

CHAPTER 30.

OF MUNICIPAL AID AND CREDIT GIVEN TOWARD
THE CONSTRUCTION OF RAILROADS.

§ 410(a). Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. * * * *

No county, city, town, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become, directly or indirectly, the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town, or village purposes. * * * *
(Sections 10 and 11 of article 8 of the State Constitution as amended by vote of the people November 3, 1874.)

Judge Dillon, in his treatise upon Municipal Corporations, second edition, section 104, says that a large and almost unbroken line of judicial decisions in most of the States has established the principle, that in the absence of special restrictive constitutional provisions it is competent for the Legislature to authorize a municipal or public corporation to aid in the construction of rail-ways running near or through them, by subscribing to the stock and taxing the inhabitants, or the property within their limits, to pay the indebtedness thereby incurred. (See cases cited in Dillon on Municipal Corporations [2d ed.], vol. 1, p. 219, *et seq.*; see also Dillon on Municipal Bonds for a full and comprehensive discussion of the whole question appertaining to municipal bonds.)

The Legislature has not power to authorize a municipal corporation to issue its obligations for the purpose of raising money wherewith to pay a subscription of said corporation to the capital stock of a private corporation, and to provide for the payment of such obligations by taxation. It has not power to tax for private purposes only. (*Weismer v. Village of Douglass*, 64 N. Y., 92.) Accordingly *hæc*, that the act (chap. 577, Laws of 1868) purporting to authorize defendant to subscribe for and take capital stock of the L. E. H. and M. Co., to issue its bonds to raise money to pay for such stock, and to collect by taxation the money to pay such bonds was unconstitutional and void, and the bonds issued thereunder invalid. (*Id.*) A municipal corporation is not estopped from asserting the invalidity of its bonds by any conduct of its officers or agents, or by the acts of acquiescence and approval on the part of the inhabitants of the municipality after knowledge of the facts. (*Id.*)

Previous to the amendment to the constitution cited above, the following decisions were made by the courts: A municipal corporation could not

issue its bonds and invest the proceeds, in railroad stock, unless such power has been conferred by the Legislature and accepted by such municipal corporation. (*Town of Duaneburgh v. Jenkins*, 46 Barb., 294, and cases cited.) Where in a charter, conferring upon the municipality, authority to aid a railroad company by subscribing to the stock of such railroad corporation, and raising the necessary funds therefor, but such authority was not to be exercised, until the question whether or not it was expedient for the city to create such liability, should be submitted to the people of the city, and a vote taken thereon for or against such subscription, it was *held*, that such provision was not unconstitutional, nor a delegation of legislative power, but a legitimate case of conditional legislation. (*Bank of Rome v. Village of Rome*, 18 N. Y., 38; *Clarke v. City of Rochester*, 24 Barb., 446; S. C., 14 How. Pr., 193; S. C., 5 Abb. Pr., 107; reversing S. C., 13 How. Pr., 204.) The former constitution did not in terms or by necessary amendment restrain the Legislature from conferring upon municipal authorities the power to subscribe to the stock of a railroad and to raise the necessary funds by taxation. (*Bank of Rome v. Village of Rome*, 18 N. Y., 38; and see *Starin v. Town of Genoa*, 23 id., 439; *Gould v. Town of Sterling*, id.; *People, ex rel. Albany and Susquehanna R. R. Co. v. Mitchell*, 35 id., 551; affirming S. C., 45 Barb., 208; *Matter of Tax Payers of Kingston*, 40 How. Pr., 444.) The Legislature cannot compel a town to become a stock holder in a railroad company without its consent. (*People, ex rel. Dunkirk, W. and P. R. R. Co. v. Bachelder*, 53 N. Y., 128.) An order granting municipal aid to a railroad corporation, upon the condition that the avails be used exclusively in the construction of its railroad, within the county in which the municipal corporation granting such aid was located, is void where the railroad company had no authority to construct its road or any part thereof, in the said county (*People, ex rel. Averill v. Adirondack Company*, 57 Barb., 656;) and the action of the county judge in granting such order, is reviewable by certiorari. (*Id.*) No legislative enactments authorizing towns in their corporate capacities, to issue their bonds; borrow money thereon, and donate the proceeds to the railroad company, is valid (*Sweet v. Hulbert*, 51 Barb., 312.) There is nothing in an act authorizing a town to subscribe for stock or bonds of a railroad company or to issue its bonds or raise money by taxation to pay for the same that is repugnant to the constitutional provisions (Const., art. I, § 6) designed to protect the citizen from being deprived of his property without due process of law, and restraining the taking of private property for public use, unless just compensation is made therefor. The owner is not deprived of his property, nor is it taken from him for public use within the meaning of the constitution; nor is his property affected, except contingently and remotely, as in the case of taxation (*Grant v. Courter*, 24 Barb., 232;) nor is the public moneys or property appropriated for local or private purposes; the credit of the State is not pledged in aid of any individual association or corporation. (*Matter of Tax Payers of Kingston*, 40 How. Pr., 444.) The town by taking stock, becomes a stockholder and sustains the same relation to the company as an individual stockholder. The issue of bonds, is only the machinery employed to pay for the stock. (*Matter of Tax Payers of Kingston*, 40 How. Pr., 444.) Defects in the consent of the tax payers may be cured by a subsequent legislative enactment. (*People ex rel. Albany and Susquehanna R. R. Co. v. Mitchell*, 35 N. Y., 551; affirming S. C., 45 Barb., 208; *People v. Clarke*, 53 Barb., 171.)

Former legislative enactments.

Although municipal corporations are now prohibited by the State constitution from issuing bonds to pay indebtedness incurred in the construction of railroads, it may become important to know what the legislation has been in respect thereto, as many bonds which have been heretofore issued are yet unredeemed, and there are litigations pending in many instances concerning the validity of the same. Below will be found the several acts passed by the Legislature in respect to the bonded indebtedness of the municipal corporations and towns of the State, omitting therefrom the various minor local enactments designed to affect special localities. These acts are given *in haec verba*, and will have to be severally consulted for their respective amendments.

(See, also, Laws 1853, chapter 603, restricting municipal corporations from loaning their credit in aid of corporations, and regulating their power to contract debts. See Laws 1870, chapter 300, providing for the payment of bonds of towns, villages and other municipal corporations. See Laws 1874, chapter 410, authorizing towns and villages to provide sinking fund and pay bonded indebtedness. Laws 1877, chapter 320, curing defects in bonds issued, when time of payment does not exceed sixty days beyond the time allowed by law for their maturity. Laws 1878, chapter 75—bonded indebtedness may be paid by issue of new bonds, and regulating sale of the same.)

CHAPTER 195, SECTION 1, OF LAWS OF 1866.

AN ACT in regard to filing the consent of taxpayers for the issuing of bonds to aid in the construction of railroads.

“The original written consent, duly acknowledged or proved, of the taxpayers to the loaning of money on the faith and credit of any town or city, for the issuing of bonds of such town or city, to aid in the construction of any railroad in this State, shall be recorded and filed in the office of the clerk of the county in which such towns or cities may be situated, and a copy thereof, duly certified by the said county clerk, shall be filed in the office of the clerk of the town or city wherein the respective property affected thereby is situated, any law requiring a different filing to the contrary notwithstanding.”

CHAPTER 907, LAWS OF 1869.

AN ACT to amend an act entitled “An act to authorize the formation of railroad corporations, and to regulate the same,” passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads.

SECTION 1. Whenever a majority of the tax-payers of any municipal corporation in this State, whose names appear upon the last preceding tax list or assessment roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation, shall make application to the county judge of the county in which such corporation is situated, by petition verified by one of the petitioners setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent of the whole amount of taxable property as shown by said tax list and assessment roll), and invest the same or the proceeds thereof in the stock or bonds (as said

petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that, on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition, and as the amount of taxable property represented by them. And any solvent moneyed, manufacturing or other corporation or company formed under the laws of this State, and being assessed on real or personal property therein, shall have all the rights and privileges under this act so far as property representation is concerned, as other tax payers. And the board of directors or trustees of any such corporation or company may apply to the county judge by petition in the same manner as herein provided for other tax-payers. The words "municipal corporation," when used in this act, shall be construed to mean any city, town or incorporated village in this State. But nothing herein contained shall be construed as to include the city or counties of New York, Kings, Erie, Green, Albany, Westchester, Ontario, Seneca, Yates, Onondaga and Niagara. (*For amendments see Laws 1870, chap. 173, § 1; see Laws 1871, chap. 925, § 1; see chap. 883, Laws 1872; also see post, making this act applicable to certain counties above excepted.*)

52 N. Y. 296; id., 583; 53 id., 128; 55 id., 1; id., 135; id., 587; 6 Lans., 306; 2 Hun, 385; 1 T. & C., 570. 63 Barb., 105; 7 Lans., 431; 3 T. & C., 794; 2 id., 134-142; 70 N. Y., 28; 66 id., 491; 8 Hun, 340; 17 id., 374; 15 id., 218; 18 id., 116; id., 206; 22 id., 201.

§ 2. It shall be the duty of the said judge, at the time and place named in the said notice, to proceed to take proof as to the said allegations in said petition; and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax-payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition do represent a majority of the tax-payers of said municipal corporation as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record. And such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State. (*For amendments see Laws 1870, chap. 597, § 1; see Laws 1871, chap. 925, § 2.*)

68 N. Y., 32. 18 Hun, 206.

§ 3. If the said judge shall adjudge and determine that such petitioners do represent a majority of such tax-payers as aforesaid, and a majority of such taxable property, as aforesaid, it shall be his duty forthwith to appoint and commission three persons who shall be freeholders, residents and tax-payers within the corporate limits of such corporation, to be commissioners for the purposes hereinafter named. The said commissioners shall hold their offices for five years and until others are appointed by the county judge of said county, and shall, before entering upon the duties of their office, each make oath faithfully to discharge all the duties thereof. All vacancies in such commission shall also be filled by such county judge as they occur. Said commissioners shall receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and their necessary disbursements to be audited and paid by the usual disbursing officer of such municipal corpora-

tion. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum and may exercise the powers of the commission. (See *Laws 1873, chap. 720, § 1.*)

76 N. Y., 182.

§ 4. It shall be the duty of such commissioner, with all reasonable dispatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal, and if not, then by their individual seals, and signed and certified by said commissioners, who are hereby authorized and empowered to affix such common seal thereto and to so sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent per annum, payable semi-annually, and shall not exceed in amount twenty per cent of the entire taxable property within the bounds of said municipal corporation as shown by said tax list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall also bear interest warrants corresponding in number and amounts with the several payments of interest to become due thereon, but the commissioners may agree with any holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bond, which shall then be transferable only on the commissioners' records. The savings banks of this State are authorized to invest in said bonds not to exceed ten per cent of their deposits. All taxes except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city on the assessed valuation of any railroad in said town, village or city, for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, village or city lies, and said money so paid over, including interest collected on bonds held by said treasurer as a sinking fund, shall be invested by said treasurer in State, city, town, county or village bonds, issued pursuant to law of this State on United States bonds, within sixty days after receiving the same, and shall be held by said county treasurer as a sinking fund for the redemption and payment of the bonds issued or to be issued by said town, village or city, to aid in the construction of said railroad. (For amendments, see *Laws 1870, chap. 789, § 1; see Laws 1871, chap. 283, § 1; Laws 1871, chap. 925, § 6.*)

§ 5. Such commissioners are further empowered and directed to subscribe in the name of the municipal corporation which they represent to the stock or bonds of the railroad company named in such petition (as the petition may direct), to an amount equal to the amount of bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, at their discretion, sell and dispose of the said municipal corporation bonds so created by them at rates not less than par, and invest the proceeds thereof in such stock or bonds of such railroad company as may be directed in said petition. They shall represent, either in person or by proxy, such municipal corporation at all meetings of such railroad bondholders or stockholders. Such stock or bonds so purchased by said commissioners may be sold by them before the maturing of the bonds of such municipal corporation only upon the order of the county judge of the county, made upon the petition of a majority of the taxpayers of said municipal corporation representing a majority of the

taxable property thereof, as shown by the last preceding tax list or assessment roll; and the proceeds from such sale shall be forthwith paid by them to the treasurer (or other proper officer) of such municipal corporation, to be by him invested in a sinking fund, as hereinafter provided. Such commissioners may vote for directors on the stock of such town, village or city. (*See Laws 1874, chap. 430; Laws 1876, chap. 446.*)

3 Hun, 401; 19 *id.*, 405; 75 N. Y., 45.

§ 6. The bonds of any municipal corporation, issued pursuant to the provisions of this act, shall be charged upon the real and personal estate within the limits thereof, and the principal and interest thereof when due (or so much thereof as shall fail to be met by the interest on such railroad bonds or the dividends on such railroad stock, or the sinking fund herein provided for), shall be collected and paid in like manner as other debts, obligations and charges against the said municipal corporation. The said commissioners shall also provide within three years from the time of issuing said bonds, for the annual payment of at least one per cent of the same to constitute a sinking fund, so as to secure the final liquidation of said bonds within twenty-five years after their date; and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said towns over the amount necessary to pay the annual interest on said bonds; and if the amount of such surplus dividends is not sufficient for the annual payment of said one per cent, and the said commissioners shall not have received sufficient from the sale of the stock belonging to the town to pay the same, and from other sources as herein provided, then the deficiency shall be reported by said commissioners to the board of supervisors, to be levied and raised annually in the manner herein provided for paying the interest on said bonds. The treasurer (or other proper officer of such municipal corporation) shall have the custody of any railroad bonds or certificates of stock that may be subscribed as aforesaid, and shall collect the interest upon any such bonds or the dividends upon such stock as it becomes due or is made payable, and shall apply the same toward the payment of the interest from time to time becoming due upon the said bonds of said municipal corporation; any surplus of interest or dividends, after providing for the interest upon the bonds of said municipal corporation, shall go to make up a sinking fund for the redemption of the principal of said corporation bonds. In case the stock or bonds purchased as aforesaid are sold by said commissioners, such treasurer or other officers shall also invest the proceeds thereof in a like sinking fund; and in case the same is not sold when the said bonds hereby authorized to be created and issued by said commissioners shall mature and the principal thereof become payable, the commissioners shall sell the same or so much thereof as shall be necessary to pay the outstanding principal sum due on such bonds in full, and shall pay the proceeds thereof to such treasurer or other proper officer, to be by him applied to the redemption and payment of such bonds. (*See Laws 1875, chap. 421; Laws 1875, chap. 238; Laws 1855, chap. 585; Laws 1877, chap. 349.*)

16 Hun, 285; 17 *id.*, 374; 13 *id.*, 582.

§ 7. The moneys received by any railroad company, from any such commissioners, or from the sale of any bonds of any municipal corporation which they may receive under the provisions of this act, shall be by the said company faithfully applied to the construction and equipment of such railroad, and to

no other purpose; and any other use thereof by any officer or agent of such company shall be deemed to be a misdemeanor, and shall be punished on conviction by imprisonment in the county jail for a term not exceeding five years.

§ 8. The bonds of any municipal corporation which may be issued under the provisions of this act shall be registered in the office of the county clerk of the county in which such corporation is situated, and shall have the words "registered in the county clerk's office" written or printed upon them, attested by the official seal of said clerk; and said clerk shall receive for each attestation the sum of twenty cents.

§ 9. Whenever any municipal corporation in this State that has heretofore issued its bonds in aid of any railroad, upon the written consent of tax-payers, or whenever any holder of such bonds so heretofore issued shall desire to perpetuate the proof of such consent in the manner herein before provided for the perpetuation of the proof of such consent, as to bonds which may be issued under the provisions of this act, application for that purpose may be made to the county judge of the county in which such municipal corporation is situated; and it shall be lawful for such judge, after notice to whom it may concern in manner as herein before provided, to proceed to take proof concerning the allegations in such petition; and if it shall be proved to his satisfaction that all the consents necessary to be obtained before such bonds could be lawfully issued were so obtained, he shall find the facts and so adjudge and determine; and such judgment, and the record thereof, shall have the same force and effect as other judgments and records in other courts of record in this State.

§ 10. Nothing herein contained shall be construed as permitting any municipal corporation, in or through which a railroad has already been constructed and is in operation, to aid in the construction of any road or any competing railroad, under the provisions of this act, unless the railroad already built appears by its corporate name upon the assessment roll specified in this act. (See *Laws 1871, chap. 925, § 3; Laws 1872, chap. 883 § 2; for repeal of foregoing section 10, see Laws 1871, chap. 260, § 1; exempting parts of Cayuga and Tompkins counties.*)

§ 11. This act shall take effect immediately.

See section 12, added by chapter 62, Laws of 1879, *post*.

CHAPTER 173, LAWS OF 1870.

AN ACT to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, being "An act entitled an act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April two, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteen, eighteen hundred and sixty-nine.

SECTION 1. Section one of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April two, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," is hereby amended by striking out of said section the words "Seneca," "Yates" and "Ontario," wherever the same occur

§ 2. The provisions of said chapter nine hundred and seven, laws of eighteen hundred and sixty-nine, passed May eighteen, eighteen hundred and sixty-nine,

are hereby made applicable to the counties of Seneca, Yates and Ontario, and to the several towns and incorporated villages within said counties of Seneca, Yates and Ontario.

§ 3. This act shall take effect immediately.

CHAPTER 300, LAWS OF 1870.

AN ACT to provide for the payment of bonds of towns, villages and other municipal corporations.

SECTION 1. In all cases where bonds of any town, village or other municipal corporation may have been or shall hereafter be issued according to law, and in all cases where the payment of the principal or interest of such bonds shall not have been otherwise paid or provided for, the same shall be a charge upon the real and personal property of such town, village or municipal corporation, and shall be assessed, levied, collected and paid in like manner as other debts, obligations and charges against such town, village or municipal corporation, except that in villages the same shall be assessed, levied and collected by the trustees thereof in the following manner: The commissioners of said village, if any there be, who are or have been duly authorized by law to issue said bonds, or if there shall be no commissioners, then the said trustees, or a majority of them, shall, on or before the first day of January of each year, prepare and file with the clerk of the said village corporation a detailed statement of the amount of bonds which may have been issued by said village, or which may be a charge upon the same, with the amount of principal and interest which may have become due, or which shall become due during the succeeding year, and such amount of principal and interest which shall be already due, or which shall become due during such succeeding year, shall be by the trustees of said village assessed and levied upon the taxable property of said village, and collected with the other taxes which shall be collected from time to time for village purposes; and whenever, through inadvertence, neglect or other cause, any portion of the principal or interest due as aforesaid upon such bonds by such municipal corporation shall not have been paid, the same shall be assessed and collected at the first assessment and collection of taxes by such municipal corporation after such failure or omission to pay the same.

§ 2. Any commissioner, officer or officers whose duty it shall be to make reports as provided for in the first section of this act, or to make provision for the payment of the principal or interest of such bonds as aforesaid, and who shall fail or refuse to make such report, or to provide for such payment, shall be liable to a penalty not exceeding one thousand dollars, nor less than two hundred and fifty dollars, to be sued for and recovered by the holder of any of the aforesaid bonds or obligations.

§ 3. This act shall take effect immediately.

CHAPTER 438, LAWS OF 1870.

AN ACT to authorize the owners and holders of certain bonds payable to bearer to render the same payable only to order.

SECTION 1. It shall be lawful for the owners or holders of any bond issued by any village, town, city or county in this State, pursuant to law, and made payable to the bearer thereof, to render such bonds non-negotiable, except by the owner's indorsement, by indorsing upon the same, and subscribing a state-

ment that said bond is the property of said owner, and thereupon the principal sum of money mentioned in said bond shall only be payable to said owner, or his legal representatives or assigns.

§ 2. This act shall take effect immediately.

CHAPTER 507, LAWS OF 1870.

AN ACT to define the powers of commissioners appointed under chapter nine hundred and seven of the Laws of eighteen hundred and sixty-nine, bonding municipalities to aid in the construction of railroads.

SECTION 1. It shall be competent for any corporation, in and to the construction of whose railroad, bonds shall have been authorized to be issued by any municipal corporation in this State, to enter into any agreement with the commissioners appointed to issue said bonds, limiting and defining the times when and the proportions in which said bonds or their proceeds shall be delivered to said corporation, and the place or places where and the purposes for which said bonds or their proceeds shall be applied or used, and any such agreement in writing, duly executed by such corporation and a majority of such commissioners, shall in all courts or places be valid and effectual. And such commissioners, shall not be compelled by any court to deliver such bonds or their proceeds to such corporation, until such agreement shall be executed if required by them.

§ 2. This act shall take effect immediately.

(For amendment see section 5, Laws 1871, chap. 925.)

CHAPTER 597, LAWS OF 1870.

AN ACT to amend an act entitled "An act to vest in the board of supervisors certain legislative powers, and to prescribe their fees for certain services," passed April third, eighteen hundred and forty-nine.

SECTION 1. Section two of an act entitled "An act to vest in the board of supervisors certain legislative powers, and to prescribe their fees for certain services, passed April third, eighteen hundred and forty-nine, is hereby amended so as to read as follows:

§ 2. Whenever any board of supervisors shall form a new town within its county from parts of other towns or town which shall have bonded to aid in the construction of any railroad under any act authorizing the same, and such bonds or any part thereof shall remain unpaid; or when any board of supervisors shall change the line of any town which shall have bonded to aid in the construction of any railroad in this State, and such bonds or any part thereof shall remain unpaid, the new town so formed and the town to which shall be annexed the part taken from another town, shall pay a proportionate share of such bonds as shall remain unpaid, which share shall be ascertained from the assessed valuation of such town or towns as contained in the last equalized valuation of the assessment roll made prior to the formation of such town or the change of any such town line.

