement of the said directors shall be considered, and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two thirds of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretaries of the respective companies, under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of consolidation of the said companies; and a copy of the said agreement and act of consolidation, duly certified by the secretary of state, under his official seal, shall be evidence in all courts and places of the existence of said new corporation, and that the foregoing provisions of this act have been fully observed and complied with. (*Laws 1869, chap. 917, § 2, as amended by Laws 1873, chap. 352, as amended by Laws 1880, chap. 94, § 1.*)

The previous legislation upon this subject was as follows: Said consolidation shall be made under the conditions, provisions and restrictions, and with the powers hereinafter in this act mentioned and contained, that is to say:

1. The directors of the companies proposing to consolidate may enter into a joint agreement under the corporate seal of each company for the consolidation of said companies and railroads, and prescribing the terms and conditions.

thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of the said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or railroads.

2. Said agreement shall be submitted to the stockholders of each of the said companies or corporations at a meeting thereof called separately for the purpose of taking the same into consideration; due notice of the time and place of holding said meeting, and the object thereof, shall be given by each company to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such company stands on the books thereof, and delivered to such persons respectively, or sent to them by mail when their post-office address is known to the company, at least thirty days before the time of holding such meeting, and also by a general notice published daily for at least four weeks in some newspaper printed in the city, town or county where such company has its principal office or place of business; or in case no daily newspaper is published in such county, then such general notice may be published once in each week in some newspaper printed in such city, town or county; and at the said meeting of stockholders the agreement of the said directors shall be considered, and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if two-thirds of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretaries of the respective companies under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of consolidation of the said companies; and a copy of the said agreement and act of consolidation, duly certified by the secretary of state, under his official seal, shall be evidence in all courts and places of the existence of said new corporation, and that the foregoing provisions of this act have been fully observed and complied with. (*Laws 1869, chap. 917, § 2, as amended by chap. 352, of the Laws of 1873.*)

The amendment of chapter 352 of the Laws of 1873, consisted in inserting after the word "business," in the second subdivision, the words "or in case no daily newspaper is published in such county, then such general notice may be published once in each week in some newspaper printed in such city, town or county."

**§ 389. Consolidation, when perfected.**—Upon the making and perfecting such agreement and act of consolidation as herein before provided, or filing the same or a copy thereof in the office of the secretary of state as aforesaid, the said corporations parties thereto shall be deemed and taken to be one corporation by the name provided in said agreement and act, but such act of consolidation shall not release such new corporation from any of the restrictions, disabilities or duties of the several corporations so consolidated. But

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nothing in this act contained shall allow any rate of fare for way passengers greater than two cents per mile, to be charged or taken over the track or tracks of that railroad, now known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks now operated by the said New York Central Railroad Company shall continue to be two cents per mile and no more, wherever it is now restricted to that rate of fare. But nothing herein contained shall apply to street railroads. (*Laws 1869, chap. 917, § 3.*)

**§ 390.** *Effect of consolidation.*—Upon the consummation of said act of consolidation as aforesaid, all and singular the rights, privileges, exemptions and franchises of each of said corporations parties to the same, and all the property, real, personal and mixed, and all debts due on whatever account to either of said corporations, as well as all stock subscriptions and other things in action belonging to either of said corporations, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, rights of way and every other interest, shall be as effectually the property of the new corporation as they were of the former corporations parties to the said agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this State, vested in either of such corporations parties to said agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation. (*Laws 1869, chap. 917, § 4.*)

The rights of all creditors of, and all liens upon the property of either of said corporations parties to said agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by either of said corporations, except mortgages, shall thenceforth attach to such new corporation, and be enforced against it and its property to the same extent as if said debts or liabilities had been incurred or contracted by it. No suit, action or other proceeding now pending before any court or tribunal, in which either of said railroad companies is a party, shall be deemed to have abated or been discontinued by the agreement and act of consolidation as aforesaid, but the same may be conducted in the name of the existing corporations to final judgment, or such new corporation may be, by order of the court, on motion, substituted as a party. Suits may be brought and maintained

against such new corporation in the courts of this State, for all causes of action, in the same manner as against other railroad corporations therein. (*Id.*, § 5.)

§ 391. *Fare allowed consolidated company, and provisions of act not applicable to street railroads.*—Nothing in this act contained shall be so construed as to allow such consolidated company to charge a higher rate of fare per passenger per mile upon any part or portion of such consolidated line than is now allowed by law to be charged by each existing company respectively, nor shall this act apply to street railroads; and nothing in this act contained shall be so construed as to affect or impair in any way the validity of any contract now existing between the Buffalo and State Line Railroad Company and the New York and Erie Railroad Company. (*Laws 1869, chap. 917, § 7.*)

§ 392. *Consolidated company, how taxed.*—The real estate of such new corporation, situate within this State, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is, or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this State, as the number of miles of its railroad situate in this State bears to the number of miles of its railroad situate in the other State or States. (*Laws 1869, chap. 917, § 6.*)

§ 393. *Provisions of general railroad act made applicable to consolidated companies.*—All the provisions of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, and of the several acts amendatory thereof or in addition thereto, shall be applicable to the new corporation so to be formed as aforesaid so far as the same are now applicable to the railroad companies of this State which may be consolidated with any other company or companies by virtue of this act. (*Laws 1869, chap. 917, § 8.*)

§ 394. *Consolidation of railroad companies of this State with company organized under the laws of the State of Pennsylvania.*—Any railroad company organized under the laws of this State may merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any railroad company or companies

organized under the laws of the State of Pennsylvania, whenever the two or more railroads of the companies or corporations so to be consolidated shall or may form a continuous line of railroad. (*Laws 1875, chap. 256, § 1.*)

Such consolidation shall be effected in the manner provided for by an act entitled "An act to authorize the consolidation of certain railroad companies," passed May twentieth, eighteen hundred and sixty-nine, and also subject to the laws of the State of Pennsylvania. (*Laws 1875, chap. 256, § 2.*)

At any meeting of the stockholders of any such company or corporation to consider any agreement or proposition to consolidate, the commissioners or other officer of any municipal corporation holding or having charge of any of the capital stock of such railroad company or corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation in the same manner as individual stockholders. (*Laws 1875, chap. 256, § 3.*)