§ 2. It shall be the duty of the railroad commissioners of a town, any part of whose territory shall have been detached as aforesaid, to render a true statement to the board of supervisors, as now required by the general railroad act, of the amount necessary to pay the proportionate share belonging to the territory detached from their town which may be then coming due, and the board of supervisors shall add such proportionate share to the sums to be collected

from the town so formed, or to which shall have been added the territory detached from the other town or towns, to be collected as heretofore provided for by statute.

§ 3. Such proportionate share of moneys so collected shall be paid by the supervisors of the town wherein collected to the railroad commissioners of the town or towns from which such territory shall have been detached, and such commissioners shall use such moneys for the payment of the bonds issued in the same manner they are required to use the moneys raised in their own town.

§ 4. This act shall take effect immediately.

CHAPTER 789, LAWS OF 1870.

AN ACT to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteen, eighteen hundred and sixty-nine.

SECTION 1. Section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

§ 4. It shall be the duty of such commissioner, with all reasonable dispatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal, and, if not, then by their individual seals, and signed and certified by said commissioners, who are hereby authorized and empowered to fix such common seal thereto, and to sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent per annum, payable semi-annually, and shall not exceed in amount twenty per cent of the entire taxable property within the bounds of said municipal corporation, as shown by said tax list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall also bear interest warrants, corresponding in number and amounts with the several payments of interest to become due thereon, but the commissioners may agree with any holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bond, which shall then be transferable only on the commissioner's records.

The savings banks of this State are authorized to invest in said bonds not to exceed ten per cent of their deposits. All taxes, except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city, on the assessed valuation of any railroad in said town, village or city, for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, city or village lies. It shall be the duty of said treasurer, with the money which has heretofore been or shall hereafter be paid to him on said bonds, including the interest thereon, to purchase the bonds of said town, issued by said town, to aid in the construction of any railroad or railroads, when the same can be purchased at or below par; the bonds so purchased to be immediately canceled by said treasurer and the county judge, and deposited with the board of supervisors.

In case said bonds so issued cannot be purchased at or below the par value

thereof, then it shall be the duty of said treasurer, and he is hereby directed to invest said money so paid to him as above mentioned, with the accumulated interest thereon, in the bonds of this State, or of any city, county, town or village thereof, issued pursuant to the laws of this State, or in bonds of the United States. The bonds so purchased, with the accumulated interest thereon, shall be held by said county treasurer as a sinking fund for the redemption and payment of the bonds issued or to be issued by said town, village or city in aid of the construction of said railroad or railroads. In case any county treasurer shall unreasonably refuse or neglect to comply with the provisions of this act, any tax-payer in any town, village or city, theretofore having issued bonds in aid of the construction of any railroad or railroads, is hereby authorized to apply to the county judge, on petition, for an order compelling said treasurer to execute the provisions of this act. And it shall be the duty of said county judge, upon a proper case being made, to issue an order directing said county treasurer to execute the provisions of this act.

All provisions of law now in force relating to the enforcement of the decrees or orders of the Supreme Court are hereby declared to apply to and devolve upon said county judge in the enforcement of said order. The county treasurers of the several counties of this State, in which one or more towns are situated which have issued bonds for railroad purposes, shall execute a bond, with two sufficient sureties, to be approved by the county judge of the counties respectively, to the people of the State of New York, in such penal sum as may be prescribed by the board of supervisors of the respective counties, conditioned for the faithful performance of the duties devolving upon him in pursuance of the provisions of this act.

§ 2. This act shall take effect immediately.

CHAPTER 283, LAWS OF 1871.

AN ACT to amend an act entitled "An act to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled 'An act to amend an act entitled an act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteen, eighteen hundred and seventy.

SECTION 1. Section four of chapter seven hundred and eighty-nine of the laws of eighteen hundred and seventy is hereby amended so as to read as follows:

§ 4. It shall be the duty of such commissioner, with all reasonable dispatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal, and, if not, then by their individual seals, and signed and certified by said commissioners, who are hereby authorized and empowered to fix such common seal thereto, and to sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent per annum, payable semi-annually, and shall not exceed in amount twenty per cent of the entire taxable property within the bounds of said municipal corporation, as shown by said tax list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall also bear interest warrants, corresponding in number and amounts with the several payments of interest to become due thereon, but the

commissioners may agree with any holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bonds, which shall then be transferrable only on the commissioner's records. The savings banks of this State are authorized to invest in said bonds not to exceed ten per cent of their deposits. All taxes, except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city, on the assessed valuation of any railroad in said town, village or city for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, city or village lies. It shall be the duty of said treasurer, with the money arising from taxes levied and collected as aforesaid, which has heretofore been or shall hereafter be paid to him (including the interest thereon), to purchase the bonds of said town, issued by said town, to aid in the construction of any railroad or railroads, when the same can be purchased at or below par; the bonds so purchased to be immediately canceled by said treasurer and the county judge, and deposited with the board of supervisors. In case said bonds so issued cannot be purchased at or below the par value thereof, then it shall be the duty of said treasurer, and he is hereby directed, to invest said money so paid to him as above mentioned, with the accumulated interest thereon, in the bonds of this State, or of any city, county, town or village thereof issued pursuant to the laws of this State, or in bonds of the United States. The bonds so purchased, with the accumulated interest thereon, shall be held by the county treasurer as a sinking fund for the redemption and payment of the bonds issued or to be issued by said town, village or city in aid of the construction of said railroad or railroads. In case any county treasurer shall unreasonably refuse or neglect to comply with the provisions of this act, any tax-payer in any town, village or city theretofore having issued bonds in aid of the construction of any railroad or railroads, is hereby authorized to apply to the county judge, on petition, for an order compelling said treasurer to execute the provisions of this act. And it shall be the duty of said county judge, upon a proper case being made, to issue an order directing said county treasurer to execute the provisions of this act. All provisions of laws now in force relating to the enforcement of the decrees or orders of the Supreme Court are hereby declared to apply to and devolve upon said county judge in the enforcement of said order. The county treasurers of the several counties of this State, in which one or more towns are situated, which have issued bonds for railroad purposes, shall execute a bond, with two sufficient sureties to be approved by the county judge of the counties respectively, to the people of the State of New York, in such penal sum as may be prescribed by the board of supervisors of the respective counties, conditioned for the faithful performance of the duties devolving upon him, in pursuance of the provisions of this act.

§ 2. This act shall take effect immediately.

CHAPTER 537, LAWS OF 1871

AN ACT requiring commissioners of towns, cities and villages, appointed under the several acts to facilitate the construction of railroads in this State, to present bonds and coupons paid by them before the boards of auditors in towns, cities and villages, and providing for the cancellation and preservation of the same.

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SECTION 1. The commissioners appointed under and by virtue of the several acts to facilitate the construction of railroads in this State, and who have been duly authorized under said laws to issue bonds of any town, city or village therein, are hereby required to present before the boards of auditors of their respective towns, cities or villages, whose duty it is annually to examine and audit the receipts and disbursements of either town, city or village officers, at each annual meeting of said boards of town auditors, or the auditing board in any city or village, all such bonds and coupons thereof which have been paid by them respectively during the year then ending; also to render a written statement or report annually to said board, showing in items all their receipts and expenditures, with vouchers. It shall be the further duty of said commissioners to loan on proper security or collaterals or deposit in some solvent bank or banking institution, at the best rate of interest they may be able to obtain (not exceeding seven per cent), all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities, and all interest or earnings accruing from such loans or deposits shall be credited to their respective towns, cities or villages, and accounted for in their annual settlements with the said boards of auditors.

§ 2. It shall be the duty of the several boards of town auditors, or any auditing board in the cities or villages of this State, before whom such bonds or coupons thereof may be presented in pursuance of section one of this act, to cancel the same, by cutting out a portion of each bond or coupon so presented, in such manner as to effectually prevent the repayment of the same.

§ 3. All bonds and coupons so presented and canceled shall be deposited for safe-keeping and future reference in the office of the clerk of the county in which such towns, cities or villages are respectively situated, and said boards of town auditors or auditing boards in any city or village shall prepare and sign a certificate, showing a full description of all bonds or coupons so canceled and deposited by them, and shall file said certificate in the office of the clerk of their respective towns and villages, and in cities in the office of the clerk of the city.

§ 4. This act shall take effect immediately.

CHAPTER 925, LAWS OF 1871.

AN ACT to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,'" passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads, and also to amend chapter five hundred and seven of the laws of eighteen hundred and seventy, entitled "An act to define the powers of commissioners appointed under chapter nine hundred and seven of laws of eighteen hundred and sixty-nine, bonding municipalities to aid in the construction of railroads."

SECTION 1. Section first of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

§ 1. Whenever a majority of the taxpayers of any municipal corporation in this State who are taxed or assessed for property, not including those taxed for dogs or highway tax only, upon the last preceding assessment roll or tax list of said corporation, and who are assessed or taxed, or represent a majority of the taxable property, upon said last assessment roll or tax list, shall make applica-

tion to the county judge of the county in which such municipal corporation is situated, by petition, verified by one of the petitioners, setting forth that they are such majority of tax-payers, and are taxed or assessed for or represent such a majority of taxable property, and that they desire that such municipal corporations shall create and issue its bonds to an amount named in such petition, and invest the same, or the proceeds thereof, in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition, and as to the amount of taxable property represented by them. Any solvent corporation or company assessed or taxed on said last assessment roll or tax list may join in such petition, and shall have all the rights and privileges under this act as other tax-payers. Any person, partnership or corporation upon whom it shall have been intended to levy a tax by virtue of said last assessment list and tax roll, under whatever name, and who shall have paid or are liable to pay such tax thus intended to be assessed and levied, shall be a tax-payer, entitled to represent the property thus taxed, and as such entitled to all the rights and privileges of this act. The petition authorized by this section may be absolute or conditional; and if the same be conditional the acceptance of a subscription founded on such petition shall bind the railroad company accepting the same to the observance of the condition or conditions specified in such petition; provided, however, that non-compliance with any condition inserted in such petition shall not in any manner invalidate the bonds created and issued in pursuance of such petition. No municipal corporation shall issue its bonds under the provisions of this act for a greater amount than twenty per centum of the taxable property thereof as appears on its said last assessment list or tax roll. The words "municipal corporation" when used in this act shall be construed to mean any city, town or incorporated village in this State, and the word "tax-payer" shall mean any corporation or person assessed or taxed for property, either individually or as agent, trustee, guardian, executor or administrator, or who shall have been intended to have been thus taxed and shall have paid or are liable to pay the tax as hereinbefore provided, or the owner of any non-resident lands, taxed as such, not including those taxed for dogs or highway tax only, and the words "tax list or assessment roll" when used in this act shall mean the tax list or assessment roll of said municipal corporation last completed before the first presentation of such petition to the judge. But nothing herein contained shall be construed so as to include the city of New York or the counties of New York, Kings, Eric, Westchester, Onondaga, and the town of Royalton in the county of Niagara, within the provisions of this act.

§ 2. Section two of chapter nine hundred and seven of the Laws of eighteen hundred and sixty-nine, is hereby amended so as to read as follows :

§ 2. It shall be the duty of the said judge, at the time and place named in the said notice, to proceed and take proof as to the said allegations in said petition, and if it shall appear satisfactorily to him that the said petitioners, or the

said petitioners and such other tax-payers of said municipal corporation as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax-payers of said municipal corporation, as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine, and cause the same to be entered of record in the office of the clerk of the county in which said municipal corporation is situated, and such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State, and in case any county judge, to whom any such petitions may have been presented, shall be declared incompetent or ineligible or in any manner disqualified to hear the same, by any court on certiorari, from any determination of such county judge in any proceeding under this act had before him, the original petitions filed with the county clerk in such proceeding and on such determination, may be taken from file and presented to a judge of an adjoining county or a justice of the supreme court; and in all such cases the same proceedings may be had before such county judge or justice of the supreme court as are required by the provisions of this act. The judge shall file the petition as part of the judgment roll, and on making his final determination in any case he shall forthwith publish notice thereof for three weeks, at least once in each week, in the same newspaper in which notice of such hearing was published as ordered.

§ 3. Section ten of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

§ 10. Nothing herein contained shall be construed as permitting any municipal corporation, in or through which a railroad has already been constructed and is in operation, to aid in the construction of any other railroad under the provisions of this act, unless the railroad already built is assessed or taxed upon the assessment roll specified in this act; provided, however, that this section shall not apply to any railroad exempted from taxation by any law of this State.

§ 4. Review of proceedings under the acts hereby amended shall be by certiorari, and no writ of certiorari shall be allowed unless said writ shall be allowed within sixty days after the last publication of notice of the judge's final determination, as provided in section two of this act, and where such judgment is so entered prior to the passage of this act, unless said writ is allowed within sixty days after the passage of this act. On the return of the certiorari, the court out of which the same issued shall proceed to consider the matter brought up thereby, and shall review all questions of law and of fact determined for or against either party by the county judge. And the said courts or court of appeals in appeals now pending, and in all future proceedings, may reverse or affirm or modify, in all questions of law or fact his final determination, or may remand the whole matter back to said county judge to be again heard and determined by him. And it may by order direct that he proceed thereon *de novo*, in the same manner and with the same effect as if he had taken no action therein, or it may by such order specify how and in what particulars he shall hear and determine the same on such remanding thereof. Applications for certiorari shall be on notice. On review, persons taxed for dogs or highway tax only shall not be counted as tax-payers unless that claim was made before the county judge. The county judge shall forthwith proceed to carry into effect all orders of any court on review under this act.

§ 5. Chapter five hundred and seven of the laws of one thousand eight hundred and seventy is hereby amended by adding to the end of section first as follows: But in case such commissioners and such railroad corporation cannot agree, or in case the said commissioners refuse to make any agreement, then in either case the Supreme Court at general term may, on motion and after hearing all parties interested, determine upon what terms and conditions said bonds should be delivered to said railroad corporations, having due regard to the public good, the rights of said municipal corporation whose bonds are authorized to be issued, and the rights of said railroad corporation, and shall have power to compel the delivery of said bonds on such terms and conditions, and in such manner as it shall thus determine upon, by the usual process of the court. Said court shall also, by the usual process of said court in like cases, have power at any time to prevent by injunction the issue of said bonds or any portion thereof, on notice and for good cause shown. And any justice of said court may grant a temporary injunction until such motion can be heard.

§ 6. Section four of chapter nine hundred and seven of laws of eighteen hundred and sixty-nine, as amended by chapter two hundred and eighty-three of the laws of eighteen hundred and seventy-one, is hereby amended by adding at the end thereof as follows: In case of a vacancy in the office of commissioners, or in case all commissioners are notified of any meeting, a majority of the commissioners shall have and exercise all the powers and duties of the three commissioners. The said commissioners may issue the said bonds payable at any time they may elect, less than thirty years, any law heretofore passed to the contrary, but they shall not so issue said bonds that more than ten per cent of the principal of the whole amount of bonds issued shall become due or payable in any one year.

§ 7. This act shall take effect immediately.

The cities, towns, villages or municipalities in the counties of Cayuga and Tompkins are expressly exempted from the operation of section 3 amending section 10 (*Laws 1871, chap. 260, §1*).

CHAPTER 824, LAWS OF 1872.

In relation to "The Sodus Bay and Corning Railroad Company."

SECTION 1. All signatures heretofore made to any petition asking that any municipality of this State may create and issue its bonds in aid of the said "The Sodus Bay and Corning Railroad Company" under its present or former corporate name under any of the acts hereby amended, which signatures were made at any time after the commencement of the formation of said railroad company by stockholders signing the articles of association of said railroad company, shall and are hereby declared to have been and to be as valid and effectual in all proceedings and courts as though said signatures had been made after the certificate of incorporation of said railroad company under its former corporate name of "The Sodus Bay, Corning and New York Railroad Company" had been duly filed in the office of the secretary of state; but this act shall not apply to any municipality in Wayne county.

§ 2. This act shall take effect immediately.

CHAPTER 843, LAWS OF 1872.

Bonds issued by two companies connecting common line of road.

§ 2. Whenever two railroad companies for a portion of their respective lines embrace the same location of line, or whenever their lines connect or are tribu-

tary to each other, such companies may by agreement provide for the construction by one of said companies of so much of said line as is common to both or connects with its own line, and for the manner and terms upon which the business thereon shall be performed; and the company so constructing the common or connecting and tributary portion of road shall, if the terms of such agreement so provide, be entitled to have and receive all the town bonds which have been or may be authorized to be issued to either company in aid of the construction thereof, and the towns authorized to issue such bonds are hereby authorized and required to exchange the same for the stock or bonds of the railroad company that shall, under such agreement, construct a railroad upon the line designated therein, to an amount specified in the petition of the tax-payers, or remaining unpaid on their subscription to the stock of either of said railroad companies. Nothing in this act contained shall be construed so as to compel the commissioners of any town that has assented to bond for railroad purposes for any specified line of railroad to surrender the bonds of any such town to any other railroad organization, until the assents of a majority of the tax-payers, owning a majority of the property appearing upon the assessment roll of such town, has been first obtained.

§ 3. This act shall take effect immediately.

CHAPTER 883, LAWS OF 1872.

AN ACT to confer jurisdiction upon the supreme court or the judges thereof in proceedings under chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to authorize the formation of railroad corporations and to regulate the same, passed April second, eighteen hundred and fifty, so as to permit the municipal corporations to aid in the construction of railroads," as amended by chapter nine hundred and twenty-five of the laws of eighteen hundred and seventy-one, and to repeal section ten of said act as thus amended.

SECTION 1. The petition of a majority of the tax-payers of any municipal corporation of this State who are assessed or taxed, or represent a majority of the taxable property of said corporation as required, and provided by section one of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, as amended by chapter nine hundred and twenty-five of the laws of eighteen hundred and seventy-one, duly verified as therein required, may be presented to any judge of the supreme court at any special term of said court, and on such presentation said judge or said court shall have all power and proceed to give notices, hear the parties and proofs, and adjudge, decree and determine as to all matters in like manner, and in all respects and with like force and effect as the county judge would have done under the acts hereby amended had such petition been presented to him. Such court or judge thereof, upon presentation of such petition, or at any time thereafter during the pendency of any proceeding, are hereby authorized to appoint any proper person as referee to take the evidence, and report thereupon upon any questions pending in such proceedings, and such person thus appointed referee shall have all the powers of referees appointed by the supreme court in actions therein, and shall report the evidence taken by him with his conclusions of fact and law and opinion thereupon to said judge or court appointing him.

The said judge or any special term of said court may, on a notice of not less than eight days to all parties appearing on the hearing upon filing the report of

said referee, hear, determine and decree as to all matters as though the proofs had been taken without any reference in such proceedings, and with like force and effect as is provided with regard to a county judge under the acts hereby amended. No appeal can be taken from any order or decree under this act, unless on notice to all parties appearing on the hearing, and the granting or refusing said appeal, and proceedings thereunder, shall be governed by the same rules as govern the granting or refusing a certiorari of proceedings under the acts hereby amended, and proceedings under said certiorari, if allowed.

§ 2. Section ten of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, as amended by section three of chapter nine hundred and twenty-five of the laws of eighteen hundred and seventy-one is hereby repealed.

§ 3. This act shall take effect immediately.

CHAPTER 720, LAWS OF 1873.

AN ACT to compel railroad commissioners to give bonds.

SECTION 1. The commissioners referred to in section three of the act entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May eighteen, eighteen hundred and sixty-nine, are hereby required in all cases of future appointment, within ten days after entering upon the duties of their office, and before receiving any funds belonging to the town in said section three referred to, to make and deliver to the clerk thereof a bond in such penalty and with such sureties as the board of auditors for such town shall prescribe, conditioned for the faithful discharge of their official duties, and that they will well and truly keep and pay over and account for all moneys belonging to such town, and coming into their hands as such commissioners. And in all cases, where such commissioners have entered upon the duties of their offices without executing such bond, it shall be their duty to make and file the same within twenty days after the passage of this act, and within ten days after notice thereof from the supervising officer of said municipal corporation. Such office of commissioner shall be and become vacated on failing or refusal to file the bond as herein required.

§ 2. No railroad commissioner of a town shall hereafter be eligible to the office of the supervisor thereof.

§ 3. This act shall take effect immediately.

CHAPTER 328, LAWS OF 1875.

AN ACT to authorize the payment, in whole or in part, of the bonded indebtedness of any of the towns in this State created in aid of any railroad therein, and to prescribe the mode in which the people thereof shall determine the time and amount of such payment.

SECTION 1. Upon the application in writing of at least twelve citizens, taxpayers of any town in this State, addressed to the supervisor of such town, asking for the payment, in whole or in part, of the bonded indebtedness of such town created in aid of any railroad therein, specifying the amount of such indebtedness to be paid, and how much thereof shall be paid annually, and asking also for a vote of the people of such town upon the question, the time and the amount of such payment, the said supervisor shall, at the next

annual town meeting to be held in such town, submit such question to the qualified voters of such town, and shall take the votes thereof in the manner following, to wit: The said supervisor shall have prepared a suitable book in which shall be transcribed a copy of the aforesaid application, underwritten with the names of the signers thereof, and shall open the same, at the time of the opening of the polls of such town meeting, for the signatures of the qualified voters of such town, by reading aloud to the people the said application and the names of its signers. The said voters, together with other individuals paying taxes in said town, who shall favor such application may, during the time the polls of such town meeting are open, subscribe in such book such transcribed application, or may authorize the clerk of such town to subscribe the same for him or her. And any solvent moneyed, manufacturing or other corporation or company formed under the laws of this State, and being assessed on real or personal property in such town, shall have all the rights and privileges under this act so far as property representation is concerned, as other tax-payers, to be exercised by its chief financial officer.

§ 2. Immediately after the close of the polls at such town meeting, the said supervisor shall affix his certificate, next succeeding the last name subscribed in such book, to the effect that the persons, whose names are subscribed in such book, are qualified voters of such town or tax-payers therein, and assented to the proposition submitted in the said application at such town meeting, and shall, forthwith and within five days after such town meeting, transmit the said book so completed to the county judge of his county; and it shall be the duty of the said judge forthwith and within ten days thereafter to proceed to take proof as to the relative number and assessed property represented by such voters; and if it shall appear satisfactorily to him that the persons who had so signed said application, and such other tax-payers of said town as may then and there appear before him, and express a desire to subscribe the same, do represent a majority of the tax-payers of said town as shown by the last preceding tax last or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record, and shall forthwith certify the same to the board of supervisors of his county, to whom he shall also transmit such book with its contents.

§ 3. It shall thereupon be the duty of the said supervisors, in accordance with the terms and request of such application, to cause to be assessed, levied and collected, in such town as other taxes in such town are assessed, levied and collected, in each year, as the same is designated in such application, such sum or sums as shall be sufficient to pay off and discharge the said bonded indebtedness, either at one time and by one assessment, or by installments of yearly assessments and payments as may be designated in such application.

§ 4. The money so assessed, levied and collected, shall be sacredly applied to the payment of the bonds of such town so given in aid of railroads as designated in such application and to no other purpose whatever; except, that in case there shall not be, of such bonds, as are then due and payable, sufficient in amount to exhaust the whole sum so collected, and the holders and owners of such other bonds, as may not then have matured, shall not be willing to accept payment thereof, the said supervisors shall cause the residue of said money, so collected, after paying such bonds as he may be able to retire, to be invested in such State, county, town, city or village bonds as may have been issued in pursuance

of the laws of this State, or in United States bonds, to be deposited with the treasurer of said county as a sinking fund for the redemption and payment of the bonds of such town created in aid of any railroad therein, and the avails of such sinking fund shall be sacredly applied for the payment and redemption of the bonds of such town as the same become due.

§ 5. This act shall take effect immediately.

CHAPTER 421, LAWS OF 1875.

AN ACT to authorize towns, cities and villages to pay their bonds, issued for railroad purposes, by exchanging therefor their railroad stock or bonds, and to exchange their stock of any railroad corporation for the bonds of such corporation.

SECTION 1. It shall be lawful for any town, city or village to exchange the bonds and stock of any railroad corporation for and in payment of the bonds of any such town, city or village, heretofore issued in aid of any such railroad corporation, and it shall be lawful for any town, city or village to exchange the stock of any railroad corporation for the bonds of such corporation; and such exchange may be made by the officers of such town, city or village having the lawful charge and custody of such railroad stock and bonds, but the same shall not be thus exchanged for less than the par value thereof; and when any such change shall be made, report thereof shall be made, by the officers making the same, to the then next meeting of the board of auditors of their town, the common council of their city, or the board of trustees of their village; and the town, city or village bonds obtained by such exchange, shall thereupon be canceled.

§ 2. This act shall take effect immediately.

CHAPTER 585, LAWS OF 1875.

AN ACT to provide for the sale of stock and bonds of bankrupt railroad companies by municipal corporations holding the same, and for the disposition of the proceeds of such stock or bonds.

SECTION 1. Any municipal corporation within this State holding and owning any stock or mortgage bonds of any railroad company in this State which shall have been adjudicated bankrupt, or the property of which shall be in the possession of a receiver appointed under the laws of this State, or the railroad or other property of which shall have been sold, or shall have been deemed to be sold, by virtue of any decree of foreclosure of any mortgage executed by such railroad company, is hereby authorized to sell and dispose of such stock or mortgage bonds in the manner hereinafter provided.

§ 2. The commissioner or commissioners of any municipal corporation within this State which shall have issued its bonds in aid of the construction of the railroad of any railroad company in this State within the provisions of section one of this act appointed to issue such bonds of any municipal corporation under any laws of this State, or the successor or successors in office of any such commissioner or commissioners, on the application of the mayor and common council of any city, or of the board of trustees of any incorporated village, or of the supervisor of any town within this State, the bonds of which shall have been issued in aid of the construction of any such railroad, as aforesaid, shall forthwith publish a notice of the sale at public auction of the stock or mortgage bonds of any such railroad company held and owned by such

municipal corporation as aforesaid, at such public place within the limits of such municipal corporation as such commissioner or commissioners may specify in such notice. The said notice shall specify the amount of such stock or bonds so held by said municipal corporation and the number of shares of such stock, and the amount of such bonds, respectively, and the name of the railroad company by which the same were issued, and shall be published in two newspapers published in the county wherein such railroad may be situated, or if it extends through or into more than one county, then in two newspapers published in each county wherein such railroad may be situated, at least once in each week after the first publication of such notice, until the day of sale, which shall be not less than ten nor more than twenty days after the first publication of the said notice.

§ 3. On the day and at the place of sale specified in the notice aforesaid, the said commissioner or commissioners shall sell at public auction, to the highest bidder for cash, all the stock or mortgage bonds of any such railroad company so held and owned by such municipal corporation as aforesaid, in such parcel or parcels as in their discretion shall be most advantageous to the said municipal corporation, and shall deliver the same to the purchaser or purchasers thereof, and shall execute to such purchaser or purchasers any transfer or assignment of such stock or bonds necessary to transfer the same, and thereupon the purchaser or purchasers of such stocks or bonds shall be vested with all the right, title, and interest of the said municipal corporation, and of the said commissioner or commissioners in and to the stock or bonds so sold as aforesaid.

§ 4. All moneys received by said commissioner or commissioners for any stock or mortgage bonds sold pursuant to the provisions of this act shall be immediately paid over to the treasurer or other officer of such municipal corporation having charge of its funds, in case of a town to the supervisor thereof for the use of such municipal corporation, and, after paying the expenses of such sale, shall be applied by such municipal corporation to the payment and extinguishment of its bonds issued in aid of said railroad company, and to no other purpose whatever, provided, that in case the municipal bonds so issued shall have been all paid before such sale, or in case the moneys realized from such sale shall be more than sufficient to pay off the municipal bonds issued as aforesaid in aid of such railroad corporation then outstanding, the proceeds of such railroad stock or bonds, or any such balance thereof, shall be applied by such municipal corporation to the payment of such other debt thereof, or to defray such other lawful charge thereupon as the common council of any such city, or the board of trustees of any such incorporated village, or the qualified voters of any such town, in town meeting, may direct.

§ 5. All acts and parts of acts, so far as they are inconsistent herewith, are hereby repealed.

§ 6. This act shall take effect immediately.

CHAPTER 320, LAWS OF 1877.

AN ACT relative to the bonded indebtedness of cities, villages, towns and counties.

SECTION 1. Whenever the bonds of any city, village, town or county shall have been issued and sold by the proper authorities, and the time fixed for the maturity of such bonds, or any of them, shall be for a longer period than that

provided by the law under which they were issued, a variance not exceeding sixty days shall not be regarded or held as affecting the validity of such bonds.

§ 2. Nothing in this act contained shall affect any litigation now pending.

§ 3. None of the provisions of this act shall apply to the counties of Orleans and Niagara.

§ 4. This act shall take effect immediately.

CHAPTER 349, LAWS OF 1877.

AN ACT to provide for the payment of bonds issued by municipal corporations under the provisions of chapter nine hundred and seven, laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the constructions of railroads," and the acts amendatory thereof.

SECTION 1. It shall be the duty of the commissioners appointed under the provisions of chapter nine hundred and seven, Laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad companies, and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," and the acts amendatory thereof, to report annually the total amount of bonds issued under said chapter nine hundred and seven, Laws of eighteen hundred and sixty-nine, and the acts amendatory thereof, by the town, city or village represented by such commissioners; the date and time when the principal of said bonds will become due, the rate and times of payment of interest thereon, the amount of such principal paid or interest paid, the amount of said principal or interest due and unpaid and to become due before the annual tax levy and collection of tax for the year next succeeding, and the amount in their hands applicable to the payment of the principal of said bonds or the interest thereon.

§ 2. Such report shall be in writing, signed by the said commissioners, or a majority of them, and there shall be affixed to said report an affidavit of at least one of the commissioners, that such report is in all respects true and correct. The commissioners shall deliver said report to the board of supervisors of the county within three days after the commencement of the annual meeting of said board of supervisors.

§ 3. It shall be the duty of the board of supervisors, at the annual meeting when such report is received, to cause to be levied and raised by tax on the taxable property of said town, city or village, the amount necessary to pay the principal and interest due and to become due at any time prior to the annual tax levy and collection of tax for the year then next succeeding, as shown by said report, after deducting moneys on hand for the purpose. The amount so levied and raised by tax, when so collected, shall be paid over to the said commissioners to be by them applied to the purpose for which it was so collected. And all money now in the hands of the supervisor of any town, or officer of any city or village applicable to the payment of the principal of said bonds, or interest thereon, shall be, on demand, paid to such commissioners, and any money hereafter raised under the provisions of the act hereby amended, which by law is to be applied to the payment of said bonds, or interest thereon, shall, in like manner, be paid to said commissioners. But before any money shall be

so paid to such commissioners, they shall severally execute to the town, city or village, and deliver to the town clerks of towns, or the clerks of cities or villages, a bond with two or more sureties in double the amount of the money to be so received by them, as near as can be ascertained, conditioned for the proper and due disbursement of such money, and the proper accounting therefor, which bond shall be first approved by the supervisor, or the county judge, and by the mayor or president of cities or villages, and said bond shall be renewed annually.

§ 4. It shall be the duty of said commissioners to pay the principal and interest of said bonds at the maturity thereof, and on making such payments the bonds or interest coupons paid shall be canceled by said commissioners by cutting out a portion of said bonds or coupons; and a full record of all bonds and interest coupons paid and canceled shall be kept by said commissioners, which record shall be at all times open to the inspection of the supervisor, members of the board of town auditors, and justices of the peace of towns, or the members of common councils or trustees of cities or villages; and said commissioners shall report in writing to the board of town auditors of towns, at their annual meeting; and to the common council or trustees of cities or villages, on the first day of April of each year, the date, number and amount of all bonds and interest coupons paid by them and canceled during the past year, and since their last report, and shall, at the same time, produce and deliver to the said town auditors, common council or trustees, the bonds and interest coupons canceled by them, taking a receipt therefor, which shall set forth the date, number and amount of each bond or coupon. Said commissioners, at the time of making such report, shall also file with the town clerk of towns, and clerk of cities and villages, a duplicate thereof. The said town auditors and the common council or trustees, as the case may be, shall indorse upon the receipt so received from the commissioners, that the bonds and interest coupons mentioned therein, duly canceled, were received by them from the commissioners, if such is the case, and if all or any of them are not so received, so state in the indorsement. They shall then deposit said canceled bonds and coupons with said report, in the office of the clerk of the county for safe keeping. Nothing in this act contained shall in any manner apply to or affect the town of Orleans, in the county of Jefferson, or any officer thereof, or any money raised by tax on the property therein, or to any bonds except such as were given under the act mentioned in the foregoing title.

§ 5. The provisions of this act shall not apply to the counties of Oswego, Madison, Erie, Orleans, Niagara and Genesee.

§ 6. This act shall take effect immediately.

CHAPTER 62, LAWS OF 1879.

AN ACT to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads."

SECTION 1. Chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to

aid in the construction of railroads," is hereby amended by adding thereto the following section:

§ 12. It shall be the duty of the treasurer (or other proper officer of every municipal corporation), named in section six of the act hereby amended, to invest all moneys, interest, dividends and percentages by him received and therein declared to be a sinking fund, in the manner directed by section four of said act as amended by chapter seven hundred and eighty-nine of the laws of eighteen hundred and seventy; and in every annual report to be made by him to fully set forth under the head of "railroad sinking fund," the manner and character of said investment and the condition of said funds.

The provisions of chapter 907 of the Laws of 1869, *ante*, and the acts amendatory thereof were extended and made applicable to certain towns and counties of the State.

For the application of the act of 1869 to the counties of Seneca, Yates and Ontario, and the towns and incorporated villages thereof, see chapter 173, Laws of 1870. For the act extending provisions of laws permitting municipal corporations to aid in the construction of railroads to certain towns in the county of Erie, see chapter 64, Laws of 1871.

Extending same to the counties of Albany and Genesee, see chapter 146, Laws of 1871.

Extending same to any city, town, village or municipality in counties of Cayuga and Tompkins, see chapter 260, Laws 1871.

Extending same to county of Niagara, except the town of Royalton in said county, see chapter 388, Laws 1871.

Extending same to the towns of Skaneateles and Spafford, in the county of Onondaga, see chapter 54, Laws of 1872.

Extending same to the towns of Salina and Clay, and the village of Liverpool, in the county of Onondaga, see chapter 62, Laws of 1872.

Extending same to the village of Middleport, in the county of Niagara, see chapter 307 of the Laws of 1872.

Extending same to the county of Erie, see chapter 516 of the Laws of 1872.

Extending same to the town of Marcellus, in the county of Onondaga, see chapter 689 of the Laws of 1872.

CHAPTER 308, LAWS OF 1881.

AN ACT to amend chapter twenty-one of the laws of eighteen hundred and eighty, entitled "An act to authorize the sale by towns, cities and villages in the counties of Chenango, Delaware, Madison, Ulster, Sullivan, Cortland, Orange, Cayuga and Oswego, the towns of Pittsfield and Edmeston, in the county of Otsego, and the town of Vienna, in the county of Oneida, of capital stock in railroad companies."

SECTION 1. Section one of chapter twenty-one of the laws of eighteen hundred and eighty, entitled "An act to authorize the sale by towns, cities and villages in the counties of Chenango, Delaware, Madison, Ulster, Sullivan, Cortland, Orange, Cayuga and Oswego, the towns of Pittsfield and Edmeston in the county of Otsego, and the town of Vienna in the county of Oneida of capital stock in railroad companies," is hereby amended so as to read as follows:

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§ 1. The several towns, cities and villages in the counties of Chenango, Delaware, Madison, Ulster, Sullivan, Cortland, Orange, Cayuga and Oswego, the towns of Pittsfield and Edmeston, in the county of Otsego, and the town of Vienna, in the county of Oneida, are hereby authorized and empowered to sell and transfer all or any portion of the capital stock of the New York and Oswego Midland Railroad Company now owned by them or either of them, and the several towns and villages in the county of Chenango are hereby also authorized and empowered to sell and transfer all or any portion of the capital stock of the Utica, Chenango and Susquehanna Valley Railroad Company, now owned by them, or either of them, and the said several towns, cities and villages above named are hereby further authorized and empowered to sell and transfer all or any portion of the capital stock now held by them or either of them in any railroad whatever, located in said towns, cities or villages.

§ 2. This act shall take effect immediately.

The second section of the act above amended, viz., chapter 21, Laws of 1880, provides what officers may make the sale. That no sale shall be made without a majority of justices of the peace or other officers named, and contains a proviso, and further declares that notice shall be published, and official record is to be approved before sale is made, and is unrepealed.

CHAPTER 522, LAWS OF 1881.

AN ACT in relation to the bonded indebtedness of villages, cities, towns and counties in this State created in aid of railroads.

SECTION 1. The present bonded indebtedness of any village, city, town or county in this State, which was created to aid in the construction of any railroad, may be paid up or retired by the issue of new bonds for like amount by the board of trustees, mayor and common council, town board, board of supervisors or supervisor or railroad commissioners or officer or officers now having in charge, according to law, the payment of interest and principal on bonds herein proposed to be paid and retired, respectively of such village, city, town or county; provided, however, that such new bonds shall be issued only when the existing bonds can be retired by the substitution thereof of such new bonds, or can be paid up by money realized on the sale of such new bonds; and provided, further, that such new bonds shall bear interest at a rate not exceeding five per centum per annum, payable semi-annually.

All existing bonds taken up by the substitution of such new bonds, or paid under the provisions of this act, shall be immediately canceled, and a certificate executed officially by the officers issuing such new bonds shall be forthwith made and filed by them in the county clerk's office of the proper county, which shall state the amount of existing bonds so canceled, and of new bonds so issued.

This act shall not be so construed as to authorize the issue of new bonds to supercede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court.

The new bonds so to be issued shall be made payable at any period deemed advisable by the officers issuing the same, not less than two years nor more than thirty years from their date, and shall bear date and draw interest from the date of the payment of existing bonds or the receipt of money to pay existing bonds, and shall be issued in no case at less than for their par value.

§ 2. The bonds issued under the provisions of this act when substituted or sold to retire existing bonds, by any authorized officers of any town, village,

city or county or their successors in office, shall be valid and binding on the town, village, city or county wherein they are issued, and such bonds shall contain a recital that they are issued under the provisions of this act, and such recital shall be conclusive evidence in any court of the validity of said bonds and the regularity of their issue.

§ 3. All new bonds issued by any village, city, town or county in this State, under the provisions of this act, shall be exempt from taxation for town, county, municipal or State purposes until the period when they are made payable.

§ 4. It shall be the duty of the railroad commissioners, supervisors and financial officers of towns, villages, cities and counties, having in charge the moneys received and collected and responsible for the payment of the interest and principal due on bonds issued under this act, and they are hereby required to report annually to the board of supervisors of counties, the trustees of villages and the mayor and board of aldermen or common council of cities as the case may be, as now required by law, the sum due and payable the succeeding year, both principal and interest on said bonds.

§ 5. It shall be the duty of the boards of supervisors of counties, the trustees of villages, and the boards of aldermen, and the common councils of cities, and they are hereby required to levy and collect in each year upon the towns, villages, cities or counties severally obligated, moneys sufficient to pay such interest when and as it shall fall due, and the principal of such bonds when and as the same shall become due and payable.

CHAPTER 31.

PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE FOR PROCEEDINGS AGAINST CORPORATIONS.

411. Information against a corporation.
 412. Form of the summons.
 413. When and how served.
 414. Examination of the charge.
 415. Certificate of the magistrate, and return.
 416. Grand jury may proceed as in the case of a natural person.
 417. Appearance, and plea to indictment.
 418. Fine or conviction, how collected.
 419. Falsely indicating person as corporate officer, is forgery.

Preliminary note.—The several provisions of the Penal Code will be found collated in their appropriate places in the text. A repealing act in connection with the Penal Code and the Code of Criminal Procedure designed to repeal such provisions of the Revised Statutes as were abrogated by these Codes, was passed by the Legislature of 1881, and it failed to receive the signature of the governor.

§ 411. *Information against a corporation.*—Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons. (*Code Crim. Proc.*, § 675.)

§ 412. *Form of the summons.*—The summons must be in substantially the following form:

“*County of Albany* [or as the case may be].

“In the name of the people of the State of New York:

“To the [naming the corporation.]

“You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon *the information of A. B.*, for [designating the offense, generally].

“Dated at the *city* [or “town”] of _____, the _____ day of _____, 18__.

G. H., *Justice of the Peace.*
 [or as the case may be.]

(*Code Crim. Proc.*, § 670.)

§ 413. *When and how served.*—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof. (*Code Crim. Proc.*, § 677.)

§ 414. *Examination of the charge.*—At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable. (*Code Crim. Proc.*, § 678.)

§ 415. *Certificate of the magistrate and return.*—After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221. (*Code Crim. Proc.*, § 679.)

§ 416. *Grand jury may proceed as in the case of a natural person.*—If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer. (*Code Crim. Proc.*, § 680.)

§ 417. *Appearance and plea to indictment.*—If an indictment be found against a corporation, it may appear by counsel, to answer the same. If it do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. (*Code Crim. Proc.*, § 681.)

§ 418. *Fine, on conviction, how collected.*—When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution in a civil action. (*Code Crim. Proc.*, § 682.)

The provisions of the Revised Statutes previous to the enactment of the Code of Criminal Procedure were as follows: When an indictment shall be found against any corporation, a summons against the defendants may be issued, and served in the same manner as provided by any statute in civil cases, and if such corporation do not appear according to the summons, a *distringas* may be issued, and levied upon their personal estates and chattels real; and the issues levied thereon may be ordered to be sold, and the money arising therefrom shall be detained until such corporation appear and plead to the indict-

ment, when it may be paid to them, after deducting such costs and expenses incurred, as shall be allowed by the court. (2 R. S., marg. p. 747, § 39.)

But if such corporation shall neglect to appear, and plead to such indictment within two terms after the return of the *distringas* against them, the court shall order the money levied thereby, after deducting the costs and expenses of the proceedings to be paid to the county treasurer, for the use of the poor of such county. (2 R. S., marg. p. 747, § 40.)

When a fine shall be imposed upon any corporation, the same may be collected by *distringas* against their personal estate, and chattels real. (2 R. S., marg. p. 747, § 42.)