The following is the act to authorize the consolidation of certain railroad companies, chapter 76, Laws of 1853, and which constitutes the charter of the New York Central Railroad Company:

§ 1. The Albany and Schenectady, Schenectady and Troy, Utica and Schenectady, Syracuse and Utica, Rochester and Syracuse, the Buffalo and Lockport, the Mohawk Valley, and the Syracuse and Utica direct, Buffalo and Rochester, Rochester, Lockport and Niagara Falls Railroad Companies, or any two or more of them, are hereby authorized at any time to consolidate such companies into a single corporation, in the manner following:

1. The directors of any two or more of such corporations may enter into an agreement, under their respective corporate seals, for the consolidation of the said corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, which shall not be less than thirteen nor more than twenty-three, the time and place of holding the first elections of directors, the day for annual elections of directors, the amount of capital, and the number of shares of the stock of the new corporations, which shall not be larger in amount than the aggregate amount of capital of the several companies thus consolidated, and shall not be increased, except in accordance with the provisions of the act passed April second, eighteen hundred and fifty, the manner of converting the shares of capital stock in each of said corporations into the shares of such new corporation, the manner of paying any shareholder that may decline taking shares in the new corporation, with such other details as they may deem necessary to embrace in such agreement, not inconsistent with the provisions of the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty.

2. Such agreement of the directors shall not be deemed to be the agreement of the said corporations so proposing to consolidate, until after it has been submitted to the stockholders of each of said corporations respectively separately, at a meeting thereof to be called upon a notice of at least thirty days, speci-

ifying the time and place of such meeting and the object thereof, to be addressed to each of such stockholders, when the place of residence is known to the secretary, and deposit in the post-office, and published for at least three successive weeks in the State paper, and in one of the newspapers printed in each of the counties through or into which the railroad of the said corporation shall extend, and has been sanctioned and approved by such stockholders by the vote of at least two-thirds in amount of the stockholders present at such meetings respectively, voting by ballot in regard to such agreement either in person or by proxy, each share of such capital stock being entitled to one vote; and when such agreement of the directors has been sanctioned and approved by each of the meetings of the respective stockholders separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said several corporations, and a sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, and attached to the said agreement, shall be evidence of the holding and of the action of such meetings in the premises.

§ 2. Upon the making the said agreement mentioned in the preceding section in the manner required therein, and filing a duplicate or counter part thereof in the office of the secretary of state, and immediately upon and after the first election of directors of said corporation, the said corporation shall be merged in the new corporation provided for in the said agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein, only such new corporation shall not have any larger powers than are granted by the act entitled "An act to authorize the formation of railroad companies and to regulate the same," passed April second, eighteen hundred and fifty, or be exempt from the performance of any duty which the said several corporations may be liable to perform, except as herein provided.

§ 3. Such new corporation shall possess the general powers, and be subject to the general liabilities and restrictions, expressed in the third title of the eighteenth chapter of the first part of the Revised Statutes; it shall also have the general powers and privileges, and be subjected to the general liabilities, restrictions, duties and provisions expressed and contained in the said act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and the acts amending the same, as far as the same are applicable to a railroad corporation, where a railroad is constructed and put in operation.

§ 4. Upon the election of the first board of directors of the said new corporation created by the agreement of the several companies, all and singular the rights, franchises and interests of the said several corporations so consolidated in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the rights of way, and all other rights of property, franchises and interests, in the same manner and to the same extent as if the said several corporations so consolidated should have continued to retain the title and transact the business of such corporations; and the title and real estate acquired by either of the said corporations



shall not be deemed to revert, or be impaired by means of such act of consolidation, or anything relating thereto.

§ 5. The rights of creditors of any corporations that shall be consolidated shall not in any manner be impaired by any act of consolidation, nor shall any liability or obligation for the payment of any money now due or hereafter to become due to this State or any individual, or any claim or demand for damages for any act done or neglect suffered by any such corporation, be in any manner released or impaired, but such new corporation is declared to succeed to such obligations and liabilities, and to be held liable to pay and discharge all the debts and liabilities of each of the corporations that shall be so consolidated, whether on contract, or for misconduct or neglect, either to this State or to individuals, and it shall be liable to have an action brought against it to enforce the payment of any money or damages, or the performance of any duty which any corporation consolidated into such new corporation was liable to pay or perform, in the same manner as if such new corporation had itself incurred the obligation or liability to pay such money or damages, or perform such duty; and no suit, action or other proceeding, now pending before any court or tribunal in which any railroad company that may be so consolidated is a party, shall be deemed to have abated or discontinued by reason of any such agreement of consolidation; but the same may be prosecuted to final judgment in the same manner as if the said corporation had not entered into such agreement of consolidation, or the said new corporation may be substituted as a party in the place of any corporation of which it shall be composed, by order of the court in which such action, suit or proceeding may be pending.

§ 6. If any stockholder shall, at said meeting of stockholders or within twenty days thereafter, object to said consolidation, and demand payment for his stock, such stockholder or said new company may, if said consolidation take effect at any time thereafter, apply to the supreme court at any special term thereof, held in any county through which any part of the said railroad may pass, for the appointment of three persons to appraise the value of such stock. If the court shall be satisfied that reasonable notice has been given of such application, it shall thereupon appoint three persons to appraise the value of said stock, and shall designate the time and place of meeting of such appraisers, and give such directions in regard to the proceedings on said appraisement as shall be deemed proper, and shall also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve, or otherwise; the appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent as aforesaid, and deliver one copy of their appraisal to the said company, and another to the said stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the company. When the corporation shall have paid the amount of the appraisal, as directed by the court, such stockholder shall cease to have any interest in the said stock, and in the corporate property of the said corporation, and the said stock may be held or disposed of by the said corporation.

§ 7. When any two or more of the railroad companies named in this act are so consolidated, said consolidated company shall carry way passengers on their road at a rate not to exceed two cents per mile.

§ 8. This act shall take effect immediately.