§ 419. *Falsely indicating person as corporate officer.*— The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, State or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, State or government. (*Penal Code*, § 519.)

CHAPTER 32.

OF THE TAXATION OF RAILROAD CORPORATIONS.

420. Railroads are subject to taxation.
421. Real estate of company, where assessed.
422. Personal estate of company, where assessed.
423. Property, how to be estimated and assessed.
424. Consolidated company, how assessed.
- 424(a). Taxation of railroads in foreign countries.
425. Capital stock is personal estate.
426. Owner of capital stock not to be taxed individually thereon.
427. Stock owned by State or by literary or charitable institutions not to be taxed.
428. Capital stock, how taxed.
429. Certain amended sections of tax law repealed.
430. Certain provisions of tax laws made applicable to company.
431. Duties of school collectors.
432. Company may pay school tax to treasurer.
433. School collector, when to collect tax.
434. Treasurer to pay to collector.
435. Companies may pay collector.
436. The apportionment of the valuation of the property of railroad companies in school districts, for the purposes of taxation.
437. Apportionments, how made.
438. Duty of supervisors.
439. Duty of town clerk.
440. Alteration of valuation.
441. Railroad companies may pay commutation money for highway labor.
442. When not to apply.
443. Annual statement of assessments against railroad corporations to be delivered to county treasurer.
444. Tax may be paid to the county treasurer.
445. Tax, not paid, how collected.
446. Payment of tax, how to be credited.
447. Foregoing provisions shall not prevent payment of tax to the collector of taxes.
448. President or treasurer to make report to the comptroller.
449. Comptroller, when to add percentage.
450. Annual tax, etc.
451. When payable.
452. Insurance companies to report, etc.
453. Tax on railroad companies.
454. Tax, when payable, etc.
455. Exempt from taxation for State purposes.
456. Tax, how applied.
457. Tax under repealed act to be enforced.
458. Corporations liable to taxation.
459. To deliver statements to assessors.
460. To deliver statement to comptroller.
461. Penalty.
462. Suit therefor.
463. Companies, how assessed.

- § 464. Preceding sections extended.
- § 465. Taxes to be stated and collected.
- § 466. Duty of supervisors.
- § 467. Duty of collector.
- § 468. Taxes, how paid.
- § 469. Proceedings if taxes cannot be collected.
- § 470. The same.
- § 471. Attorney-General to file petition.
- § 472. Powers of Supreme Court therein.
- § 473. Further penalty.

The text of this chapter gives the several provisions of the statute which are applicable to the taxation of railroad corporations. The act of 1881, chapter 361, amendatory of chapter 542 of the Laws of 1880 (sections 448, *et seq.*) provides a method of taxation upon certain corporations, including railroad corporations, for raising money to pay the ordinary and current expenses of the State, different from the ordinary methods of taxing corporations for county, city and village taxes, and section 8 of the act of 1881 above referred to, declares that the corporations mentioned in that act shall be exempt from assessment and taxation for State purposes, except upon the real estate, and as in said act provided, but that they shall in all other respects be liable to assessment and taxation as heretofore.

§ 420. *Railroads are subject to taxation.*—All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified. (1 R. S. 387, § 1; 6th ed., R. S., vol. 1, p. 931.) So also all moneyed or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital, in the manner hereinafter prescribed. (1 R. S. 414, § 1; 6th ed., R. S., vol. 1, p. 979; 7th ed. R. S., vol. 2, p. 1036.)

The term land, as used in this chapter, shall be construed to include the land itself, all buildings and other articles erected upon and affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State, and the terms real estate and real property, wherever they occur in this chapter, shall be construed as having the same meaning as the term "land" thus defined. (1 R. S., 387, § 2, 6th ed. R. S., vol. 1, p. 931.) *See page 504*

The terms "personal estate" and "personal property," wherever they occur in this chapter, shall be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond or mortgage, public stocks, and stocks in moneyed corporations. They shall also be construed to include such portions of the capital stock of incorporated companies liable to taxation on their capital as shall not be invested in real estate. (1 R. S., 388, § 3, 6th ed. R. S., vol. 1, p. 931.)

Such portion of the capital of the company, as is invested in the railways, fixtures and real estate necessary for the operation of the railroad, is taxable as real estate (1 R. S., 387, § 2); and the residue which remains, after deducting all the company's real estate, including the railway itself, from the whole

amount of capital, is taxable as personal estate. (*Mohawk and Hudson R. R. Co. v. Clute*, 4 Paige, 384.)

§ 421. *Real estate of company where assessed.*—The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. (1 R. S. 390, § 6; 6th ed., R. S., vol. 1, p. 935; 7th ed., R. S., vol. 2, p. 990.)

A railroad corporation should be regarded, with the meaning of the tax laws in reference to real estate, as a resident of the several towns and wards through which its road extends, and the real estate of such company should not be assessed as "non-resident lands." (*Supreme Ct.*, 1866, *People ex rel. Buffalo and State Line R. R. Co. v. Fredericks*, 48 Barb., 173; S. C., 33 How. Pr., 150; see, also, *People v. Hudson R. R. Co.*, 31 Barb., 138; *Fowler v. Westervelt*, 40 Barb., 374; S. C., 17 Abb. Pr., 59; *Pond v. H. R. R. Co.*, 17 How. Pr., 543; *Johnson v. Cayuga R. R. Co.*, 11 Barb., 621; *Belden v. N. Y. and H. R. R. Co.*, 15 How. Pr., 59; *Sherwood v. Saratoga R. R. Co.*, 15 Barb., 560; *N. Y. and H. R. R. Co., v. Lyon*, 16 id., 657; criticised in *Buffalo R. R. Co. v. Fredericks*, *supra.*)

A corporation created by the laws of this State is deemed a resident thereof, although the bulk of its property and business lies in a foreign State. (13 Pet., 519; 14 id., 129; 2 How. [U. S.], 499; *Supreme Ct.*, 1859, *Crowley v. Panama R. R. Co.*, 30 Barb., 99.) As to foreign corporation having office here, see (*International Life Assurance Co., v. Sweetland*, 14 Abb. Pr., 240) A corporation created under the laws of this State is to be deemed a resident of the State, and the place of its business is to be deemed the place of its residence. (4 Bing., 394; 3 Jurist, 55; 2 Eng. L. & Eq., 388; 2 Brock., 395; 2 How. [U. S.], 497; 2 Rich., 512; 5 Wend., 211; *Supreme Ct., Sp. T.*, 1855, *v. Conroe, National protection Ins. Co.*, 10 How. Pr., 403.) If it has several places of business, it is to be deemed a resident of each. (*Supreme Ct., Sp. T.*, 1858, *Pond v. Hudson R. R. R. Co.*, 17 How. Pr., 543.)

When the same property is taxed in two townships, but is only liable to taxation in one, the company may apply for an interpleader to compel the tax collectors to settle the right to such tax between themselves. (*Mohawk and Hudson R. R. R. Co., v. Clute*, 7 Paige, 384.) The intent of the section is to give the inhabitants of the town or ward where the land is situated, the benefit of the tax on the real estate, and the inhabitants of the town or ward where the principal office of the company is, the benefit of the tax on the personal property. (*Albany and Schenectady R. R. Co., v. Osborn*, 12 Barb., 223; *Mohawk and Hudson R. R. R. Co., v. Clute* 4 Paige, 384; *Utica etc., Co., v. Supervisors of Oneida*, 1 Barb., Ch. 432.) See the next section.

§ 422. *Personal estate of company, where assessed.*—All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the opera-

tions of such company shall be carried on. (1 R. S. 390, § 6; 6th ed., R. S., vol. 1, p. 935, 7th ed., R. S., vol. 2, p. 990.)

(See notes to the preceding section, § 421.)

The Laws of 1857, chapter 536, section 1 declared that the above mentioned "section six of title two of chapter thirteen of the first part of the Revised Statutes shall not be construed to apply to railroad corporations, except so far as that their real estate shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals; and whenever the financial condition of such corporation shall subject them to be assessed on personal estate, the assessment shall be made and declared by the assessors of the town or ward in which their principal office is situate; but the taxes accruing from such personal estate shall be divided and paid by the railroad corporations to the collectors of the several towns or wards through which their road shall pass, in proportion, as near as may be, to the length of the track of the road in such town or ward, as compared with the whole length thereof." But the Legislature by chapter 110 of the Laws of 1858 repealed the above mentioned chapter 536 of the Laws of 1857.

§ 423. *Property, how to be estimated and assessed.*—All real and personal estate liable to taxation, shall be estimated and assessed at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. (1 R. S., 393, § 17, as amended by chap. 176, § 3, *Laws of 1851*; 6 R. S., vol. 1, p. 937.)

The assessors may consider the cost of the real estate, and the productiveness of its use, as part of the data, from which to judge of its value, and in order to enable them to judge how valuable that portion of the road in their town is, they are entitled to regard it as an essential portion of a valuable and completed railroad. (*People ex rel. Buffalo, etc., R. R. Co. v. Fredericks*, 48 Barb., 173; S. C., 33 How. Pr., 150.) The assessors are to ascertain the actual value of the land within their town, with the erections or fixtures thereon, at the time of the assessment, irrespective of the consideration whether the road is well or badly managed, or whether it is profitable to the stockholder or not. (*Albany and Schenectady R. R. Co. v. Osborn*, 12 Barb., 223; *Albany and West Stockbridge R. R. Co. v. Town of Canaan*, 16 id., 244.)

If the company feels aggrieved by the action of the assessors in fixing the valuation upon the assessment roll it is entitled to a hearing before the assessors. (See section 20 of title 2, chap. 13, part 1, R. S.; 1 R. S., 393, § 20, as amended by § 6, chap. 176, *Laws 1851*, as amended by § 5, chap. 536, *Laws of 1857*; see § 3 of the act of 1857, making it include corporations, § 430, *post*.)

It would seem that the statement delivered to the assessors by the officers of the company under the provisions of the Revised Statutes (see § 459, *post*) should be regarded as *prima facie* evidence of value. (*People ex rel. N. Y. C. R. R. Co. v. Ross*, 15 How. Pr., 63.) The assessors, however, are under no obligation to allow such statement to have any weight, when not delivered until after the completion of the assessment roll. (*Id.*) Where the assessment stated the length of the road, but not the number of acres of land assessed to the company. *Held*, that such omission was at most an irregularity, and did not affec

its validity. (*Albany, etc., R. R. Co. v. Town of Canaan, supra.*) The assessors are bound to "hear and examine" such applicants, but they are not thereby subjected to an arbitrary rule. (*People ex rel. Buffalo, etc., R. R. Co. v. Fredericks, 48 Barb., 173*) They may, notwithstanding such examination, fix the value at such sum as they deem just, even though they grossly err in their estimate, and a tax based on such assessment, the proceedings being regular, and the assessors having jurisdiction, cannot be assailed, unless the assessed value of the property is so outrageously exaggerated as to point clearly to corruption or fraud. (*Albany, etc., R. R. Co. v. Town of Canaan, 16 Barb., 244.*)

§ 424. *Consolidated railroad 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.*)

§ 424(a). *Taxation of railroads in foreign countries.*—All corporations formed under the provisions of this act (*Laws 1881, chap. 468, see page 412, et seq., ante*), shall be subject to taxation upon the amount of the real or personal property owned by such corporation within this State. (*Laws 1881, chap. 468, § 13.*)

§ 425. *Capital stock is personal estate.*—The stock of every company formed under this act* shall be deemed personal estate. (*General railroad act, Laws 1850, chap. 140, § 8.*)

§ 426. *Owners of capital stock not to be taxed individually thereon*—The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock. (1 R. S., 388, § 7, 6th ed., R. S., vol 1, p. 933.)

§ 427. *Stocks owned by State or by literary or charitable institutions not taxable.*—All stocks owned by the State or by literary or charitable institutions are exempt from taxation. (1 R. S. 388, § 6, 6th ed., R. S., vol. 1, p. 932.) Any moneyed or stock corporation deriving profit or income from its capital or otherwise, shall add to the dividend which shall be declared upon any stock owned by the State,

*The general railroad act.

or by any literary or charitable society or institution, a sum equal to the assessment for taxes paid upon an equal amount of the stock of such corporation not exempted from taxation. (*Laws 1845, chap. 195, § 1.*) The above provisions stated in the text and declared to be for the benefit of the State, or the institutions owning such stock, and not for the benefit of the said corporations. (*Laws 1845, chap. 195, § 2.*)

§ 428. *Capital stock, how taxed.*—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value and taxed in the same manner as other personal and real estate of the county. (*Laws 1857, chap. 456, § 3.*)

§ 429. *Certain amended sections of tax law repealed.*—Sections six, seven, eight and nine of title three, of chapter thirteen, of the first part of the Revised Statutes (1 R. S. 308, § 6, 6th ed., vol. 1, p. 951) had application to the tax collector calling upon the person taxed and demanding payment of the tax and of a levy in case of non-payment of tax, and a notice of sale of the goods levied upon. Section 6 of chapter 536 of the laws of 1857 made these sections applicable to railroad corporations and regulated the manner in which a "call" for the tax should be made upon the company, and directed the service of a written notice of sale upon the treasurer or agent of the company. This amendment, however, was repealed by chapter 110 of the laws of 1858.

§ 430. *Certain provisions of the laws made applicable to company.*—Where the term "person" or "persons" is used in sections eighteen and twenty of said title two of chapter thirteen of the first part of the Revised Statutes, and in sections five, six and seven of chapter one hundred and seventy-six of the laws of eighteen hundred and fifty-one, such term shall be construed to include corporations as well as individuals. (*Laws 1857, chap. 536, § 3.*)

(The sections of the Revised Statutes, and chapter 176 of the Laws of 1851, above referred to, have reference to applications made to the assessors for reductions of valuation, and for revisions of the assessment rolls. See section 423 and notes, and section 464.)

IN RELATION TO THE PAYMENT OF SCHOOL TAXES BY RAILROAD COMPANIES.

§ 431. *Duties of school collectors.*—It shall be the duty of the school collector in each school district in this State (except in the counties of New York and Kings), within five days after the receipt by such collector of any and every tax or assessment-roll of his district, to prepare and deliver to the county treasurer of the county in which such district, or the greater part thereof, is situated, a statement showing the name of each railroad company appearing on said roll, the assessment against each of said companies for real and personal property respectively, and the tax against each of said companies. (*Chap. 675, § 1, Laws 1881.*)

§ 432. *Company may pay school tax to treasurer.*—Any railroad company heretofore organized, or which may hereafter be organized, under the laws of this State, may, within thirty days after the receipt of such statement by such county treasurer, pay the amount of tax so levied or assessed against it in such district and in such statement mentioned and contained, with one per centum fees thereon, to such county treasurer, who is hereby authorized and directed to receive such amount and give proper receipt therefor. (*Chap. 675, § 2, Laws of 1881.*)

§ 433. *School collectors, when to collect.*—In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of such county treasurer to notify the collector of the school district in which such delinquent railroad company is assessed, of its failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law, together with five per centum fees thereon; but no school collector shall collect by distress and sale any tax levied or assessed in his district upon the property of any railroad company until the receipt by him of such notice from the county treasurer. (*Chap. 675, § 3, Laws of 1881.*)

§ 434. *Treasurer to pay to collector.*—The several amounts of tax received by any county treasurer in this State, under the provisions of this act, of and from railroad companies, shall be by such county treasurer placed to the credit of the school district for or on account of which the same was levied or assessed, and on demand paid over to the school collector thereof, and the one per centum fees received therewith shall be placed to the credit of, and on

demand paid to, the school collector of such school district. (*Chap. 675, Laws 1881, § 4.*)

§ 435. *Companies may pay collector.*—Nothing in this act contained shall be construed to hinder, prevent or prohibit any railroad company from paying its school tax to the school collector direct, as now provided by law. (*Chap. 675, Laws 1881, § 4.*)

§ 436. *The apportionment of the valuation of the property of railroad companies in school districts, for the purpose of taxation, duties of assessors.*—It shall be the duty of the town assessors, within fifteen days after completion of their annual assessment list, to apportion the valuation of the property of each and every railroad company as appears on such assessment list, among the several school districts in their town, in which any portion of said property is situated, giving to each of said districts their proper portion, according to the proportion that the value of said property in each of such districts bears to the value of the whole thereof in said town. (*Chap. 694, Laws 1867, § 1.*)

§ 437. *Apportionment, how made.*—Such apportionment shall be in writing, and shall be signed by said assessors, or a majority of them, and shall set forth the number of each district and the amount of the valuation of the property of each railroad company apportioned to each of said districts; and such apportionment shall be filed with the town clerk, by said assessors or one of them, within five days after being made; and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed, until the next annual assessment and apportionment. (*Chap. 694, Laws 1867, § 2.*)

438. *Duty of supervisor.*—In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees or board of education of any district, or of any railroad company, to make such apportionment, in the same manner and with the like effect as if made by said assessors. (*Laws, 1867, chap. 694, § 3.*)

§ 439. *Duty of town clerk.*—The town clerk shall, whenever requested, furnish to the trustees or board of education of each district, a certified statement of the amounts

apportioned to such district, and the name of the company to which the same relates. (*Laws 1867, chap. 694, § 4.*)

§ 440. *Alterations of valuation.*—In case any alteration shall be made in any school district, affecting the property of any railroad company, the officer making such alteration shall, at the same time, determine what change in the valuation of the said property in such district would be just, on account of the alteration of district, and the valuation shall be accordingly changed. (*Chap. 694 § 5, Laws of 1867.*)

§ 441. *Railroad corporations may pay commutation money for highway labor.*—Whenever any railroad corporation assessed in any town or road district for highway labor shall elect to commute therefor as provided by law, such corporation shall pay the commutation money to the commissioner or commissioners of highways of such town, and such moneys shall be applied and expended in the improvement of the roads, and building and maintainance of bridges in such town. (*Laws 1877, chap. 344, § 1, as amended by chap. 44, of the Laws of 1878.*)

§ 442. *When not to apply.*—This act shall not apply to incorporated villages which constitute a separate road district, nor shall it have the effect to repeal or modify chapter sixty-six of the laws of eighteen hundred and seventy-two. (*Laws 1877, chap. 344, § 2.*)

Section 1 of chapter 344 of the Laws of 1877, previous to its amendment read as follows: "Whenever any railroad corporation assessed in any town or road district for highway labor shall elect to commute therefor as provided by law, such corporation shall pay the commutation money to the commissioner or commissioners of highways of the town for the benefit of the road district or districts in such town in which the property of such corporation may be situated. And said commissioner or commissioners shall distribute said money to the overseers of highways of such road districts, to be applied and expended by such overseers in the improvement of the roads and bridges in their respective districts as is now provided by law."

Chapter 66, Laws of 1872, above referred to, has reference to highway tax of New York Central Railroad Company in the town of Mentz, Cayuga county.

§ 443. *Annual statement of assessments against railroad corporations to be delivered to county treasurer.*—It shall be the duty of the clerk of the board of supervisors of the several counties of this State (except New York and Kings counties), within five days after the making out or issuing of the annual tax warrants by the board of super-

visors of their respective counties, to prepare and deliver to the county treasurer a statement showing the title of all railroad corporations in such county, as appears on the last assessment roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporation in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county. (*Laws 1870, chap. 506, § 1.*)

§ 444. *Tax may be paid to the county treasurer.*—Any railroad company heretofore organized under the laws of this State, or that may be hereafter organized, may, within thirty days after the receipt of such statement by the county treasurer, pay the amount of tax so assessed or levied on their property, with one per cent fees on said tax to the county treasurer, who is hereby authorized and directed to receive such amounts and to give proper receipt therefor. (*Laws 1870, chap. 506, § 2.*)

§ 445. *Tax, not paid, how collected.*—In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of the county treasurer to notify the collector of all towns or cities in their county in which said company is assessed, of such failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect said tax in the manner now provided by law, together with five per cent fees; but no town or city collector shall collect any tax levied or assessed upon the property of any railroad company in said county, by the supervisors of the county, until the receipt of such notice from the county treasurer. (*Laws 1870, chap. 506, § 3.*)

§ 446. *Payment of tax, how to be credited.*—The several amounts of tax so received by the county treasurer, of and from railroad companies, shall be placed to the credit of the town or city for or on account of which the same was levied or assessed, and to the credit of the fund or funds to which the same is now or shall be hereafter pledged or appropriated by law, and the one per cent fees also paid shall be placed to the credit of the collector of said city or town; and in case such amounts shall exceed the sum due from said town or city, the surplus shall, on demand, be paid to the supervisor of said town or city, who shall receive, hold and disburse the same as if received from the collector of said town or city. (*Laws 1870, chap. 506, § 4.*)

§ 447. *Foregoing provisions shall not prevent payment of tax to the collector of taxes.*—Nothing in this act shall be

construed to prevent any railroad company from paying their tax to the collector of towns or cities as now provided by law; nor shall the provisions of this act be construed to repeal or in any manner interfere with the provisions of chapter nine hundred and seven of the session laws of eighteen hundred and sixty-nine. (*Laws 1870, chap. 506, § 5.*)

Chapter 907, of the laws of 1869, above referred to, is an act permitting municipal corporations to aid in the construction of railroads.

THE RAISING OF TAXES UPON THE PERSONAL PROPERTY OF CORPORATIONS FOR THE PAYMENT OF THE ORDINARY AND CURRENT EXPENSES OF THE STATE.

§ 448. *President or treasurer to make report to the comptroller.*—Chapter five hundred and forty-two of the laws of eighteen hundred and eighty, entitled “An act to provide for raising taxes for the use of the State upon certain corporations, joint-stock companies and associations,” is hereby amended so as to read as follows :

Hereafter it shall be the duty of the president or treasurer of every association, corporation or joint-stock company liable to be taxed on its corporate franchises or business, as provided in section three of this act, to make report in writing to the comptroller, annually, on or before the fifteenth day of November, stating specifically the amount of capital paid in, the date, amount and rate per centum of each and every dividend declared by their respective corporations, joint-stock companies or associations, during the year ending with the first day of said month. In all cases where any such corporation, joint-stock company or association shall fail to make or declare any dividend upon either its common or preferred stock during the year ending as aforesaid, or in case the dividend or dividends made or declared upon either its common or preferred stock during the year ending as aforesaid, shall amount to less than six per centum upon the par value of the said common or preferred stock, the treasurer and secretary thereof, after being duly sworn or affirmed to do and perform the same with fidelity, according to the best of their knowledge and belief, shall, between the first and fifteenth days of November, in each year, in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of said common or preferred stock, estimate and appraise the capital stock of such company upon which no dividend has been made or declared, or

upon the par value of which the dividend or dividends made or declared, amounted to less than six per centum, at its actual value in cash, not less, however, than the average price which said stock sold for during said year; and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the comptroller a certificate thereof, accompanied by a copy of their said oath or affirmation by them signed, and attested by the magistrate or other person qualified to administer the same; provided, that if the comptroller is not satisfied with the valuation so made and returned, he is hereby authorized and empowered to make a valuation thereof and to settle an account upon the valuation so made by him for the taxes, penalties and interest due the State thereon; and any association, corporation or joint-stock company dissatisfied with the account so settled, may within ten days appeal therefrom to a board consisting of the secretary of state, attorney-general and state treasurer, which board, on such appeal, shall affirm or correct the account so settled by the comptroller, and the decision of said board shall be final; but such appeal shall not stay proceedings unless the full amount of the taxes, penalties and interest as due on said account, as settled by the comptroller, be deposited with the state treasurer. (*Laws 1881, chap. 361, § 1.*)

§ 449. *Comptroller, when to add percentage.*—If the said officers of any such corporation, joint-stock company or association shall neglect or refuse to furnish the comptroller, on or before the fifteenth day of November of each and every year, with the report aforesaid, or the certificate of appraisement, and oath or affirmation, as the case may be, as required by the first section of this act, or to pay the tax imposed on such corporation, company or association within fifteen days after the first of January as provided in the fourth section of this act, it shall be the duty of the comptroller of the State to add ten per centum to the tax of said corporation, company or association, for each and every year for which such report or certificate of appraisement and oath or affirmation were not so furnished, or for which such tax shall not have been paid, which percentage shall be assessed and collected with the said tax in the usual manner of assessing and collecting such taxes; provided, that if said officers of any such corporation, joint-stock company or association shall intentionally fail to comply with the provisions of the first or fourth section of this act for one year, the comptroller shall report the fact to the governor, who, if he shall be made satisfied that such failure was intentional, shall thereupon direct the attorney-

general to take proceedings, in the name of the people of this State, to declare the charter or privileges of said corporation, joint-stock company or association forfeited, and at an end; and for such intentional failure duly found, the charter and privileges of every such corporation, company or association shall cease, end, and be determined. (*Laws* 1881, *chap.* 361, § 2.)

§ 450. *Annual tax, etc.*—Every corporation, joint-stock company or association whatever, now or hereafter incorporated or organized under any law of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country and doing business in this State, except savings banks, and institutions for savings, life insurance companies, banks and foreign insurance companies, and manufacturing corporations carrying on manufacture within this State, which exception shall not be taken to include gas companies or trust companies, shall be subject to and pay a tax, as a tax upon its corporate franchise or business, into the treasury of the State annually, to be computed as follows: If the dividend or dividends made or declared by such corporation, joint-stock company or association, during any year ending with the first day of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-quarter mill upon the capital stock for each one per centum of dividends so made or declared; or if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of one and one-half mills upon each dollar of a valuation of the said capital stock made in accordance with the provisions of the first section of this act; and in case any such corporation, joint-stock company or association shall have more than one kind of capital stock as, for instance, common and preferred stock, and upon one of said stocks a dividend or dividends amounting to six or more than six per centum upon the par value thereof has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter mill for each one per centum of dividend made or declared upon the capital stock, upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, tax shall be charged at the rate of one and one-half mills upon each dollar of a valuation, made also in accordance with the

provisions of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum. (*Laws 1881, chap. 361, § 3.*)

§ 451. *When payable.*—It shall be the duty of the treasurer or other officer having charge of any corporation, joint-stock company or association, upon which a tax is imposed by either of the preceding sections of this act, to transmit the amount of said tax to the treasurer of the state within fifteen days after the first day of January in each and every year. (*Laws 1881, chap. 361, § 4.*)

§ 452. *Insurance companies to report, etc.*—Hereafter it shall be the duty of the president, secretary, or other proper officer of every insurance company and every association organized or incorporated by or under any law of this State, and of every person or partnership doing an insurance business in this State (except life insurance companies, and purely mutual beneficial associations, whose fund for the benefit of members, their families, or heirs, is made up entirely of contributions of their members, and the accumulated interest thereon,) to make report in writing to the comptroller annually upon the first day of August in each year, after the first day of August, eighteen hundred and eighty-one, setting forth the entire amount of premiums received on business done in this state by such company or association, person or partnership during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits, or any other substitute for money, and every such company, association, person or partnership shall pay into the state treasury, at the date aforesaid, a tax, as a tax on its corporate franchise or business, at the rate of eight-tenths of one per centum upon the gross amount of said premiums. And every company or association organized under the laws of any other state or country, and every person or partnership doing an insurance business in this State, except as aforesaid, shall pay into the treasury on the first day of August in each year a tax at the rate of eight-tenths of one per centum on their gross premiums received by them on business transacted in this state during the year ending with the preceding thirtieth day of June, whether the said premiums were in money or in the form of notes, credits, or any other substitute for money. And every such company, association, person, partnership, or the agents and officers thereof in this state, shall make report in writing to the comptroller annually upon the first day of August in

each year, setting forth the entire amount of premiums received during the period aforesaid. Provided, that the reports above required shall be made under oath or affirmation, and that it shall be the duty of the comptroller of the State to add ten per centum to the account of any company, association, person, or partnership, which shall neglect or refuse for a period of thirty days to make the said report, or to pay into the State treasury the tax imposed by this section. And it shall also be the duty of the president, secretary, or other proper officer of each and every insurance company, association, partnership, and of every person liable to be taxed under this section, to make a report in writing to the comptroller on the first day of August, eighteen hundred and eighty-one, under oath or affirmation, of the entire amount of premiums received on business done in this State during the six months ending with the preceding thirtieth day of June, and to pay a tax at the rate of eight-tenths of one per centum thereon. And it shall be the duty of the comptroller of the State to add ten per centum to the account of any company, association, person or partnership which shall neglect or refuse for a period of thirty days to make the said report, or to pay into the State treasury the tax imposed. (*Laws 1881, chap. 361, § 5.*)

§ 453. *Tax on railroad companies.*—In addition to the taxes above provided for, every corporation formed for railroad, canal, steamboat, ferry, express, navigation or transportation purposes, and every elevated railway company, and every other corporation, joint-stock company or association now or hereafter incorporated or organized by or under any law of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country and doing business in this State, and owning, operating or leasing to or from another corporation, joint-stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe line or transportation route or line, or elevated railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freights or passengers, and every telegraph company or telephone company incorporated under the laws of this or any other State, and doing business in this State, and every express company or association, palace car or sleeping car company or association incorporated or unincorporated, doing business in this State, shall pay to the State treasurer for the use of the State, as a tax upon its corporate franchise or business in this State, a tax, at the rate of five-tenths of one per centum upon the gross

earnings in this State of said corporation or company or association, for tolls, transportation, telegraph, telephone or express business transacted in this State. (*Laws 1881, chap. 36, § 1.*)

§ 454. *Tax, when payable, etc.*—The tax imposed upon section six of this act shall, after the first day of August, eighteen hundred and eighty-one, be paid annually on the first day of August of each year. It shall be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section six of this act to transmit to the comptroller, on the first day of August in each year, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint-stock companies derived from all sources during the year ending with the preceding thirtieth day of June, together with the amount of tax imposed thereon by section six. And it shall also be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section six of this act, to transmit to the comptroller on the first day of August, eighteen hundred and eighty-one, a statement under oath or affirmation of the amount of the gross earnings of the said associations, corporations or joint-stock companies derived from all sources during the six months ending with the thirtieth day of June, eighteen hundred and eighty-one, together with the tax imposed thereon by section six of this act. And if any such corporation, joint-stock company or association shall neglect or refuse, for a period of thirty days after any tax imposed by sections six or seven of this act becomes due, to make returns or to pay the same, the amount thereof, with the addition of ten per centum thereto, shall be collected for the use of the State as other taxes are recoverable by law from such corporation, joint-stock company or association. (*Laws 1881, chap. 361, § 7.*)

§ 455. *Exempt from taxation for State purposes.*—The corporations, joint-stock companies and associations mentioned in this act, as taxable shall hereafter be exempt from assessment and taxation for State purposes, except upon their real estate and as herein provided; but they shall in all other respects be liable to assessment and taxation as heretofore. (*Laws 1881, chap. 361, § 8.*)

§ 456. *Tax, how applied.*—The taxes imposed by this act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the

State, and if any corporation, joint-stock company, person, partnership or association shall neglect or refuse to pay any tax by this act required to be paid, the same may be sued for in the name of the people of the State, and recovered in any court of competent jurisdiction, in an action to be brought by the attorney-general at the instance of the comptroller. (*Laws 1881, chap. 361, § 9.*)

§ 457. *Tax under repealed act to be enforced.*—All obligations, liabilities and taxes heretofore incurred or imposed under said act, chapter five hundred and forty-two of laws of eighteen hundred and eighty, are saved, and shall be enforced as if the said act had not been hereby amended. (*Laws 1881, chap. 361, § 10.*)

For the act, of which the foregoing is an amendment, see chapter 542, Laws of 1880, entitled "An act to provide for raising taxes for the use of the State upon certain corporations, joint stock companies and associations."

GENERAL REGULATIONS CONCERNING THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES, AND THE COLLECTION THEREOF.

The subject embraced in this portion of this chapter was provided for by the twenty-three sections of title four, chapter thirteen of the first part of the Revised Statutes. Chapter 536, section 6, of the Laws of 1857, declared those provisions not applicable to railroad corporations, and by the last mentioned act five new sections were added to the provisions of the Revised Statutes regulating railroad corporations in respect thereto. By Laws of 1858, chapter 110, section 1, the sixth section of chapter 536 of the laws of 1857 above referred to was repealed.

The original provisions of the Revised Statutes, as amended by chapter 654 of the Laws of 1853, and by chapter 456 of the Laws of 1857, will be found below.

That the repeal of a repealing statute revives the act first repealed. (*Vide Wheeler v. Roberts, 7 Cow., 536.*) That previous to the amendment and repeal the taxation of railroad companies were regulated by those sections. (*See Mohawk and H. R. R. Co. v. Clute, 4 Paige, 384.*)

§ 458. *Corporations liable to taxation.*—All moneyed or stock corporations deriving an income or profit from their capital or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed. (1 R. S., 414, § 1; 6th ed., R. S., vol. 1, p. 979; 7th ed., R. S., vol. 2, p. 1036.)

§ 459. *To deliver statements to assessors.*—The president, cashier, secretary, treasurer or other proper officer of every such incorporated company, shall, on or before the

first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second title of this chapter (see sections 421, 422, *ante*), a written statement, specifying:

1. The real estate, if any, owned by such company, the town or wards in which the same is situated, and the sums actually paid therefor.

2. The capital stock actually paid in and secured, to be paid in, excepting therefrom the sums paid for real estate and the amount of such capital stock held by the State, and by any incorporated literary or charitable institution; and,

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated, or, if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed under the provisions of this chapter. (*Id.*, § 2.)

§ 460. *To deliver statements to comptroller.*—The president, or other proper officer of every such company, shall also deliver to the comptroller on or before the first day of July, in each year, a written statement, containing the same matters required by the foregoing sections to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this title, shall be certified under the oath of the said president, or other proper officer, to be in all respects just and true. (1 R. S., 415, § 3; 6th ed., R. S., vol. 1, p. 980; 7th ed., R. S., vol. 2, p. 1036.)

The court will not interfere by injunction to relieve a company against its own mistake in its written statement, after the town and county officers have acted thereon. (*Mohawk and Hudson R. R. Co. v. Clute*, 4 Paige, 384.)

§ 461. *Penalty.*—If the statements above required, or either of them, shall not be furnished by any company to the assessors and to the comptroller within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this State for each statement omitted to be furnished the sum of two hundred and fifty dollars; and it shall be the duty of the comptroller to furnish the attorney-general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties herein imposed. (*Id.*, § 4.)

§ 462. *Suits therefor.*—If any company shall be prosecuted for any such penalty shall pay the costs of prosecu-

tion, and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not willful, may, in his discretion, discontinue such suit. (*Id.*, § 5.)

§ 463. *Companies, how assessed.*—The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies and the property of all other incorporated companies liable to taxation in their respective towns, in their assessment rolls, in the following manner (*Id.*, § 6):

1. They shall insert, in the first column of the assessment rolls, the name of each incorporated company in their respective towns or wards liable to taxation, on its capital or otherwise, and under its name they shall specify the amount of its capital stock paid in, and secured to be paid in, the amount paid by such company for real estate then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds exceeding ten per cent of the capital, after deducting therefrom the said amount of said real estate and the amount of its stock, if any, belonging to the State, and to any incorporated literary and charitable institutions. (*As amended by Laws of 1853, chap. 654.*)

2. In the second column they shall enter the quantity of real estate owned by such company and situated within their town or ward, and in the third column the actual value thereof, estimated as in other cases.

3. In the fourth column they shall enter the amount of the capital stock of every incorporated company paid in, and secured to be paid in; and of all surplus profits or reserved funds as aforesaid, after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and those belonging to it and the amount of stock, if any, belonging to the people of the State, and to incorporated literary and charitable institutions. (*As amended by Laws 1853, chap. 654.*)

1 R. S., 393, § 19, as amended by Laws of 1857, chap. 536, § 2 read as follows: "The assessors shall complete the assessment rolls on or before the first day of August, in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall forthwith cause notices thereof to be left with one of their number; they shall forthwith cause notices thereof to be put up at three or more public places in their town or ward; and in case the assessment roll shall include property belonging to a railroad corporation, they shall at the same time cause a like notice to be mailed to the treasurer thereof, or delivered to the railroad agent at the nearest station." But section 1 of chapter 110 of the Laws of 1858 repealed so much of section 2 of chapter 536 of the Laws of 1857, which required special notice to be given in case an assessment roll included property belonging to a railroad corporation.

Section 7 was repealed by section 2 of chapter 654 of the Laws of 1853.

§ 464. *Preceding sections extended.*—The provisions of the fifteenth section of the second title of this chapter shall be and are hereby extended to the incorporated companies in the two preceding sections named, and the president, secretary or other proper officer may make the affidavit required by said section. (1 R. S., 416, § 8; 6th ed., R. S., vol 1, p. 980.)

The original fifteenth section of the Revised Statutes applied to an affidavit for the purpose of reducing the value of property. This section was repealed by section 3, chapter 176, Laws of 1851, and section 6 of said last named act, as amended by section 5 of chapter 536, Laws of 1857, now provides for the method of reducing the valuation of assessments. Section 6 last above cited as amended, is not stated in terms to be either an amendment of or a substitute for the original section 15 of the Revised Statutes, but by section 3 of chapter 536 of the Laws of 1857, the word "person" or "persons," as used in the above referred to section 6 of the Laws of 1851, is declared to include corporations as well as individuals. (See note to section 423, *ante*.)

The ninth section was amended by chapter 654 of the Laws of 1853, but was afterwards repealed by chapter 456 of the Laws of 1857, as amended previous to its repeal; it read as follows: If the president or other proper officer of any incorporated company named in the assessment roll shall show to the satisfaction of the board of supervisors, at their annual meeting, within two days from the commencement thereof by the affidavit of such officer, to be filed with the clerk of the board, that said company has not been, during the preceding year, in the receipt of net annual profits or clear income equal to five per cent on the capital stock of such company paid in, or secured to be paid in, after deducting from the amount of their capital stock the assessed value of their real estate, such company shall be entitled to commute for their taxes on such capital stock by paying directly to the treasurer of the county in which the business of such company is transacted, a sum equal to five per cent on such net annual profits or clear income, and also such further sum as shall have been assessed on such roll as the taxes on their real estate. And the assessment of every moneyed or stock corporation authorized to make dividends on its capital, from which no such affidavit shall be received as aforesaid, shall be conclusive evidence that such corporation was liable to taxation, and was duly assessed.

Section 10 was amended by chapter 654, Laws of 1873, and then repealed by chapter 456 of Laws of 1857. Prior to its repeal as amended it read as follows: The capital stock of every company liable to taxation, except such part of it as shall have been exempted in the assessments under the previous sections of this title, together with its surplus profits or reserved funds, exceeding ten per cent of its capital, after deducting the assessed value of its real estate, and also the real estate of every such company shall be assessed and taxed in the same manner as the other personal and real estate of the county, unless such company shall be entitled to commute, as by the provisions of the preceding section, and shall elect so to do.

Sections 11, 12 and 13 were repealed by chapter 654, Laws of 1853, section 2, and section 14 was repealed by chapter 456 of Laws of 1857. Section 14, before its repeal, read as follows: The president or other proper officer of each company electing to commute shall make affidavit before some officer authorized to take affidavits, stating the amount of such net income, and on filing the same with the clerk of the board of supervisors at their annual meeting within two

hours from the commencement thereof, accompanied by the receipt of the county treasurer acknowledging the payment of the proper commutation, such board of supervisors shall impose no tax on the property of such company.

§ 465. *Taxes to be stated and collected.*—The amount of taxes assessed on all incorporated companies liable to taxation shall be set down by the board of supervisors in the fourth column of the corrected assessment roll, and shall form a part of the moneys to be collected by the assessor. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or shall have been exempted by law, together with its surplus profits or vested funds exceeding ten per cent of its capital after deducting the assessed value of its real estate; and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value and taxed in the same manner as the other real and personal estate of the county. (R. S. 416, § 15; 6th ed., R. S., vol. 1, p. 981, *as amended by Laws of 1857, chap. 456*; also, 7th ed., R. S., vol. 2, p. 1037.)

§ 466. *Duty of Supervisors.*—The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuation of the real and personal estate in their county, a statement showing the names of the several municipal corporations liable to taxation in such county, the amount of the capital stock paid in and secured to be paid in by each, the amount of the real and personal property of each as put down by the assessors or by them, and the amount of taxes assessed in each. In those counties in which there is no such company, the board of supervisors shall certify such fact to the comptroller, with their returns, of the aggregate valuation of real and personal estate. (1 R. S., 417, § 16; 6th ed., R. S., vol. 1, p. 982; 7th ed., R. S., vol. 2, p. 1038.)

§ 467. *Duty of collector.*—The collector shall demand payment of all taxes assessed on incorporated companies from the president, or other proper officer, of such companies; and, if not paid, shall proceed in the collection and payment thereof in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him, and the collector's receipt shall be evidence of the payment of such tax. (*Id.*, § 17.)

§ 468. *Taxes, how paid.*—Such taxes shall be paid out of the funds of the company, and shall be rateably deducted

from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock if no dividends be afterwards declared. (*Id.*, § 18.)

§ 469. *Proceedings if taxes cannot be collected.*—If the collector shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county treasurer, and, at the same time, make affidavit before the county treasurer, or some other officer authorized to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the company, and that such officer had refused to pay the same; or that he had not been able to make such demand, as the case may be, and that such company had no personal property from which he could levy such tax. (1 R. S., 418, § 19; 6th ed., R. S., vol. 1, p. 983.)

§ 470. *The same.*—The county treasurer shall thereupon certify such facts to the comptroller, who shall place to the credit of such county treasurer the amount of all taxes so returned and certified, as in the case of taxes on the lands of non-residents. (*Id.*, § 20.)

§ 471. *Attorney-General to file petition.*—The comptroller shall furnish the attorney-general with the names of all companies and banks refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively, and the attorney-general shall thereupon file a petition in the supreme court against every such company or bank for the discovery and sequestration of its property. (*Id.*, § 21, as amended by chap. 456 of the Laws of 1857.)

§ 472. *Powers of supreme court thereon.*—The supreme court, on the filing of such petition, or on the coming in of the answer thereto, may order such part of the property of such company or bank to be sequestered as shall be deemed necessary for the purpose of satisfying the taxes in arrears, with the costs of prosecution, and the court may also, at its discretion, enjoin such company or bank and the officers thereof from any further proceedings under their charter or act of incorporation, and may order and direct such other proceedings as he shall deem necessary to compel the payment of such taxes and costs. (*Id.*, § 22, as amended by chap. 456 of the Laws of 1857.)

§ 473. *Further penalty.*—The attorney-general may also recover such tax, with costs, from such delinquent company, by action in any court of record in this State. (*Id.*, § 23.)