The agreement of consolidation made under the above act bears date May 17, 1853, and was filed in the office of the secretary of state. In the agreement it is stated that the several companies shall be consolidated into and form, one corporation, under the name of the New York Central Railroad Company.

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## CHAPTER 28.

## RAILROAD BONDS AND MORTGAGES.

§ 395. Power of railroad corporation to issue bonds and to mortgage its property, and to convert bonds into stock.

§ 396. Conversion of bonds into stock in certain cases, and proceedings therein; act of 1849.

§ 397. Railroad mortgages of real and personal property to be recorded.

§ 398. Railroad bonds, how made non-negotiable.

§ 399. The same.

§ 400. Railroad bonds, how transferred.

§ 401. Concerning payment of interest by railroad companies on loans of the State credit, and for other purposes.

§ 401(a). Bonds, etc., not to be issued on consolidation of railroads.

§ 395. *Power of railroad corporation to issue bonds and to mortgage its property, and to convert bonds into stock.*—Every corporation formed under this act\* shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power, from time to time, to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed; and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid, and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon, into stock of said company, at any time not less than two nor more than twelve years from the date of the bond, under such regulations as the directors may see fit to adopt; provided, however, that if the already authorized capital stock of the corporation, at the time such bonds may be issued, shall not be sufficient to meet such conversion when made, the stockholders shall, before such issue, and in the manner hereinbefore provided (*see section 90, ante*), authorize an increase of capital stock to an extent sufficient to meet the deficiency. (*Laws 1850, chap. 140, § 28, subd. 10, as amended by Laws 1880, chap. 133.*)

As to the rights of the bondholders against new companies formed after foreclosure. (*See Voe v. Cowdry, 49 N. Y., 336.*) As to bondholder's right to

\* Laws 1850, chap. 140.

enjoin division of property. (See *Weetjen v. St. P. and P. R. R. Co.*, 4 Hun' 529.) As to ground of removal of trustee for bondholders. (See *Beadelson v. Knapp*, 13 Abb. Pr. R. [N. S.], 335.)

Under the provisions of the general railroad act (*subd.* 10, § 28, *chap.* 140, *Laws of 1853*) authorizing a corporation organized under it to borrow moneys necessary for completing, finishing or operating its road, to issue and dispose of its bonds, and to mortgage its property and franchises "to secure the payment of any debt contracted for the purposes aforesaid," a railroad corporation may pledge its bonds for moneys loaned, and also as security for a precedent debt incurred for moneys borrowed for the purpose specified. (*Duncombe v. N. Y. and N. R. R. Co.*, 84 N. Y., 191.)

The original subdivision 10 of section 28 of chapter 140 of the Laws of 1850, previous to the amendment of chapter 133 of the Laws of 1880 read as follows: Every corporation formed under this act shall, in addition to the powers conferred on corporations, in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power, from time to time, to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt. (*Laws 1850, chap.* 140, § 28, *subd.* 10.)

Interest coupons on railroad bonds, payable to bearer at a specified time and place, are negotiable promises for the payment of money, and are subject to the same rules as other negotiable instruments. They are transferable by delivery though detached from the bonds, and a purchaser in good faith before maturity, from one who has stolen them, acquires a valid title. (*Evertson v. Nat. Bank*, 66 N. Y., 14.) Duties of trustee for bondholders under railroad mortgage, and when liable individually for violation of trust. (*James v. Cowing*, 82 N. Y., 449.)

#### *Mortgaged property.*

The provision of the general act (§ 28, *subd.* 10)—which authorizes a railroad corporation, organized under such act, "from time to time to borrow such sums of money as may be necessary for completing, or finishing, or operating their railroad, and to issue and dispose of their bonds for an amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company, for the purpose aforesaid"—gives authority to railroad corporations to mortgage all and singular the property of the corporation, with all its franchises, rights and interests acquired, and to be acquired, as an entirety; and it is therefore entirely immaterial whether the right of way for the railroad was all acquired or not, at the time such mortgage was put on record, or whether the road had or had not been at that time entirely located, or the location thereof, if previously made, was afterwards changed. The right to change its location is one of the chartered privileges of the corporation, and embraced within the grant of its franchises. So, also, is the right to take such lands as might be requisite to complete the road upon its original, or upon any altered line. (*Supreme Ct., Sp. T.*, 1857,

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*Seymour v. Canandaigua and Niagara Falls R. R. Co.*, 25 Barb., 284; S. C., 14 How. Pr., 531.)

A mortgage of engines, cars, and of all personal property, "in any way belonging or appertaining to the railroad of said company;" held not to include canal-boats, though the same were considered as belonging to the company and accessory to the business of the road, forming a connection at the point where the road terminates. (*Parish v. Wheeler*, 22 N. Y., 494.) The doctrine that the rolling stock of a railroad company in all cases is to be considered personal property, and as not passing under a mortgage of the road on its property not acceded to. (*Hoyle and Trustees, etc., v. The Plattsburgh and Montreal R. R. Co.*, 51 Barb., 45.) When it was found by the referee and conceded that a mortgage of a road on its franchise, executed by a railroad company, was sufficient to include in the mortgaged property, the rolling stock, and the parties intended that the rolling stock and equipments of the road should pass as a part of the road, and as necessary to its use, the object of the mortgage being to procure funds for the building of the road and preparing it for travel, and the intent of the parties was to secure the bondholders by a mortgage on the whole property in the road as used by the company for travel; held that such a construction should be given to the instrument as to include therein the rolling stock, although not expressly named. (*Id.*) The twenty-eighth section of the general railroad act, authorizing railroad corporations to borrow money for the building of their roads or operating them, and to mortgage all their corporate property and franchises to secure the payment thereof, contemplates a mortgage of all the property, whether land, road, rolling stock or franchise, and warrants the conclusion that it was the intent of the Legislature that the whole should be included in one mortgage, and treated as a mortgage of the road and its accessories. Such a mortgage need not be treated as a chattel mortgage and filed as such in order to give it validity as against a judgment creditor. (*Id.*); affirming *sub nom Bement v. Same.* (47 Barb., 104.) The rolling stock, engines and cars of a railroad company are personal property, and will not pass by a mortgage and foreclosure thereof, and sale of the road, unless the terms of the mortgage are such as to include and carry the rolling stock as personal property. (*Id.*) A mortgage executed by a railroad company upon its railroad, with the lands, tracks, buildings, privileges, and franchises, "together with all the locomotives, tenders, cars, carriages, tools, and machinery owned or *hereafter to be owned* by the company, or in any way belonging or appertaining to said road and to be used thereon," is valid in equity, in respect to subsequently acquired property. (*Supreme Ct., 1867, Benjamin v. Elmira, etc., R. R. Co.*, 49 Barb., 441.)