By chapter 293, Laws 1881, section 2, title 1, chapter 13, part 1, of the Revised Statutes was amended so that the word "*Land*" should be construed to include all surface, underground, or elevated railroads, all railroad structures, substructures and superstructures, tracks and the iron thereon, branches, switches and other fixtures permitted or authorized to be made, laid, or placed in, upon, over or under any public or private road, street, or grounds.

CHAPTER 33.

ACTIONS BY THE CORPORATION AND AGAINST THE CORPORATION TO RECOVER DAMAGES OR PROPERTY.

- § 474. Complaint in actions by or against corporations.
 § 475. When proof of corporate existence unnecessary.
 § 476. Misnomer, when waived.
 § 477. Action against a corporation upon a note, etc.
 § 478. When foreign corporation may sue.
 § 479. When foreign corporation may be sued.

§ 474. *Complaint in actions by or against corporations.*—In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the State, county, or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding by or under which the corporation was created. (*Code Civil Proc.*, § 1775.)

Founded upon 2 R. S., 459, part 3, chap. 8, tit. 4, § 13 (3 R. S., 5th ed., 756; 2 Edm., 479), the provisions of which have been extended, so as to establish an obligatory rule of pleading in the case therein provided for, and also where a foreign corporation is a party.

§ 475. *When proof of corporate existence unnecessary.*—In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation. (*Code Civil Proc.*, § 1776.)

(*Id.*, § 3, as amended by Laws 1864, chap. 422 [6 Edm., 296], and Laws 1875, chap. 508, extended to a case where a foreign corporation sues, or is sued.

§ 476. *Misnomer, when waived.*—In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded

in the answer, or other pleading in the defendant's behalf. (*Code Civil Proc.*, § 1777.)

§ 477. *Action against a corporation upon a note, etc.*—In an action against a foreign or domestic corporation, to recover damages for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order, extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issue presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his demand therefor; or, if the service of the summons was otherwise than personal, at the expiration of twenty days after the service is complete. (*Code Civil Proc.*, § 1778.)

§ 478. *When foreign corporation may sue.*—An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the laws of the country, or government by or under which the corporation is created; or of an act, done at such a meeting, which is not in conflict with the same laws, or the laws of the State. (*Code Civil Proc.*, § 1779.)

§ 479. *When foreign corporation may be sued.*—An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State, or relating to

property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the state, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

(Code Civil Proc. 1780)

CHAPTER 34.

JUDICIAL SUPERVISION OF THE CORPORATION, AND OF THE OFFICERS AND MEMBERS THERE- OF.

- § 480. Actions against directors, etc., of a corporation, for misconduct.
 § 481. By whom action to be brought.
 § 482. This article, how construed.

§ 480. *Action against directors, etc., of a corporation, for misconduct.*—An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires :

1. Compelling the defendants to account for their official conduct, in the management and disposition of the funds and property, committed to their charge.
2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by a violation of their duties.
3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.
4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board, duly authorized to hold the same, in order to supply the vacancy created by the removal ; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.
5. Setting aside an alienation of property, made by one or more trustees, directors, managers, or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.
6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made. (*Code Civil Proc.*, § 1781.)

(2 R. S., 462, part 3, chap. 8, tit. 4, § 33; 3 R. S., 5th ed., 762; 2 Edm., 482.)

It is evident that this section is open to a criticism, which also applies to the original statute, namely, that its restrictions may be evaded by an assignment of the cause of action to a resident. But, generally, the assignment will obviate the objection to the bringing of the action; and, in most cases where it will not, section 1910 of the Code of Civil Procedure will prevent the violation of any grave principle of public policy.

§ 481. *By whom action to be brought.*—An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the State; or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager or other officer of the corporation, having a general superintendence of its concerns. (*Code Civil Proc.*, § 1782.)

§ 482. *This article, how construed.*—This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer. (*Code Civil Proc.*, § 1783.)

CHAPTER 35.

ACTIONS TO PROCURE THE DISSOLUTION OF THE CORPORATION, AND ACTIONS TO ENFORCE THE INDIVIDUAL LIABILITY OF THE OFFICERS OR MEMBERS OF THE CORPORATION, WITH OR WITHOUT A DISSOLUTION THEREOF.

- § 483. Action by judgment creditor for sequestration, etc.
 484. Action to dissolve a corporation.
 485. Id.; by whom to be brought.
 486. Temporary injunction.
 487. Receiver may be appointed. Permanent and temporary receiver. Powers, etc., of temporary receiver.
 § 488. Additional powers and duties may be conferred upon temporary receiver.
 489. Making stockholders, etc., parties.
 490. When separate action may be brought against them.
 491. Proceedings in either action.
 492. Judgment; property of corporation to be distributed.
 493. Id.; stock subscriptions to be recovered.
 494. Id.; as to liabilities of directors and stockholders.
 495. Effect of this article limited.

§ 483. *Action by judgment creditor for sequestration, etc.*—Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the State, and an execution, issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment, sequestering the property of the corporation, and providing for a distribution thereof, as prescribed in section 1793 of the Code of Civil Procedure. (*Code of Civil Proc.*, § 1784.)

From 2 R. S., 463, part 2, chap. 8, title 4, § 36, omitting the provision for a receiver, which is in section 1788 of the Code. (Section 487, *post.*) Under the former provision of the statute it was held that upon the granting of an order of sequestration and the appointment of a receiver of an insolvent corporation, under 2 Rev. Stat., 463, § 36, the right of action against the stockholders for unpaid subscriptions to the capital-stock vests in the receiver; and an injunction under section 56 restraining creditors from proceeding against the corporation has the effect of restraining judgment-creditors of the corporation from prosecuting an action commenced by him after the order, though before the

appointment of a receiver, to recover against a stockholder on his unpaid subscription. (*Ct. of Appeals*, 1857, *Rankin v. Elliott*, 16 N. Y. [2 Smith], 377; affirming S. C., 14 How. Pr., 339.)

§ 484. *Action to dissolve a corporation.*—In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of the State, and forfeiting its corporate rights, privileges, and franchises, may be maintained, as prescribed in the next section:

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it. (*Code of Civil Proc.*, § 1785.)

See section 37, *ante*.

It was held, in *Bradt v. Benedict*, 17 N. Y., 93, that section 38 of the Revised Statutes, of which the foregoing section is a consolidation, was cumulative, and not a limitation upon the previous common law rule. A sale of the property of the corporation, a resolution to dissolve, and cessation of business constitute a practical surrender of corporate franchises. (*Webster v. Turner*, 12 Hun, 264.) As to the proper parties, see *People v. Albany, etc., R. R. Co.*, 15 Hun, 126.)

Insolvency, in the abstract, has the same signification, whether applied to corporations or associations, and means a general inability to pay one's debts; an inability to fulfill one's obligations, according to his undertaking; a general inability to answer, in the course of business, the liabilities existing and capable of being enforced,—not an absolute inability to pay one's debts at some future time, upon a settlement and winding up of all a trader's concerns, but not being in a condition to pay one's debts in the ordinary course, as persons carrying on trade usually do. (5 Seld., 589; 2 Bell's Com., 162; 4 Cush., 134; 12 O. R., 335; 4 Hill, 654; *Supreme Ct., Sp. T.*, 1858, *Ferry v. Bank of Central New York*, 15 How. Pr., 445.) Chancery has no jurisdiction over corporate bodies, either under the principles of the common law or through its general equitable powers, for the purpose of restraining their operations, with a view to a dissolution or to take away corporate rights and franchises; and it is only by the statute, and for particular causes there enumerated, to be made out by due proof, that the court entertains jurisdiction. (2 Johns. Ch., 371; Hopk., 354, 598; *V. Chan. Ct.*, 1831, *Verplanck v. Mercantile Ins. Co.*, 1 Edw., 84.) That the court of chancery cannot dissolve a corporation, or wind up its affairs, except upon some one of the grounds specified in the Revised Statutes. (*Ferris*

v. *Strong*, 3 Edw., 127.) A corporation, like an individual, is insolvent when it is not able to pay its debts. Insolvency means a general inability to answer in the course of business the liabilities existing and capable of being enforced. (2 *Younge & Jer.*, 459; 2 *Bouv. Inst.*, 157; 1 *Johns.*, 370; 3 *M. & G.*, 158; 4 *Bing.*, 20; 1 *Metc.*, 366; 1 *Sandf. Ch.*, 207; *Ct. of Appeals*, 1854, *Brouwer v. Harbeck*, 9 N. Y. [5 *Seld.*], 589.)

§ 485. *Id.*; by whom to be brought.—[Amended, 1880, chap. 301.]—An action, specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits for sixty days after this submission to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly. (*Code Civil Proc.*, § 1786.)

See *Osgood v. Maguire*, 61 N. Y., 524; *Masten v. Eclectic Life Ins. Co.*, 6 Daly, 455; *Attorney-General v. North American Life Ins. Co.*, 6 Abb., N. C., 293; *Medbury v. Rochester F. S. Co.*, 19 Hun, 498; *Wilmersdoerffer v. Lake Mahopac Imp. Co.*, 18 Hun, 387; *Bedell v. The Same*, 7 Daly, 273; *Fisher v. World Mut. Life Ins. Co.*, 47 How. Pr., 451; *Attorney-General v. Continental Life Ins. Co.*, 53 How. Pr., 16.

§ 486. In an action, brought as prescribed in this article (*chapter*), the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, restraining the corporation, and its trustees, directors, managers, and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering, to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers, and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of this act,* relating to the granting, vacating, or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court. (*Code Civil Proc.*, § 1787.)

*Code of Civil Procedure.

Held, by the court of appeals, that the voluntary appearance of the corporation by an attorney, and admission of service of an order to show cause, give the court jurisdiction to enjoin the corporation, appoint a receiver of its property, and render judgment of dissolution in an action by the attorney-general. (*Attorney-General v. Guardian Life Ins. Co.*, 77 N. Y., 272.)

§ 487. *Receiver may be appointed; permanent and temporary receiver; powers, etc., of temporary receiver.*—In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed before final judgment, is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell, or otherwise dispose of the property, as directed by the court; to collect, receive, and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law, for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof. A receiver, appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver. (*Code Civil Proc.*, § 1788.) (*See chap. 39.*)

§ 488. *Additional powers and duties may be conferred upon temporary receiver.*—A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court. (*Code Civil Proc.*, § 1789.)

§ 489. *Making stockholders, etc., parties.*—Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable,

may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action. (*Code Civil Proc.*, § 1790.)

§ 490. *When separate action may be brought against them.*—Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning, and enforcing their liability. (*Code Civil Proc.*, § 1791.)

§ 491. *Proceedings in either action.*—In an action, brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendant's liability must be apportioned accordingly; but, if it affirmatively appears, that the corporation is insolvent, and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly. (*Code Civil Proc.*, § 1792.)

§ 492. *Judgment; property of corporation to be distributed.*—A final judgment in an action, brought against a corporation, as prescribed in this article (*chapter*), either separately or in conjunction with its stockholders, directors, trustees, or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation. (*Code Civil Proc.*, § 1793.)

§ 493. *Id.; stock subscriptions to be recovered.*—Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation. (*Code Civil Proc.*, § 1794.)

§ 494. *Id.; as to liabilities of directors and stockholders.*—If it appears that the property of the corporation,

and the sums collected or collectible from the stockholders, upon their stock subscriptions, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the directors, trustees, or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation. (*Code Civil Proc.*, § 1795.)

§ 495. *Effect of this article limited.*—This article (*chapter*) does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation. (*Code Civil Proc.*, § 1796.)

CHAPTER 36.

ACTION BY THE PEOPLE TO ANNUL THE CORPORATION.

- § 496. Action by attorney general, when Legislature directs.
- § 497. *Id.*; by leave of court.
- § 498. Leave, when and how granted.
- § 499. Action triable by a jury.
- § 500. Judgment.
- § 501. Injunction may issue.
- § 502. Copy of judgment-roll to be filed and published.

§ 496. *Action by attorney-general, when Legislature directs.*—The attorney-general, whenever he is so directed by the Legislature, must bring an action against a corporation created by or under the laws of the State, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated. (*Code Civil Proc.*, § 1797.)

§ 497. *Id.*; *by leave of court.*—Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the State, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either

1. Offended against any provision of an act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation; or,
2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or,
3. Forfeited its privileges or franchises by a failure to exercise its powers; or,
4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges and franchises; or,
5. Exercised a privilege or franchise, not conferred upon it by law. (*Code Civil Proc.*, § 1798.)

§ 498. *Leave, when and how granted.*—Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto. (*Code Civil Proc.*, § 1799.)

§ 499. *Action triable by a jury.*—An action, brought as prescribed in this article (*chapter*), is triable, of course and of right, by a jury, as if it was an action specified in section nine hundred and sixty-eight of this act, and without procuring an order, as prescribed in section nine hundred and seventy of this act. (*Code Civil Proc.*, § 1800.)

§ 500. *Judgment.*—Where any of the matters, specified in section 1797 or section 1798 of this act, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in chapter seventeenth of this act. (*Code Civil Proc.*, § 1801, *see chap. 38, post.*)

§ 501. *Injunction may issue.*—In an action, brought as prescribed in this article (*chapter*), an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees, and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section six hundred and three of this act, and all the provisions of title second of chapter seventh of this act, applicable to an injunction specified in that section apply to an injunction granted as prescribed in this section, except that it can be granted only by the court. (*Code Civil Proc.*, § 1802.)

§ 502. *Copy of judgment roll to be filed and published.*—When the final judgment is rendered against a corporation, in an action, brought as prescribed in this article (*chapter*), the attorney-general must cause a copy of the

judgment-roll to be forthwith filed in the office of the secretary of state ; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in the newspaper printed at Albany, in which legal notices are required to be published, and also in a newspaper printed in the county, wherein the principal place of business of the corporation was located. (*Code Civil Proc.*, § 1803.)

CHAPTER 37.

PROVISIONS APPLICABLE TO TWO OR MORE OF THE ACTIONS SPECIFIED IN THE LAST THREE CHAPTERS.

- § 503. Certain corporations excepted from certain articles of this title.
 § 504. Officers and agents may be compelled to testify.
 § 505. Injunction staying actions by creditors.
 § 506. Creditors may be brought in.
 § 507. When attorney-general must bring action.
 § 508. Requisites of injunction against corporations in certain cases.
 § 509. Id.; of order appointing receiver in certain cases.
 § 510. Id.; of judicial suspension or removal of an officer.
 § 511. Application of the last three sections.
 § 512. In action against stockholders, misnomer, etc., not available.

§ 503. *Certain corporations excepted.*—Articles second, third, and fourth of this title (*i. e., the three last chapters*) do not apply to an incorporated library society; to a religious corporation; to a select school or academy, incorporated by the regents of the university, or by an act of the Legislature; or to a municipal or other political corporation, created by the constitution, or by or under the laws of the State. (*Code Civil Proc., 1804.*)

The articles above referred to are embraced in the last three chapters.

§ 504. *Officers and agents may be compelled to testify.* In an action, brought as prescribed in article second, third, or fourth of this title (*i. e., the last three chapters*), a stockholder, officer, alienee or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offence, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding. (*Code Civil Proc., § 1805.*)

§ 505. *Injunction staying actions by creditors.*—In such an action the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an

injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it was granted. (*Code Civil Proc.*, § 1806.)

§ 506. *Creditors may be brought in.*—In such an action the court may, at any stage of the action, before or after final judgment, make an order, requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner, and within such a reasonable time, not less than six months from the first publication of notice of the order, as the court directs; and that the creditors, who make default in so doing, shall be precluded from all benefit of the judgment, and from any distribution which may be made thereunder. Notice of the order must be given, by publication, in such newspapers and for such a length of time, as the court directs. (*Code Civil Proc.*, § 1807.)

§ 507. *When attorney-general must bring action.*—Where the attorney-general has good reason to believe that an action can be maintained in behalf of the people of the State, as prescribed in article second, third or fourth of this title (*i. e.*, the last three chapters), except section seventeen hundred and ninety-seven of this act, (section 496 *ante*), he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stock holder, director or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe, that it can be maintained. Where such an application is made, section nineteen hundred and eighty-six of this act applies thereto, and to the action brought in pursuance thereof. (*Code Civil Proc.*, § 1808.)

§ 508. *Requisites of injunction against corporations in certain cases.*—An injunction order, suspending the general and ordinary business of a corporation, or of a

joint-stock association, consisting of seven or more persons, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application thereof, to the proper officer of the corporation or association, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void. (*Code Civil Proc.*, § 1809.)

§ 509. *Id.*; of order appointing receiver in certain cases.—A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in article second, third, or fourth of this article, (*i. e.*, the last three chapters.)

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to prevent the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment, must be given to the proper officer of the corporation. (*Code Civil Proc.*, § 1810.)

See, as to the appointment of a receiver of mortgaged premises, *Burlingame v. Parce*, 12 Hun, 144; *Smith v. Tiffany*, 13 id., 671; see, also, Rules of Courts 87 and 88.

§ 510. *Id.*; of judicial suspension or removal of an officer.—A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section seventeen eighty-one of this act. (*Code Civil Pro.*, § 1811.) (*See chapter 34, ante.*)

§ 511. *Application of the last three sections.*—The last three sections apply to an action or a special proceeding, against a corporation, or joint-stock association created by or under the laws of the State, or a trustee, director, or other officer thereof; or against a corporation, or joint-stock association created by or under the laws of another State, government, or country, or a trustee, director, or other officer thereof, where the corporation or association does business within the State, or has, within the State, a business agency, or a fiscal agency, or an agency for the transfer of its stock. (*Code Civil Proc.*, § 1812.)

§ 512. *In action against stockholders, misnomer, etc., not available.*—Where an action, authorized by a law of the State, is brought against one or more persons, as stockholders of a corporation or joint-stock association, an objection to any of the proceedings cannot be taken, by a person properly made a defendant in the action on the ground that the plaintiff has joined with him, as a defendant in the action, a person, whose name appears on the stock-books of the corporation or association, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor. (*Code Civil Proc.*, § 1813.)

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CHAPTER 38.

PROCEEDINGS FOR THE VOLUNTARY DISSOLUTION OF THE CORPORATION.

- § 512(a). When a majority of directors, etc., may petition for dissolution.
 § 513. Id.; when they are equally divided.
 § 514. Contents of petition.
 § 515. Affidavit to be annexed.
 § 516. Presentation of petition, etc.; order to show cause.
 § 517. Order to be published.
 § 518. Id.; to be served on creditors and stockholders.
 § 519. Hearing.
 § 520. Id.; original papers may be used.
 § 521. Application for final order.
 § 522. Final order.
 § 523. Certain sales, etc., void.
 § 524. Certain corporations excepted from this title.

§ 512(a). *When a majority of directors, etc., may petition for dissolution.*—If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the State, discover that the stock, effects, and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders, that the corporation should be dissolved; they may present a petition, to the supreme court, or to a superior city court of the city where the principal office of the corporation is located, praying for a final order dissolving the corporation, as prescribed in this title. (*Code Civil Proc.*, § 2419.)

(2 R. S., 467, part 3, chap. 8, tit. 4, § 58; [3 R. S., 5th ed., 768; 2 Edm., 488], amended.)

§ 513. *Id.; when they are equally divided.*—If a corporation, created under a general statute of the State for the formation of corporations, has an even number of trustees or directors, who are equally divided, respecting the management of its affairs, and the entire stock of the corporation is, at that time, owned by the trustees, or directors, or is so divided, that one-half thereof is owned or controlled by persons favoring the course of one-half of the trustees or

directors, and one-half by persons favoring the course of the other half of them, the trustees or directors, or one or more of them, may present a petition as prescribed in the last section. But this section does not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money. (*Code Civil Proc.*, § 2420.)

(Laws 1876, chap. 442, § 1, omitting the provision making the granting of the order discretionary, which has been taken into sections 2423 and 2429 of the Code of Civil Procedure.)

§ 514. *Contents of petition.*—The petition must show that the case is one of those specified in the last two sections, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, containing the following matters, as far as the petitioners know, or have the means of knowing the same :

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it was to be performed, if known ; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand, or other engagement.

4. A statement of the true cause and consideration of the indebtedness of each creditor.

5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto.

6. A statement of each incumbrance upon the property, of the corporation, by judgment, mortgage, pledge, or otherwise.

7. A full, just, and true account of the capital stock of the corporation, specifying the name of each stockholder ; his residence, if it is known, or if it is not known, stating that fact ; the number of shares belonging to him ; the amount paid in upon his shares ; and the amount still due thereupon. (*Code Civil Proc.*, § 2421.)

The requisites of an application for the voluntary dissolution of a corpora-

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tion, under the provisions of the Revised Statutes, stated. (*Case of Westchester Iron Co.*, 6 Abb. Pr., 386, note; S. C., 15 How. Pr., 7.)

§ 515. *Affidavit to be annexed.*—An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has means of knowing the same, must be annexed to the petition and schedule. (*Code Civil Proc.*, § 2422.)

§ 516. *Presentation of petition, etc. Order to show cause.*—Where the petition is addressed to the supreme court, the papers must be presented at a term of that court, held within the judicial district, embracing the county wherein the principal office of the corporation is located. In a case specified in section 2420 (section 513, *ante*) of this act, the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the case is one of those specified in section 2419 [section 512(*a*), *ante*] of this act, the court must make an order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than three months after the granting of the order, why the corporation should not be dissolved. The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the court, or, in the supreme court, with the clerk of the county where the principal office of the corporation is located. (*Code Civil Proc.*, § 2423.)

§ 517. *Order to be published.*—A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in the newspaper printed at Albany, in which legal notices are required to be published; and also in one or more newspapers, specified in the order, published in the city or county wherein the order is entered. (*Code Civil Proc.*, § 2424.)

§ 518. *Id.; to be served on creditors and stockholders.*—A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made, either personally, at least twenty days before the time ap-

pointed for the hearing; or by depositing a copy of the order, at least forty days before the time so appointed, in the post-office, inclosed in a postpaid wrapper, addressed to the person to be served, at his residence, as stated in the schedule. (*Code Civil Proc.*, § 2425.)

§ 519. *Hearing.*—At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts. If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable. The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits, and other property, and of the debts and other engagements, of the corporation, and of all other matters, pertaining to its affairs. (*Code Civil Proc.*, § 2426.)

§ 520. *Id.*, original papers may be used.—The court or the referee is entitled to use, upon the hearing, the original petitions, and the schedule annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge, or of the referee. In that case, they must be returned with the decision or report. (*Code Civil Proc.*, § 2427.)

§ 521. *Application for final order.*—Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the State, where such a notice may be served. The notice may be served as prescribed in this act, for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice, as the court prescribes. (*Code Civil Proc.*, § 2428.)

§ 522. *Final order.*—Upon an application for a final order, if it appears to the court, in a case specified in section 2419 [section 512(a), *ante*], of this act, that the corporation is insolvent, or, in a case specified either in that section, or in section 2420 (section 513, *ante*) of this act, that, for any reason, a dissolution of the corporation will be beneficial to the interests of the stockholders,

and not injurious to the public interests, the court must make a final order, dissolving the corporation, and appointing one or more receivers of its property. Upon the entry of the order, the corporation is dissolved. The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property. (*Code Civil Proc.*, § 2429.) (See chap. 39.)

The following are recent authorities bearing upon the receiver's general powers and duties: *New Amsterdam Savings Bank v. Tartter*, 4 Abb. [N. C.], 215; *Matter of Le Blanc*, id., 221; *Chamberlain v. Greenleaf*, id., 178; *Palmer v. Clark*, id., 25; *Ritterbaud v. Baggett*, id., 67; *Matter of Guardian M. L. Ins. Co.*, 13 Hun, 115; *Matter of Crosby and Day*, 16 id., 291; *Whittlesey v. Delaney*, 73 N. Y., 571; *Whittlesey v. Frantz*, 74 id., 456. As to restraining auditors' actions by injunction, see *Matter of French Man. Co.*, 12 Hun, 438.

§ 522. *Certain sales, etc., void.*—A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this title, in payment, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation. (*Code Civil Proc.*, § 2430.)

§ 524. *Certain corporations excepted from this title.*—This title does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the Legislature, or to a municipal or other political corporation. (*Code Civil Proc.*, § 2431.)

CHAPTER 39.

UNREPEALED PORTIONS OF THE REVISED STATUTES AND SUBSEQUENT ACTS, RELATING TO THE GENERAL POWERS, DUTIES AND LIABILITIES OF RECEIVERS OF CORPORATIONS.

- § 525. Receiver's general powers and duties.
- § 526. Receiver's security.
- § 527. Their rights.
- § 528. Their authority.
- § 529. To prosecute for arrears of stock.
- § 530. To give notice of appointment.
- § 531. Certain sales void.
- § 532. Debtors to account to receivers.
- § 533. Referring to controversies.
- § 534. Meeting of creditors to be called.
- § 535. Subsisting contracts.
- § 536. Receivers' commissions.
- § 537. To retain certain moneys.
- § 538. Id. ; to meet suits.
- § 539. Order of payment of debts.
- § 540. Second and final dividend.
- § 541. Proceedings thereon.
- § 542. Debts not exhibited.
- § 543. Surplus to stockholders.
- § 544. Money refunded.
- § 545. Control of receivers.
- § 546. Account by them.
- § 547. Previous notice thereof.
- § 548. Master's duty.
- § 549. Settlement of account; its effect.
- § 550. Receiver to report to attorney-general.
- § 551. Compelling report.
- § 552. Motion to remove receiver.
- § 553. Notices of motion to be served on attorney-general.
- § 554. Powers of receivers extended for protection against fraud.
- § 555. And have actions against offenders.
- § 556. Enforcement of liabilities against receivers of insolvent corporations.
- § 557. Officers of company punished for concealing notices for injunction of receiver.
- § 558. To whom the above act applies.

Chapter 245 of the Laws of 1880, contains the following :

SECTION 1. The following acts and parts of acts heretofore passed by the Legislature of this State are hereby repealed.

[Here follow very numerous acts, which are superseded by the passage of the Code of Civil Procedure.]

§ 3. The third part of the Revised Statutes, except the following portions thereof ; * * * the following portions of title fourth, namely (*chapter eight*)

section forty-two, which is hereby made applicable to a permanent receiver appointed as prescribed in section seventeen hundred and eighty-eight of the Code of Civil Procedure, sections sixty-six to eighty-nine, both inclusive, which are hereby made applicable to a receiver appointed as prescribed in section twenty-four hundred and twenty-nine of the Code of Civil Procedure.

(For section 1788, above referred to, see section 487, *ante*; and for section 2429, see section 522, *ante*.)

2 R. S., 464, PART 3, CHAP. 8, TIT. 4, ART. 2 (3 R. S., 5TH ED., 664; 3 R. S., 6TH ED., PAGE 749); 2 EDM., 484; 7TH ED., R. S., VOL. 3, PAGE 2396.

§ 525. *Receiver's general powers and duties.*—Such receiver shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed, in article third of this title, upon receivers appointed in case of the voluntary dissolution of a corporation (see next section). It shall be his duty to keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year, to make and file a written statement, verified by his oath, that such statement is correct and true, showing the amount of money received by such receiver, his agent or attorneys, the amount he has a right to retain under the provisions of this title, and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto on demand, at any time after such statement. Such accounts, statements and all the books and papers of the corporation, in the hands of such receiver shall, at all reasonable times, be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by this title, the supreme court at either a general or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor, as if no such removal had been made. Such receivers shall also be liable to pay to the party interested, interest at the rate of ten per cent per annum on all moneys due to such party, and retained by him more than one day after such demand made as aforesaid.

Section 42 of R. S. *supra*, as amended by Laws 1858, chap. 348.

(45 N. Y., 315; 1 id., 332; 23 Barb., 656; 1 id., 148; 6 Paige, 217, 226, 503; 4 id., 225; 2 id., 452; 2 Sandf. Ch., 257.)

2 R. S., 468-472, PART 3, CHAP. 8, TIT. 4, ART. 3 (3 R. S., 5TH ED., 769; 3 R. S., 6TH ED., PAGE 764); 2 EDM., 490; 7TH ED., R. S., VOL. 3, PAGE 2399.

§ 526. *Receivers; security.*—Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, before entering upon the duties of their appointment, shall give such security to the people of this State, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them. (§ 66 of *R. S. supra.*)

(16 How. Pr. R., 57.)

§ 527. *Their rights.*—Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation and of its stockholders. (§ 67, *Id.*)

(1 N. Y., 332; 26 Barb., 59, 311; 23 *id.*, 656; 1 *id.*, 148; 3 Wend., 13; 23 How. Pr. R., 283; 73 N. Y., 571; 55 Barb., 217.)

§ 528. *Their authority.*—Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of insolvent debtors may be made, pursuant to the provisions of the fifth chapter of the second part of the Revised Statutes. (§ 68, *Id.*)

(36 N. Y., 350; 6 Bosw., 638; 55 Barb., 219; 4 T. & C., 622; 5 Robt., 362; 1 N. Y., 332; 23 Barb., 656; 1 Abb., 463; 6 Paige, 503; 37 Barb., 228; 24 How. Pr. R., 487; 178 N. Y., 267; 81 *id.*, 242.)

§ 529. *To prosecute for arrears of stock.*—If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receivers shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file their bill in the court of chancery, or may commence and prosecute an action at law, for the recovery of such sum, without the consent of any creditors of such corporation. (§ 69, *Id.*)

(25 Barb., 109; 21 *id.*, 619; 12 *id.*, 672; 2 *id.*, 208; 1 Barb. Ch., 124; 23 Barb., 656; 1 *id.*, 298; 6 Bosw., 638.)

§ 530. *To give notice of appointment, etc.*—The receivers, immediately on their appointment, shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addi-

tion thereto, shall require all persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified; which shall be published for three weeks in the State paper and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated. (§ 70, *Id.*)

(36 N. Y., 350; 5 Robt., 362; 6 Bosw., 638.)

§ 531. *Certain sales, etc., void.*—All sales, assignments, transfers, mortgages and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as a security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation. (§ 71, *Id.*)

(11 N. Y., 240; 26 Barb., 59; 8 Paige, 382; 1 Duer, 129; 24 How. Pr., 93; 55 N. Y., 18, 21; 6 Bosw., 638; 5 Robt., 362.)

§ 532. *Debtors to account to receivers.*—After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers: and all the provisions of law, in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation. (§ 72, *Id.*)

(1 N. Y., 332; 1 Barb., 148; 6 Paige, 226; 4 *id.*, 225; 36 N. Y., 350; 6 Bosw., 638.)

§ 533. *Referring controversies.*—Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors; and the same proceedings for that purpose shall be had, and with the like effect; and application for the appointment of referees may be made to any officer authorized to appoint such referees on the application of trustees of insolvent debtors, who shall proceed therein in the same manner; and the referees shall proceed

in like manner, and file their report with the like effect in all respects. (§ 73 *Id.*)

(18 N. Y., 213; 17 Barb., 111; 24 How. Pr., 487; 6 Bosw., 638; 42 N. Y., 155; 81 *id.*, 242.)

§ 534. *Meetings of creditors to be called, etc.*—The receivers shall be subject to all the duties and obligations by law imposed on trustees of insolvent debtors, so far as they may be applicable, except where other provisions shall be herein made. They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment, when all accounts and demands for and against such corporation, and all its open and subsisting contracts, shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared. (§ 74, *Id.*)

(37 Barb., 228; 5 Robt., 362; 6 Bosw., 638; 36 N. Y., 350.)

§ 535. *Subsisting contracts.*—If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed cancelled and discharged as against such receivers. (§ 75, *Id.*)

(3 Barb. Ch., 642; 2 Edw. Ch., 672; 78 N. Y., 114; 79 *id.*, 267.)

§ 536. *Receivers' commissions.*—Such receivers, shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors or administrators. (§ 76, *Id.*)

(12 Barb., 672; 6 Paige, 217; see Laws 1831, chap. 141, § 1; see Laws 1842, chap. 3.)

§ 537. *To retain certain moneys.*—The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums which they are hereinbefore authorized to pay, for the purpose of cancelling and discharging any open or subsisting engagements. (§ 77, *Id.*)

§ 538. *Id.*; to meet suits.—If any suit be pending against the corporation or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend. (§ 78, *Id.*)

(Laws 1821, chap. 141, § 3.)

(36 Barb., 331.)

§ 539. *Order of payment of debts.*—The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows :

1. All debts entitled to a preference under the laws of the United States :

2. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens :

3. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties. (§ 79, *Id.*)

(26 Barb., 59; 8 Paige, 380; 3 Edw. Ch., 387; 3 Abb. Ct. App. Dec., 242.)

§ 540. *Second and final dividend.*—If the whole of the estate of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands, among the creditors entitled thereto ; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week, in the State paper, and in a newspaper printed in the county where the principal place of business of such corporation was situated. (§ 80, *Id.*)

(Laws 1821, chap. 141, § 3.)

§ 541. *Proceedings therein.*—Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors, as herein provided ; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would

have been entitled to on the first dividend, before any distribution be made to the other creditors. (§ 81, *Id.*)

(Laws 1821, chap. 141, § 3.)
(45 N. Y., 315.)

§ 542. *Debts not exhibited.*—After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend. (§ 82, *Id.*)

(Laws 1821, chap. 141, § 4.)

§ 543. *Surplus to stockholders.*—If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock. (§ 83, *Id.*)

(6 Paige, 503; 45 N. Y., 316.)

§ 544. *Money retained.*—When any suit pending at the time of the second dividend, shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend. (§ 84, *Id.*)

§ 545. *Control of receivers, etc.*—The receivers shall be subject to the control of the court of chancery, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, by death or otherwise, may be supplied by the court. (§ 85, *Id.*)

(6 Paige, 226.)

§ 546. *Account by them.*—Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of all their proceedings to the court of chancery, on oath, whi

shall be referred to a master to examine and report thereon. (§ 86, *Id.*)

§ 547. *Previous notice thereof.*—Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in the State paper, and in a newspaper of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered. (§ 87, *Id.*)

§ 548. *Masters duty.*—The master to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court. (§ 88, *Id.*)

§ 549. *Settlement of account, its effect.*—Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation. Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends. (§ 89, *Id.*)

It will be noticed that by chapter 245, Laws of 1880, above cited, the provisions of section 42 of the Revised Statutes in relation to the powers of receivers are made applicable to a receiver appointed under section 1788 of the Code of Civil Procedure (section 487, *ante*), while the provisions of the Revised Statutes—sections 66 to 89, both inclusive—are made applicable to a receiver appointed as prescribed by section 2429 of the Code of Civil Procedure (section 522, *ante*.) Section 1788 of the Code applies to receivers appointed in an action specified in chapter 35, *ante*, brought by the attorney-general to procure a judgment dissolving the corporation, while section 2429 of the Code applies to receivers appointed in proceedings instituted for a voluntary dissolution of the corporation (chapter 38, *ante*).

Under the Revised Statutes, and previous to the enactment of the Code of Civil Procedure, the powers of receivers appointed under section 42 of the Revised Statutes had relation only to such receivers as were appointed in suits against moneyed corporations (*Mann, Receiver, C. and C. R. R. Co. v. Pentz*, 3 N. Y., 415); but the Code now makes the provisions of section 42 applicable to receivers of all corporations, except those mentioned in section 503, *ante*.

The powers and authority conferred and duties and obligations upon receivers under section 42, as above given in the text, viz., that imposed upon

receivers appointed in case of the voluntary dissolution of a corporation, as specified in article 3 of title 4 chapter 8 of the 3d part of the Revised Statutes, are sections 68 to 89, both inclusive, given above in the text. The powers and authority conferred upon receivers by section 68 of the Revised Statutes (section 528 of the text, *supra*), to wit, the powers, duties and authority conferred by the fifth chapter of the second part of the Revised Statutes, are found at 2 R. S., 39-51, part 2, chapter 5, title 1, article 8 (3 R. S., 5th ed., 114; 2 Edm., 41; 3 R. S., 6th ed., page 35, *et seq.*; 7th ed., R. S., vol., 3, page 2264; see, also, Laws 1830, chap. 258, providing for relief in case of death of such assignees); also for amendments to this article of the Revised Statutes, see Laws 1846, chapter 158, and Laws 1862, chapter 373. Article 8 of title 1, chapter 5, above referred to, is concerning the powers, duties, and obligations of trustees and assignees of non-resident, absconding, insolvent, and imprisoned debtors. For the powers and authority of receivers of insolvent corporations as co-extensive with such trustees and assignees, see the provisions of the Revised Statutes above referred to, and Bishop on Insolvent Debtors, chapter 21, *et seq.* For the notice to be published by the receiver upon his appointment, see section 8 of article 8, above referred to, 6th ed., R. S., vol. 3, page 37; 7th R. S., vol. 3, page 2267, and § 530, *ante*.

In equity, the receiver takes the property by operation of law under the appointment; and an assignment is mere matter of practice, and not necessary to transfer the property (Edw. on R., 83; 8 Paige, 386; 9 *id.*, 640; 1 Smith's Ch. Pr., 628, 635), though it might be otherwise at law. (*A. V. Chan. Ct.*, 1845, *Mann v. Pentz*, 2 Sandf. Ch., 257.) The receiver of a corporation, appointed under 2 R. S., 464, § 42, should allow every claim against the corporation which he is satisfied is justly due (2 *id.*, 469; 42, § 7); but no claim which could not have been recovered against it, either at law or in equity. (*Chancery*, 1833, *Attorney-General v. Life and Fire Ins. Co.*, 4 Paige, 224.) The property and effects of the corporation vest in the receiver, and he has power to sue on giving the requisite security. (2 R. S., 464, §§ 41, 42; *id.*, 468, §§ 66-68; *id.*, 41, § 7.) No assignment is necessary. (*Supreme Ct.*, 1847, *Gillett v. Fairchild*, 4 Denio, 80.)

A receiver appointed under 2 R. S., 464, § 41, unless his powers are restricted by the order appointing him, is absolutely vested with all the property and effects of the corporation, and has full power to sell and dispose of the same, and to settle its affairs. (*Verplanck v. Mercantile Ins. Co.*, 2 Paige, 438.) A receiver is subject to all the rights and equities existing against the company. He takes the place of the company, and stands as the representative of the company. (4 N. Y., 387; *Supreme Ct.*, 1861, *Bell v. Shibley*, 33 Barb., 610.)

The receiver of an insolvent corporation has not greater rights than the corporation, and cannot impeach or disaffirm their lawful and authorized acts. (3 Comst., 19, 479; *Ct. of Appeals*, 1850, *Hyde v. Lynde*, 4 N. Y. [4 Comst], 387.)

The receiver of a corporation who takes under the statute, and not under the consent of the corporation, should act, contract, and convey in his own name. The name or seal of the corporation is unnecessary. (*Ct. of Appeals*, 1851, *Hoyt v. Thompson*, 5 N. Y. [1 Seld.], 320.)

It is the duty of the receiver of an insolvent corporation, if he supposes the same will be necessary, to require the solvent stockholders to pay up the whole balances due from them on their stock. (*Chancery*, 1845, *Pentz v. Hawley*, 1 Barb. Ch., 122.) Upon the dissolution of a corporation, the title to its real

property granted to it in fee, and not for a special purpose, vests in its receiver, and does not revert to the original grantors, and the same is to be administered by him for the benefit of the creditors and stockholders. (3 Pet., 281; 15 How., Pr., 304; Ang. & Am. on Corp., § 779, *a*; 2 Kent's Com., 308, *c*; 2 Den., 574; 1 Paige, 102; 1 R. S., 600; *Supreme Ct.*, 1860, *Owen v. Smith*, 31 Barb., 641.)

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§ 550. *Receivers to report to attorney-general.*—All receivers of insolvent corporations who are now required by law to make and file reports of their proceedings shall hereafter, at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this State. (*Chap. 537, Laws of 1880, § 1.*)

(See *chap. 539, Laws 1881, as to receivers of banks*)

§ 551. *Compelling the report.*—In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is now required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by the first section of this act, the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office. (*Chap. 537, Laws of 1880, § 2.*)

§ 552. *Motion to remove receiver.*—If at any time the attorney-general shall have reason to believe that the interests of the stockholders, creditors, policy holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of such insolvent corporation will be subserved thereby, he may make a motion in supreme court, at a special term thereof in the third judicial district, or in the judicial district in which such insolvent corporation is located for an order removing such receiver, or to compel him to account, or for such other or additional order or orders as to the court may seem proper to facilitate the closing up of the affairs of such receivership. (*Chap. 537, Laws of 1880, § 3.*)

(See *Attrill v. Rockaway Beach Co.*, 25 Hun, 509.)

§ 553. *Notices of motions to be served on attorney-general.*—A copy of all notices of motion and of all papers, and a copy of any other application to the court, and a copy of all papers on which the same is founded, together with a copy of the order or judgment to be proposed thereon to the court, specifying the amount of any allowance to be applied for, in any action or proceeding in which a receiver of an insolvent corporation has been or shall be appointed,

shall in each case be served upon the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions or special proceedings, and no order or judgment granted shall vary in any material respect from the relief specified in such copy order or judgment, unless the attorney-general shall appear on the return day and have been heard in relation thereto. (*Chap. 437, Laws of 1880, § 4.*)

§ 554. Power of receivers extended for protection against fraud.—That any executor, administrator, receiver, assignee, or other trustee of an estate, or the property and effects of an insolvent estate, corporation, association, partnership or individual, may for the benefit of creditors or others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers and agreements made, in fraud of the rights of any creditor, including themselves and others, interested in any estate or property held by or of right belonging to any such trustee or estate. (*Laws 1858, chap. 314, § 1.*)

§ 555. And have action against offenders.—That every person who shall, in fraud of the rights of creditors or others, have received, taken, or in any manner interfered with, the estate, property or effects of any deceased person, or insolvent corporation, association, partnership or individual, shall be liable in the proper action to the executors, administrators, receivers, or other trustees of such estate or property, for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate (*Laws 1858, chap. 314, § 2.*)

(Section 3, repealed by Laws 1880, chap. 245.)