A mortgage given by a railroad company to secure the payment of its bonds, a bond issued by the company, and a certificate indorsed thereon, stating that such bond is included in the mortgage, should all be construed together, as parts and parcels of the same security. (*Benjamin v. Elmira, etc., R. R. Co.*, 49 Barb., 441.)

#### *Conversion of bonds into stock.*

The directors of a railway corporation, acting in good faith, have power to issue bonds in the name of the corporation, for the amounts they may borrow to complete and finish, or to operate the road, and make such bonds carry the right to convert them into stock, although it increases the amount of capital stock beyond that fixed by the charter. And that being so, the right of the

directors to issue stock in conversion of such bonds, is clear. (*Supreme Ct., Sp. T., 1869, Belmont v. Erie R'way Co., 52 Barb., 637.*)

*Mortgage of after-acquired property.*

A mortgage given by a railroad company upon all property and franchises—including "all its present real and personal estate and franchises now owned, or hereafter to be acquired, without any exception or reservation"—held to include only such after-acquired property as was appurtenant to and necessary for building and operating the road, and carrying out the purpose for which it was erected. A hotel, vacant town lots, and 300 acres of farming land, acquired by the company after the mortgage was made, but used in connection with the railroad in its business, held not included in such mortgage. (*Miss. Valley R. R. Co. v. Chicago, St. L. and N. O. R. R. Co., reported Alb. Law Jour., vol. 24, No. 14.*)

**§ 396.** *Conversion of bonds into stock in certain cases and proceedings thereon; act of 1849.*—All railroad companies in the State of New York whose roads have been or now are layed with the flat bar rail, and that have borrowed or that may hereafter borrow money on bonds of the said companies for relaying said road with the heavy iron rail, weighing not less than fifty-six pounds to the lineal yard, and pay all or any part of said bonds out of the earnings of said roads, may for such part of said bonds as the companies do pay as aforesaid, convert the same into stock and divide the same rateably among the stockholders; or the directors may dispose of said stock at auction to the highest bidder and divide the amount for which it sells among the stockholders in proportion to the stock respectively held by them. (*Laws 1849, chap. 271, § 1.*)

Section 1 of chapter 272 of the Laws of 1847, provided that the stock of the corporation might be increased to procure heavy iron rail in the place of flat bar rail. Section two of the same act limited the time for laying the heavy rail, and placed restrictions upon dividends in case the heavy rail was not laid; and chapter 405 of the Laws of 1847, provided that corporations embraced in the first section of chapter 272, above cited, might increase its capital stock, or borrow money on the security of its railroad appurtenances or franchises, for the purpose of relaying with heavy rail.

Each railroad company embraced within the provisions of the first section of chapter 272, of the Laws of 1847, is hereby authorized to increase its capital stock, or to borrow money on the security of its railroad appurtenances and franchises, as the directors of the company may determine, subject, however, to all previous incumbrances and debts in favor of this State and of individuals, to such an amount subject to the limitation hereafter expressed as may be sufficient for the purpose of putting so much of its railroad as such directors shall deem expedient in a proper condition to receive a second track, of procuring iron for such track, and of laying the same with an iron rail weighing not less than fifty-six pounds to the lineal yard; but nothing herein contained shall be construed to authorize such an increase of stock, or borrowing of money by such company, for any other than the aforesaid purposes, nor shall

such money or stock be used for or applied to any other purpose, nor shall the increase of stock or the money borrowed by virtue of this section, exceed in the aggregate, the sum of \$10,000 for each mile of the railroad of such company which it shall so put in a condition to receive such second track, for which it shall procure the iron for such track, and on which it shall lay such second track with heavy rail as aforesaid. (*Chap. 405, Laws 1847.*)

§ 397. *Railroad mortgages of real and personal property to be recorded.*—It shall not be necessary to file as a chattel mortgage, any mortgage which has been, or shall hereafter be, executed by any railroad company upon real and personal property, and which has been, or shall be recorded as a mortgage of real estate in each county in or through which the railroad runs. (*Laws 1868, chap. 779.*)

A mortgage by a railroad company, of its road and movable stock, need not be filed as a chattel mortgage. The statute (*Laws of 1850, 211.*) authorizes such mortgages to be made of the property as an entirety. (*Supreme Ct., 1868, Hoyle v. Plattsburgh and Montreal R. R. Co., 51 Barb., 45*) Although rolling stock of a railroad is personal property, a mortgage of a railroad which by its terms includes the rolling stock of the road, is not within the intent of the chapter 279 of the Laws of 1833, requiring chattel mortgages to be filed in the town or city where the mortgagor, if a resident of this State, resides, and, if he is not a resident, then in the town or city where the mortgaged property is at the time of the execution of the mortgage [disapproving 35 Barb., 484; 31 id. 590.] (*Supreme Ct., Sp. T., 1866, Bement v. Plattsburgh and Montreal R. R. Co., 47 Barb., 104.*) A railroad corporation, domestic or foreign, is not a resident or non-resident within the above-mentioned act requiring chattel mortgages to be filed. (*Id.*)

§ 398. *Railroad bonds, how made non-negotiable.*—It shall be lawful for any person or persons owning and holding any railroad mortgage bonds, or other corporate bonds (for which a registry is not by law provided), heretofore issued, or which may be hereafter issued, and made payable in this State and which are made payable to bearer, to render the same non-negotiable by the owner and holder indorsing upon the same and subscribing a statement that said bond is the property of such owner. And thereupon the principal sum of money mentioned in said bond shall only be payable to such owner or his legal representatives or assigns. (*Laws 1871, chap. 84, § 1.*)

§ 399. *The same.*—The owner or holder of any corporate or municipal bond or obligation (except such as are designed to circulate as currency), payable to bearer, heretofore issued or which may hereafter be issued, and payable in this State, but not registered in pursuance to any law thereof, may make the same non-negotiable (except as provided in the second section of this act), by subscribing his name to a

statement, indorsed thereon, that such bond or obligation is his property, and thereupon the principal sum therein mentioned shall be payable only to such owner or holder or his legal representatives or assigns. (*Laws 1873, chap. 595, § 1.*)

The bond and obligations mentioned in the last section, after having been indorsed as therein provided, may be transferred by an indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence. (*Id.*, § 2.)

The provisions of this act shall apply to all interest coupons accompanying any corporate or municipal bond or obligation payable in this State. (*Id.*, § 3.)

So much of chapter eighty four of the Laws of one thousand eight hundred and seventy-one, entitled "An act to authorize the owners and holders of certain railroad mortgage bonds, made payable to bearer, to render the same payable to order only," as is inconsistent with this act is hereby repealed. (*Id.*, § 4.) (See preceding section.)

§ 400. *Railroad bonds, how transferable.*—The bonds described and referred to in the first section of this act\* may be transferred by an indorsement in blank, giving name and residence of assignor, or they may be transferred by an indorsement payable to bearer or to the order of the purchaser (naming him), subscribed by the assignor, giving name and place of residence. (*Laws 1871, chap. 84, § 2.*)

Where the payee named in the bond, assigned the same in blank, the title passes by delivery merely. (*Brainerd v. N. Y. and Harlem R. R. Co.*, 10 Bosw., 332.)

§ 401. *Concerning payment of interest by railroad companies on loans of the State credit and for other purposes.*—In order to provide for the punctual payment of the interest, on all stocks issued or hereafter to be issued to any railroad company, it shall be the duty of said company to deposit at such bank in the city of New York, as the comptroller shall designate, the amount of interest payable on the said stock, before the respective payments of interest shall become due, and give a notice of such deposit to the comptroller at least five days before such payment of interest shall become due, and in default thereof, the comptroller shall make provisions for the punctual payment of such interest; any advance made by the comptroller for such purpose, together with the interest thereof, and any expenses incident to the making such advances, to be certified by the comptroller, shall be refunded to the treasury of this State

\* See preceding section 98, Laws 1871, chap. 84, § 1.



by the said company upon demand, and in default of payment thereof, the comptroller may enforce payment in like manner as provided in the case of non-payment of interest, by the several acts authorizing such loans. (*Laws 1840, chap. 358, § 1.*)

The section above quoted is given as one of the existing statutes of the State. Title 9 of chapter 8 of the first part of the Revised Statutes, provided for the issue and transfer of State stock. By a vote of the people in November, 1874, section 10 of article 8 of the constitution was amended, declaring that neither the credit nor the money of the State should be given or loaned to or in aid of any association, corporation or private undertaking. (See, also, section 2, article 7, of the State constitution, in regard to sinking fund to pay debt for loans of State credit to railroad companies, and providing that claims of the State for such loans shall not be released.)

It is considered that the provisions of the statute, given in the text, are obsolete. Those portions of the State loan which remained unpaid became a loss to the State, and were finally charged to the State debt. (For the particulars of the loans, to what roads made, and the respective amounts, see the State Engineer's Report on Railroads for 1880, page 9.)

§ 401(a). *Bonds, etc., not to be issued on consolidation of railroads.*—Chapter 94 of the Laws of 1880, section 2, subdivision 1, amending the act in regard to the consolidation of railroad companies provides as follows: "Nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation."

## CHAPTER 29.

### OF THE RIGHTS ACQUIRED BY PURCHASERS AT MORTGAGE FORECLOSURE AND JUDGMENT SALES, AND THE REORGANIZATION AND FORMATION OF COMPANIES BY THE PURCHASERS.

§ 402. Mortgagee may purchase railroad on foreclosure sale.

§ 402(a). Corporations of other States may purchase at mortgage foreclosure and judgment sales.

§ 403. Right of stockholder to redeem on mortgage foreclosure by payment of a sum proportionate to the amount of his stock.

§ 404. Of the rights acquired by purchasers at mortgage foreclosures, and the reorganization and formation of new companies by the purchasers.

§ 405. Amendatory act in regard to reorganization after judicial sale of railroad.

§ 406. The same; in relation to purchasers of the franchises and property of corporations whose franchises and property shall have been sold by mortgage, and of the filing of new articles of association.

§ 407. The same; in regard to the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases.

§ 408. The foreclosure of mortgages made by consolidated railroad companies lying partly within and partly without the State.

§ 409. When the president, treasurer and secretary may issue certificates of stock after a foreclosure and sale.

§ 410. The increasing of the capital stock to facilitate the reorganization of railroads.

§ 402. *Mortgagee may purchase railroad on foreclosure sale.*—It shall be lawful for any mortgagee of any railroad and the franchises thereof, to become the purchaser of the same, at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment or decree, or otherwise, and to hold and convey the same, with all the rights and privileges belonging thereto or connected therewith. (*Laws 1857, chap. 444, § 1.*)

§ 402(a). *Corporations of other states may purchase at mortgage foreclosures, and judgment sales.*—It shall be lawful for any corporation duly organized under the laws of any State in which such corporation shall be located, to purchase under any foreclosure sale based upon any mortgage or mortgages owned by such corporation, or upon judgments or decrees obtained or rendered for any debts due it, or in any settlement effected to secure such debts, any of the land lying within this State that may be covered by or subject to any such mortgages, judgments, decrees or set-

lements, and also to hold, for a term not exceeding four years from the date of such purchase, and to convey such lands by deed or otherwise in the same manner as though such corporation had been organized under the laws of and located within this State. (*Laws 1877, chap. 158.*)

§ 403. *Right of stockholder to redeem on mortgage foreclosure by payment of a sum proportionate to the amount of his stock.*—Whenever default shall be made by any railroad or plank-road company in the payment of principal or interest of any bonds of such company, which are secured by a mortgage of the property of such company, it shall be lawful for each and every stockholder of said company, at any time during the process of such foreclosure, to pay to the mortgagees named in such mortgage, for the use and benefit of the holder and holders of such bonds, such a proportion of the sum due and of the sum secured to be paid by the whole of the bonds secured by such mortgage as such stockholders' stock shall bear to the whole stock of said company; and on so paying, such stockholder shall, to the extent of such payment, become and be interested in said mortgage and protected thereby. (*Laws 1853, chap. 502, § 1.*)

In case of the foreclosure of any mortgage given by any railroad or plank-road company to secure the payment of any bond of such company, any stockholder of such company shall, for the period of six months after the sale under such foreclosure, have the right on paying to the purchaser or purchasers at or under such sale, or to the mortgagees named in such mortgage, for the use and benefit of said purchaser or purchasers, a sum equal to such proportion of the price paid on such sale, and the costs and expenses thereof, as such stockholders' stock in said company shall bear to the whole capital stock of said company; and on so paying such stockholder shall be entitled to have the same relative amount of stock or interest in said railroad or plank-road company and its road, franchises and other property. (*Id.*, § 2.) (See note as to repeal of this section, *infra.*)

The provision of the act of 1853 in reference to the foreclosure of railroad mortgages (section 2, chapter 502, Laws of 1853), which provides that a stockholder of a railroad company may, within six months after a sale of its road under foreclosure, on paying to the purchaser a proportion of the price paid equal to the proportion his stock bears to the whole stock of the company, have the same relative amount of stock or interest in the company, its road, franchises and other property, was repealed by the act of 1854 amending the general railroad act (chap. 282, Laws of 1854), and by the act of 1874 (chap. 430,

Laws of 1874) to facilitate the reorganization of railroads sold under mortgage, etc. (*Pratt v. Munson*, 84 N. Y., 582.)

§ 404. *Of the rights acquired by purchasers at mortgage foreclosures, and the reorganization and formation of new companies by the purchasers.*—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. (*Gen'l R. R. Act, Laws 1850, chap. 140, § 5, as amended by Laws of 1854, chap. 282, § 1.*) (See next section for addition to the same.)

§ 405. *Amendatory act in regard to reorganization of road after judicial sale of railroad.*—The fifth section 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, is hereby amended by adding thereto the following: The purchaser or purchasers, or the grantee or grantees of any purchaser or purchasers of the real estate, tracks and fixtures of any railroad corporation, which has heretofore been sold, or may be hereafter 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 and 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 all 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. (*Laws 1873, chap. 710, § 1.*)

See the preceding section.

§ 406. *The same; in relation to purchasers of the franchises and property of corporations whose franchises and property shall have been sold by mortgage, and of the filing of new articles of association.*—Whenever the franchises, privileges, easements, rights and liberties of any corporation created by any 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 of 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 certificate so to be made and filed shall be in the 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. (*Id.*, § 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 pre-existing corporation authorized by law at the time of such sale 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 office for one year, and until others are chosen in their places. (*Id.*, § 3.)

The said certificate shall be executed in duplicate and acknowledged before some officer competent to take acknowledgement 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 with the clerk of the county in which the said corporation first mentioned in this act first 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 franchises 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. (*Id.*, § 4.)

A copy of any articles of association filed in pursuance of this act, and certified by the secretary of state and by the county clerk with whom the 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. (*Id.*, § 5.)

**§ 407.** *The same; in regard to the re-organization of railroads sold under mortgage and providing for the formation of new corporations in such cases.*—In case the railroad and property connected therewith, and the rights, privileges and franchises of any corporation, except a street railroad company, created under the general railroad law of this State, or existing under any special or general act or acts of the Legislature thereof, shall be sold under or pursuant to the judgment or decree of any or\* court of competent jurisdiction, made or given to execute the provisions, enforce the lien of any deed or deeds of trust, or mortgage theretofore executed by any such company, the purchasers of such railroad property and franchises, and such persons as they may associate with themselves, their grantees or assignees or a majority of them, may become a body politic and corporate, and as such may take, hold and possess the

\* So in the original.

title and property included in said sale, and shall have all the franchises, rights, powers, privileges and immunities which were possessed before such sale by the corporation whose property shall have been sold as aforesaid, by and upon filing in the office of the secretary of state, a certificate, duly executed under their hands and seals, and acknowledged before an officer authorized to take the acknowledgment of deeds, in which certificate the said persons shall describe by name and reference to the act or acts of the Legislature of this State under which it was organized, the corporation whose property and franchise they shall have acquired as aforesaid, and also the court by authority of which such sale shall have been made, giving the date of the judgment or decree thereof, authorizing or directing the same, together with a brief description of the property sold, and shall also set forth the following particulars:

1. The name of the new corporation intended to be formed by the filing of such new certificate.

2. The maximum amount of its capital stock, and the number of shares into which the same is to be divided, specifying how much of the same shall be common, and how much preferred stock, and the classes thereof, and the rights pertaining to each class.

3. The number of directors by whom the affairs of the said new corporation are to be managed, and the names and residences of the persons selected to act as directors for the first year after its organization.

4. Any plan or agreement which may have been entered into pursuant to the second section hereof.

And upon the due execution of such certificate, and the filing of the same in the office of the secretary of state, the persons executing such certificate, and who shall have acquired the title to the property and franchises sold as aforesaid, their associates, successors and assigns, shall become and be a body politic and corporate, by the name specified in such certificate, and shall become and be vested with, and entitled to exercise and enjoy, all the rights, privileges and franchises, which, at the time of such sale belonged to, or were vested in the corporation, which last owned the property so sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and of the acts amendatory thereof, except so far as said provisions, duties and liabilities may be inconsistent herewith, and with the last named rights, privileges or franchises; and a copy of

the said certificate, certified by the secretary of state or his deputy, shall be presumptive evidence of the due formation of the new corporation therein mentioned, provided always that the majority of said persons shall be citizens and residents of this State. In the certificate so to be filed shall be inserted the whole of the plan or agreement in the next section referred to. And such plan, agreement and articles may regulate voting by, and on the part of the holders of the preferred and common stock of said company, and may also allow, provide for, and regulate voting at and in said meetings, and also for directors, by and on the part of the holders and owners of any or all of the bonds of the company foreclosed, or of the bonds, issued or to be issued, and payable by the new company, pursuant to any such plan, agreement or articles; such right of voting by bondholders to be in such manner, for such period or periods, and upon such conditions as said articles may authorize and declare; but such articles shall contain suitable provisions for such bondholders voting by proxy. Said articles shall not be inconsistent with the constitution or laws of this State, and shall be binding upon the company until changed as therein provided for, or until otherwise provided by law. (*Laws 1874, chap. 430, § 1, as amended by chap. 446, of the Laws of 1876, § 1.*)

In case the persons organizing or whose duty it may be to organize the new corporation to be formed as provided in the first section of this act, shall have acquired title to the railroad property and franchises which may have been sold as in said section mentioned, pursuant to any plan or agreement for or in anticipation of the readjustment of the respective interests therein of the mortgage creditors and stockholders of the company owning, or which last owned, such property and franchises at the time of any such sale, and for the representation of such interests of creditors and stockholders in the bonds or stock of the new corporation to be formed, as provided for in said section, the said new corporation shall be authorized and shall have the power to issue its bonds and stock in conformity with the provisions of such plan or agreement, and the said new corporation may, at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former company, upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization aforesaid; and for the purposes of such plans and of such settlements, the said new corporation may and shall be authorized to establish preferences in respect to the payment of individuals in favor of any



portion of its said capital stock, and to divide its said stock into classes; provided, nevertheless, that nothing herein contained shall be held to authorize the issue of capital stock by the said new company to an aggregate amount, exceeding the maximum amount of such stock mentioned in the certificate of incorporation.

1. And it shall be lawful for the supreme court to direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in the case of the non payment of interest only, or of both the principal and interest due and unpaid and secured by any mortgage or mortgages or deeds aforesaid.

2. Neither the said sale nor the formation of such corporation shall interfere with the authority or possession of any receiver of the property and franchises aforesaid, but he shall remain liable to be removed or discharged at such time as the court may deem proper.

3. No suit or proceeding shall be commenced against said receiver (unless founded on willful misconduct or fraud in his trust), except such as shall be commenced before the expiration of sixty days from the time of the discharge of such receiver; but it is further provided that, after the expiration of said sixty days, the corporation that shall own or operate said railroad, shall be liable in any action that may be commenced against such company, and founded on any act or omission of such receiver (for which he may not as aforesaid be sued), and to the same extent as said receiver, but for this act, would be or remain liable, or to the same extent that such corporation would be, had it done or omitted the acts complained of against such receiver. (*Laws 1874, chap. 430, § 1, as amended by Laws 1876, chap. 446, § 2.*)

Every stockholder in any company, the franchises and property whereof shall have been sold as aforesaid, shall have the right to assent to the plan of readjustment and reorganization of interests pursuant to which such franchises and property shall have been purchased as aforesaid, at any time within six months after the organization of said new company, and by complying with the terms and conditions of such plan become entitled to his *pro rata* benefits therein according to its terms. (*Laws 1874, chap. 430, § 3.*)

Full power is hereby given to the railroad commissioners, corporate authorities or proper officials of any city, town or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, as mentioned in the first section of this act, to assent to any

plan or agreement of reorganization which provides for the formation of a new company, in conformity with this act, and the issue of stock therein to the proper authorities or officials of said cities, towns or villages, in exchange for the stock of the old or former company by them respectively held at par, subject to the foregoing provisions of this act. And such railroad commissioners, corporate authorities or other proper officials, may assign, transfer or surrender the stock so held by them in the manner required by any such plan and accept in lieu thereof the stock issued by said new corporation in conformity therewith. (*Laws 1874, chap. 430, § 4.*)

Sections 1 and 2 of chapter 430 of the Laws of 1874, previous to its amendment was as follows: In case the railroad and the property connected therewith, and the rights, privileges and franchises of any corporation created under the general railroad law of this State, or existing under any special act of the Legislature thereof, shall be sold under or pursuant to the judgment or decree of any court of competent jurisdiction made to execute the provisions or enforce the lien of any deed or deeds of trust, or mortgage theretofore executed by such company, the purchasers of such railroad property and franchises, their grantees or assigns, or a majority of them, may become a body politic and corporate with all the franchises, rights, powers, privileges and immunities which were possessed before such sale by the corporation whose property shall have been sold as aforesaid, by filing in the office of the secretary of state a certificate, duly executed under their hands and seals, and acknowledged before an officer authorized to take the acknowledgment of deeds, in which certificate the said persons shall describe by name and reference to the act or acts of the Legislature of this State under which it was organized, the corporation whose property and franchises they shall have acquired as aforesaid, and also the court by authority of which such sale shall have been made, giving the date of the judgment or decree thereof, authorizing or directing the same, together with a brief description of the property sold, and shall also set forth the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate.
2. The maximum amount of its capital stock, and the number of shares into which the same is to be divided.
3. The number of directors by whom the affairs of the said new corporation are to be managed, and the names and residences of the persons selected to act as directors for the first year after its organization.

And upon the due execution of such certificate and the filing of the same in the office of the secretary of state, the persons executing such certificate and who shall have acquired the title to the property and franchises sold as aforesaid, their associates, successors and assigns, shall become and be a body politic and corporate by the name specified in such certificate, and shall become and be vested with, and entitled to exercise and enjoy all the rights, privileges and franchises which, at the time of such sale, belonged to or were vested in the corporation formerly owning the property so sold, and shall be subject to all the duties and liabilities imposed by the provisions of the act entitled "An act

to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and of the acts amendatory thereof, except so far as may be inconsistent herewith; and a copy of the said certificate, by the secretary of state or his deputy, shall be presumptive evidence of the due formation of the new corporation therein mentioned; provided, always, that a majority of said persons shall be citizens and residents of this State.

In case the persons organizing the new corporation to be formed, as provided in the first section of this act, shall have acquired title to the railroad property and franchises which may have been sold as in said section mentioned, pursuant to any plan or agreement for the re-adjustment of the respective interests therein of the mortgage creditors and stockholders of the company owning such property and franchises at the time of any such sale, and for the representation of such interests of creditors and stockholders in the bonds or stock of the new corporation to be formed, as mentioned in said section, the said new corporation shall be authorized and have the power to issue its bonds and stock in conformity with the provisions of such plan or agreement; and the said new corporation may, at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former company, upon such terms as may be approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization aforesaid; and for the purposes of such plans and of such settlements, the said new corporation may and shall be authorized to establish preferences in respect to the payment of dividends in favor of any portion of its said capital stock, and to divide such stock into classes; provided, nevertheless, that nothing herein contained shall be held to authorize the issue of capital stock by the said new company to an aggregate amount exceeding the maximum amount of such stock mentioned in its certificate of incorporation.

§ 408. *The foreclosure of mortgages made by consolidated railroad companies of railroads lying partly within and partly without this State.*—Whenever a railroad corporation whose line of road lies partly in this State and partly in another State or States, which corporation shall have been created by the consolidation of a railroad corporation of this State with a railroad corporation or corporations of another State or States, shall have executed a mortgage upon its entire line of road, and a sale of the entire line of road under such mortgage shall have been or may hereafter be ordered, adjudged and decreed by a court of competent jurisdiction of the State or States in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this State in the judicial district in which some part of such line or road is situated, such sale shall operate to pass title to the purchaser of that part of the line of railroad lying in this State, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree

under which sale is had, had been made by the court of competent jurisdiction of this State. Such judgment or decree and sale may be so confirmed in any action now pending, or that may hereafter be brought in the said supreme court, for the foreclosure of such mortgage or in aid of an action for that purpose pending in such other State, if it shall appear that such confirmation is for the interest of the public and of the parties, due and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this State and for such costs, expenses and charges as may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the State in which the greater part of the line of railroad is situated, such receiver may perform within this State, the duties of his office not inconsistent with the laws of this State, and may sue and be sued in the courts of this State. (*Laws 1879, chap. 505, § 1.*)

A corporation created under the laws of the State in which the greater part of the line of such railroad may be situated, for the purpose of taking title to and operating the entire line of railroad, so sold as provided in the preceding section, with its franchises and appurtenances, the judgment, decree and sale having been duly confirmed and approved, as therein provided, may hold, possess and operate that part of the line of such railroad lying in this State, and shall have all the rights and franchises theretofore possessed by the corporation executing the mortgage under which such judgment or decree and sale was made, and such as now are or may hereafter be conferred upon railroad corporations organized under the laws of this State, and shall be subject to the duties and liabilities to which such corporation was by the laws of this State subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this State, provided that an exemplified copy of the charter, certificate of incorporation or articles of association under and by virtue of which such corporation is created, and of the judgment or decree under which said entire line of railroad was sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, shall be filed in the office of the secretary of state for this State. (*Id.*, § 2.)

**§ 409.** *When the president, treasurer, and secretary may issue certificates of stock after foreclosure and sale.*  
—The president, treasurer, and secretary of any railroad company organized under the laws of this State, or either

of them, whose property and franchises have been sold under a foreclosure of any mortgage given to secure the payment of any bond or bonds issued by such company, are hereby authorized and required after such foreclosure and sale upon demand of any individual or any duly authorized officers of any corporation, town, county or city entitled thereto, to issue certificates of stock in said railroad company; provided, when any such individual or the proper officers of any corporation, county, town or city duly authorized so to do, have subscribed to the stock of such railroad company and paid the amount of such subscription to the officers of such railroad company, either in money or bonds, before the date of such foreclosure and sale, and a certificate of stock through the neglect of such railroad company or of any individual or the officers of any town, county, city or corporation has not been issued and delivered to said subscriber or the officers of any corporation, town, county or city for the amount of money or both so subscribed and paid. (*Laws 1880, chap. 5, § 1.*)

All certificates of stock issued under the authority of the first section of this act shall have all the force and effect, and shall give the holder all the rights which would pertain thereto, as if said stock had been issued at the date and payment of the subscription thereto. (*Id.*, § 2.)

**§ 410.** *The increasing of the capital stock to facilitate the reorganization of railroads.*—Whenever the maximum amount of capital stock mentioned in the certificate of incorporation of any railroad or railway company on file in the office of the secretary of state, shall be insufficient to carry out any plan or agreement of reorganization set forth in such certificate of incorporation, it shall be lawful for the directors, or a majority of the directors of said company, to file an additional certificate with the secretary of state, which shall set forth the fact of such insufficiency and the additional amount of capital stock required to carry out such plan or agreement of reorganization, and thereupon, with the approval of the state engineer and surveyor, said company shall be authorized to issue such capital stock as fully as if the same had been mentioned or set forth in the original certificate of incorporation. Said additional certificate shall be filed in the office of the secretary of state within two months after the passage of this act. (*Laws 1880, chap. 155.*)

Chapter 111 of the Laws of 1850, provided for the sale of the real and personal estate and franchises of a railroad company at public auction, to provide means to pay the creditors of the corporation, the purchasers were authorized to sell and distribute the stock, appoint an election for trustees and organize

the company known by such name as a majority of the trustees should adopt, and that the company, when organized, should have the same power and be subject to the same restrictions as the old company. It was held that a new corporation was not created, but that it was a continuation of the former corporation under a new name. (*Mosier v. Hilton*, 15 Barb., 663.) The rolling stock of a road is personal property and is leviable as such on execution (*Beardsley v. Ontario Bank*, 31 B., 619; *Stevens v. Buffalo and N. Y. R. R. Co.*, id., 590,) and is not considered fixtures, even as between a mortgagee and an execution creditor. (*Id.*) Requisites of the complaint in an action by a trustee of the first mortgage bonds, respecting the fund arising from a railroad mortgage. (*Coe v. Beckwith*, 10 Abb., Pr., 296.) A stockholder of the company may purchase its property at a sheriff's sale, even below its value, for his own benefit, and where no fraud is shown, is not accountable to the other stockholders therefor (*Hickles v. Rochester City Bank*, 11 Paige, 118; affirmed, id., 129, note.)