That the receiver of an insolvent moneyed corporation may repudiate an illegal executed contract of the corporation, and reclaim the property transferred by it in pursuance thereof. (*Talmage v. Pell, 7 N. Y. [3 Seld.,] 828.*)

§ 556. Enforcement of liabilities against receivers of insolvent corporations.—Whenever the receiver or receivers of any insolvent corporation or joint-stock association for banking purposes has been removed, or shall hereafter be removed, and has neglected or hereafter shall neglect for the period of sixty days after the appointment of his or their successor or successors, to pay to such successor or successors the moneys remaining in the hands of the receiver or receivers so removed, or any part thereof, then, and in that case, such successor or successors may bring and maintain an action in any court of competent jurisdiction for the moneys so neglected to be paid over, or any part thereof,

against the receiver or receivers so removed, and his or their surety or sureties, on the bond given by such receiver or receivers so removed, for the performance of his or their duties as such receiver. (*Laws 1866, chap. 26.*)

§ 557. *Officers of company punished for concealing notices for injunction or receiver.*—Any director or other officer of a corporation or joint-stock association, upon whom shall be served any notice of any application for an injunction restraining or affecting the business of such corporation or joint-stock association, or for a receiver of its property and effects, or any part thereof, who shall conceal from or omit to disclose to the other directors, trustees, managers and officers thereof the fact of such service, and the time and place at which such application is to be made, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine or imprisonment, or both such fine and imprisonment, and shall be liable, in a civil action, to the corporation or joint-stock association for all damages which shall be sustained by it by reason of such proceedings. (*Chap. 151, § 4, Laws 1870.*)

§ 558. *To whom the above act applies.*—The provisions of this act shall extend and apply to all corporations and joint-stock associations, created or existing by the laws of this or of any other State or government doing business within this State, or having a business or fiscal agency, or an agency for the transfer of its stock therein, and to the directors, trustees, managers and other officers of such foreign corporations or joint-stock associations, and to all proceedings by the attorney-general, in the name of the people of this State, under the laws regulating proceedings against corporations, except that it shall not apply to savings banks or to corporations or associations having banking powers or power to make insurances, or to such as shall be organized under the general manufacturing laws of this State. (*Chap. 151, § 5, Laws 1870, as amended by chap. 428, Laws 1875.*)

That the above cited section 2 has been repealed by chapter 245 of the Laws of 1880, see note to § 66, *ante*.

The amendment of 1875 consisted of the insertion of the words "to savings banks or." The first, second and third sections of chapter 151 of the Laws of 1870, were repealed by the repealing act chapter 245 of the Laws of 1880. They had reference to the proceedings for obtaining injunctions against corporations and the appointment of receivers.

CHAPTER 40.

MISCELLANEOUS PROVISIONS REGULATING THE CONDUCT OF ACTIONS AGAINST THE CORPORATION.

§ 559. Definition of domestic and foreign corporation under the Code of Civil Procedure.

- § 560. Personal service of summons, how made on domestic corporation.
 § 561. Id., upon a foreign corporation.
 § 562. Cases in which service of summons by publication, etc., may be ordered.
 § 563. Service of summons in a justice's court upon the company.
 § 564. Id.; special provisions in regard to railroad corporations.
 § 565. Verification of pleading, how and by whom made.
 § 566. Service of injunction on the corporation.
 § 567. Damages sustained when officer of corporation is enjoined.
 § 568. Grounds of issuing warrant of attachment against the corporation.
 § 569. Attachment of unpaid subscription to foreign corporation.
 § 570. Id.; interest in corporation.
 § 571. Certificate of defendant's interest to be furnished.
 § 572. Person refusing certificate may be examined.
 § 573. When judgment enforced only against attached property.
 § 574. Preferred causes on trial.
 § 575. Admission by member of corporation.
 § 576. Books, etc., of corporation, how produced.
 § 577. When personal attendance not required by subpoena duces tecum.
 § 578. Books of foreign corporation, when evidence.
 § 579. When a copy thereof is evidence.
 § 580. How copy to be verified.
 § 581. References, how made, of actions against the corporation.
 § 582. Judgment by default against foreign corporations, how taken.

§ 559. *Definition of domestic and foreign corporations under the Code of Civil Procedure.*—In the construction of the Code of Civil Procedure, the following rule is to be observed: A "domestic corporation" is a corporation created by and under the laws of the State, or located in the State, and created by or under the laws of the United States, or by or pursuant to the laws in force in the colony of New York, before the nineteenth day of April, in the year seventeen hundred and seventy-five. Every other corporation is a "foreign corporation." (*Code Civil Proc.*, § 3343, *subd.* 18.)

§ 560. *Personal service of summons, how made on domestic corporations.*—Personal service of the summons upon a defendant, being a domestic corporation, must be

made by delivering a copy thereof within the State (*except in cases of municipal corporations*), to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent. (*Code Civil Proc.*, § 431, *subd.* 3.)

The term managing agent has been *held* to mean one whose agency extends to all the transactions of the company, and is not confined to the management of a particular branch or department of the business. (*Brewster v. Michigan Cent. R. R. Co.*, 5 How. Pr., 183.) Thus the ticket agent (*Doty v. Same*, 8 Abb. Pr., 427), or baggage-master (*Flynn v. Hudson R. R. Co.*, 6 How. Pr., 308), is not a managing agent in such a sense as to render service of the summons upon him the commencement of an action against the corporation.

§ 561. *Id.*; upon a foreign corporation.—Personal service of the summons, upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer, or secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of state. The designation must specify a place, within the State, as the office or residence of the person designated; and, if it is within a city, the street, and street number, if any, or other suitable designation of the particular locality. It remains in force, until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence, to some other place within the State, by a writing, executed by him, and filed in like manner. The secretary of state may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State. (*Code Civil Proc.*, § 432.)

§ 562. *Cases in which service of summons by publication, etc., may be ordered.*—An order, directing the service of a summons upon a defendant, without the State, or by publication, may be made in either of the following cases:

Where the defendant to be served is a foreign corporation; or, being a natural person, is not a resident of the State; or where, after diligent inquiry, the defendant remains unknown to the plaintiff, or the plaintiff is unable to ascertain whether the defendant is or is not a resident of the State. (*Code Civil Proc.*, § 438, *subd.* 1.)

Where the defendant is a resident of the State, or a domestic corporation; and an attempt was made to commence the action against the defendant, as required in chapter fourth of this act,* before the expiration of the limitation applicable thereto, as fixed in that chapter; and the limitation would have expired, within sixty days next preceding the application, if time had not been extended by the attempt to commence the action. (*Code Civil Proc.*, § 438, *subd.* 6.)

Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by a law of the State, and the defendant is a stockholder thereof. (*Code Civil Proc.*, § 438, *subd.* 7.)

§ 563. *Service of summons in a justice's court upon the company.*—When the defendant to be served is a corporation, the summons may be personally served upon it by delivering a copy thereof to an officer or person to whom a copy of the summons in an action brought against the corporation in the supreme court might be delivered as provided in sections 431 and 432 of this act,* or to any director or trustee of the corporation by whatever official title he is called. (*Code Civil Proc.*, § 2879.)

For sections 431 and 432 referred to in the text, see sections 560 and 561, *ante.*

§ 564. *Id.; special provisions in regard to railroad corporations.*—When the defendant to be served is a domestic railroad corporation, and no officer thereof resides in the county to whom a copy of the summons may be delivered, as prescribed in the last section, it may be personally served by delivering a copy thereof to a local superintendent of repairs, freight agent, agent to sell tickets, or station keeper of the corporation residing in the county, unless, at least, thirty days before it was issued, the corporation had filed in the office of the clerk of the county a written instrument, designating a person residing in the county upon whom pro-

* Code Civil Procedure.

cess to be issued by a justice of the peace against it may be served, in which case the summons may be personally served by delivering a copy to the person so designated. (*Code Civil Proc.*, § 2880.)

The above section of the Code of Civil Procedure, as it is stated in Mr. Throop's notes, is a consolidation and amendment of sections 14 and 15 of chapter 282 of the Laws of 1854. An examination of the repealing acts passed in connection with the enactment of the Code, viz., chapter 417 of the Laws of 1877, and chapter 245 of the Laws of 1880, does not show that chapter 282 of the Laws of 1854 was repealed by either of those acts. The language of that act was as follows: Every railroad corporation in this State shall, within thirty days after this act shall take effect, designate some person, residing in each of the counties through or into which such railroad may run, on whom process to be issued by a justice of the peace may be served, and shall file such designation in the office of the clerk of county where the person so designated shall reside, and a copy of such designation, duly certified by such clerk, shall be evidence of such appointment, and the service of any process upon the person so designated or named, to be issued by any justice of the peace in any civil action or matter of which such justice may have jurisdiction, shall be as valid and effectual as if served upon the president or any director of any such corporation, as now provided by law. (*Laws 1854, chap. 282, § 14.*)

In all cases where such designation shall not be made as aforesaid, and where no officer of such corporation shall reside in the county on whom process can be served according to the existing provisions of law, the process mentioned in the next preceding section may be served on any local superintendent of repairs, freight agent, agent to sell tickets, or station-keeper of such corporation, residing in such county, which service shall be as effectual in all respects as if made on the president or any director of such corporation. (*Laws 1854, chap. 282, § 15.*)

Under that act it was held that the manner of service should appear by the constable's return to the summons, so that the justice may determine whether it was properly served on the company. (*Sherman v. Saratoga, etc., R. R. Co., supra*), but it is no where made the duty of a constable receiving a summons against a railroad company, to ascertain or to certify whether there be any director or other officer of the company within his county, or whether the company has failed to designate some person, as required above, on whom service can be made. (*Wheeler v. N. Y. and Harlem R. R. Co., 24 Barb., 414*), and where the return stated that the summons was served on one A. B., a managing agent of the defendant, it was held sufficient to give the justice jurisdiction. (*N. Y. and Erie R. R. Co. v. Purdy, 18 Barb., 574.*)

The act in regard to the designation by foreign corporations of persons within this State upon whom process could be served (*Laws 1855, chapter 279*), was repealed by chapter 417 of the Laws of 1877. (See *Code Civil Proc.*, § 432 *§ 561, ante*).

The provisions of the act of 1854, chapter 282, *supra*, did not interfere with service upon a director of the company, where such service can be made. (*Curtis v. Aon, etc., R. R. Co., 49 Barb., 148.*) For the purpose of jurisdiction the company is deemed a resident of each county through which it passes. (*Johnson v. Cayuga, etc., R. R. Co., 11 Barb., 621; Sherwood v. Saratoga, etc., R. R. Co., 15 id., 650; Pond v. Hudson R. R. Co., 17 How. Pr., 543; Belden*

v. *N. Y. and Harlem R. R. Co.*, 15 id., 17; see, also, *People ex rel. Hudson R. R. Co. v. Pierces*, 31 Barb., 138; *People ex rel. Buffalo, etc., R. R. Co. v. Fredericks*, 48 id., 173; S. C., 33 How. Pr., 150; *Fowler v. Westervelt*, 40 id., 374; S. C., 17 Abb. Pr., 59.)

§ 565. *Verification of pleading, and by whom made.*—The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows :

Where a party is a domestic corporation, the verification must be made by an officer thereof. (*Code Civil Proc.*, § 525, § 1.)

Where the party is a foreign corporation, the verification may be made by the agent of or the attorney for the party. *Code Civil Proc.*, § 525, § 2.

§ 566. *Service of injunction on the corporation.*—The injunction order must briefly recite the grounds for the injunction. *Where it is granted by the court, it must be served by delivering a certified copy thereof; where it is granted by a judge, it must be served by showing the original order, and delivering a copy thereof. Service of the order, upon a corporation, may be made as prescribed in this act, for making personal service of a summons upon a corporation. Copies of the papers, upon which the order was granted, must be delivered with the copy of the order. (*Code Civil Proc.*, § 610.)

For the manner in which personal service of a summons is made upon the corporation, see section 560, *ante*.

§ 567. *Damages sustained when officer of corporation is enjoined.*—Where the defendant enjoined was an officer of a corporation, or joint-stock association, or a bailee, agent, trustee, or other representative of another, and the damages, sustained by him, are less than the sum specified in the undertaking, the court or the referee may also separately ascertain and determine the damages sustained, by reason of the injunction, by the corporation, association, or person, whom the defendant represents, to an amount not exceeding the surplus of the sum specified in the undertaking; and those damages may be recovered in a separate action, brought as prescribed in the next section. (*Code Civil Proc.*, § 624.)

§ 568. *Grounds of issuing warrant of attachment against the corporation.*—To entitle the plaintiff to a warrant of attachment, he must show, by affidavit, to the satisfaction of the judge granting the same, among other things

required by the Code, that the defendant is either a foreign corporation or not a resident of the State; or, if he is a natural person and a resident of the State, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property, with the like intent. (*Code Civil Proc.*, § 636.)

§ 569. *Attachment of unpaid subscription to foreign corporation.*—Under a warrant of attachment against a foreign corporation, other than a corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation, made by a person within the county; or upon one or more shares of stock therein, held by such a person, or transferred by him, for the purpose of avoiding payment thereof. (*Code Civil Proc.*, § 646.)

§ 570. *Id.; interest in corporation.*—The rights or shares which the defendant has in the stock of an association or corporation, together with the interest and profits thereon, may be levied upon; and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges, with respect thereto, which the defendant had, when they were so attached. (*Code Civil Proc.*, § 647.)

(*Smith v. Am. Coal Co.*, 7 Lans., 317; *Pardee v. Leitch*, 6 id., 303.)

§ 571. *Certificate of defendant's interest to be furnished.*—Upon the application of a sheriff, holding a warrant of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant, in the stock of the association or corporation, with all dividends declared, or incumbrances thereon; or the amount, nature, and description of the party, held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires. (*Code Civil Proc.*, § 650.)

(*O'Brien v. Mechanics, etc., F. Ins. Co.*, 56 N. Y., 52; *Baxter v. Mo., etc., R'way*

Co., 4 Hun, 630; *Schieb v. Baldwin*, 22 How., 278; S. C., 13 Abb., 469; *Skinner v. Stuart*, 13 id., 443; S. C. on appeal, 24 How., 489; 15 Abb., 391; *Bank v. Sturgis*, 9 Bosw., 660.)

§ 572. *Person refusing certificate may be examined.*—If a person, to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, or the county judge of the county to which the warrant is issued, that there is reason to suspect that a certificate given by him is untrue, or that it fails fully to set forth the facts, required to be shown thereby; the court or judge may make an order, directing him to attend, at a specified time, and at a place within the county to which the warrant is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein. (*Code Civil Proc.*, § 651.)

(See *Baxter v. Mo., etc., R'way Co.*, 4 Hun, 630; supersedes *Carroll v. Finley*, 23 Barb., 61; *Reynolds v. Fisher*, 48 id., 146; also Laws 1848, chap. 53, § 1 [3 Edm., 681.]

§ 573. *When judgment enforceable only against attached property.*—Where a defendant, who has not appeared, is a non-resident of the State, or a foreign corporation, and the summons was served without the State, or by publication, pursuant to an order obtained for that purpose, as prescribed in chapter fifth of this act, the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does not declare the affect of such a judgment, with respect to the application of any statute of limitation. (*Code Civil Proc.*, § 707, as amended in 1877.)

(*Force v. Gower*, 23 How. Pr., 294; and the remarks of the court in *Warren v. Tiffany*, 9 Abb. Pr., 65; S. C., 17 How. Pr., 106; *Thacher v. Bancroft*, 15 Abb. Pr., 243; and *Phelps v. Baker*, 60 Barb., 107. see, also, *Fiske v. Anderson*, 33 id., 71; S. C., 12 Abb. Pr., 8; and *Hurlbert v. Hope M. Ins. Co.*, 4 How. Pr., 275; see *Gibbs v. Queen Ins. Co.*, 63 N. Y., 114.)

§ 574. *Preferred causes at trial.*—Certain civil causes are entitled to preference among themselves in the trial or hearing thereof, as regulated by the Code of Civil Procedure. In the eighth class of such cases is an action against a corporation, founded upon a note or another's evidence of debt for the absolute payment of money. (*Code Civil Proc.*, § 791; § 8 as amended in 1879.)

§ 575. *Admission by member of corporation.*—The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation, unless it was made concerning and while engaged in a transaction, in which he was the authorized agent of the corporation. (*Code Civil Proc.*, § 839.)

(*East River Bank v. Hoyt*, 41 Barb., 444.)

§ 576. *Books, etc., of corporation, how produced.*—The production, upon a trial, of a book or paper, belonging to or under the control of a corporation, may be compelled, in like manner as if it was in the hands, or under the control, of a natural person. For that purpose, a subpoena duces tecum, or an order, made as prescribed in the last section, as the case requires, must be directed to the president, or other head of the corporation, or to the officer thereof, in whose custody the book or paper is. (*Code Civil Proc.*, § 868.)

Books of a corporation how far evidence.)

The following note is taken from *Haynes v. Brown*, 36 N. H., 545, 546. This case contains the following valuable discussion of the subject by Bell, J.: "The records of a corporation are evidence in some cases, and for some purposes. The rule generally laid down in the elementary books is that 'the books of a corporation, whether containing entries of a public or private nature, are admissible in evidence as between themselves, and not against a stranger.' (1 Saund. on Pl. & Ev., 851; Ang. & Ames on Corp., 607; 2 Ph. on Ev., 295.) The present case is not one where the parties are members of the same corporation, and it is therefore unnecessary to enquire whether the rule is not laid down more broadly, or with fewer qualifications, than it ought to be. There is no question that the records of a corporation are evidence of the proceedings of the corporation itself (1 Greenl. on Ev., § 493; *Highland Turnpike Co. v. McKean*, 10 Johns., 154; Ang. & Ames on Corp., § 679; *Wood v. Jefferson County Bank*, 9 Cow., 194, 205; *Case of Thetford*, 12 Vin. Abr., 90, pl., 16; *Smith v. Steamboat Co.*, 1 How. (Miss.), 479; *Whitman v. Granite Church*, 24 Me., 236; *Coffin v. Collins*, 17 Me., 440; *The People v. Oakland County Bank*, 1 Dougl., 282); as to its organization (*Duke v. Navigation Co.*, 10 Ala., 82; *Hall v. Carey*, 5 Ga., 239; *McFarlan v. Insurance Co.*, 4 Denio, 392; of its meetings, and the election of its officers and members (*Gibbon's Case*, 17 How. St. Tr., 810, 814); and of the votes and acts of the corporation and its officers, where those acts and votes are required, either by the charter or by-laws, to be recorded; or where they are in fact transacted at meetings of those officers, at which there is a clerk to keep the records. To render these books admissible for these purposes, the party who introduced them must show that they are the books of the corporation, independently of what appears upon the books themselves (*Whitman v. Granite Church*, 24 Me., 236); that they have been regularly kept by the clerk, or other proper officer (12 Vin. Abr., 90, pl., 16; *Highland Turnpike Co. v. McKean*, 10 Johns., 154; *Rex v. Mothersell*, 1 Stra., 93; 2 Ph. on Ev., 442); and if there is anything suspicious in their appearance, or if any doubt is cast upon them by the testimony, that they were made at the

times they purport to have been, and have not been made up subsequently, to answer some purpose of the corporation or others. But the entries in the books of a corporation, relating to other matters of fact than the proceedings of the corporation, are not evidence in their favor in a controversy between them and any stranger, nor between them and a member of the corporation, holding or claiming adversely to them. (2 Saund. on Pl. & Ev., 748; Ang. & Ames on Corp., § 679; 1 Greenl. on Ev., § 493.) Neither are they evidence against a member of the corporation of his contracts or private dealings with the company. In that respect he is to be regarded as a stranger. (1 Ph. on Ev., 449; *Hill v. Manchester Water Works Co.*, 2 Nev. & Man., 573; S. C., 2 Barn & Adol., 544.) This principle was recognized in the case of *Marriage v. Lawrence* (3 Barn. & Ald., 142), in *Brett v. Beales* (1 Moo. & M., 416), *Mayor of London v. Mayor of Lynn* (1 H. Black., 214, note c), *Jermain v. Worth* (5 Denio, 342). As the books of a corporation are not evidence, as between the corporation and a member or a stranger, as to their business transactions, it follows *a fortiori* that they cannot be so between a member and a stranger, or between two strangers; and the cases of *Brett v. Beales*, *Jackson v. Walsh* (3 Johns, 226), and *Jermain v. Worth*, before cited, are direct authorities to this point."

§ 577. *When personal attendance not required by subpoena duces tecum.*—In a case specified in the last section, or when a subpoena duces tecum, or an order, made as prescribed in section eight hundred and sixty-six or section eight hundred and sixty-seven of this act, requires a public officer to attend, and bring a book or paper under his control, the subpoena or order is deemed to be sufficiently obeyed, if the book or paper is produced by a subordinate officer or employee of the corporation, or in the public office, who possesses the requisite knowledge to identify it, and to testify respecting the purposes for which it is used. If the personal attendance of a particular officer of the corporation or public officer is required, a subpoena, without a duces tecum clause, must also be served upon him. (*Code Civil Proc.*, § 869.)

§ 578. *Book of foreign corporation; when evidence.*—Where a party wishes to prove an act or transaction of a foreign corporation, the book or books of the corporation may be used for that purpose, as presumptive evidence, whether any or all of the parties are or are not members of the corporation. (*Code Civil Proc.*, § 929.)

§ 579. *When a copy thereof is evidence.*—If an original book is not produced at the trial, as prescribed in the last section, a copy thereof, or of an entry therein, verified as prescribed in the next section, may be used, with like effect as the original book; provided that the party, intending to use the copy, gives the adverse party at least ten days' notice of his intention, specifying briefly the nature of the

evidence proposed to be given. But this and the next section do not apply, where the foreign corporation is a party to the action, and seeks to prove its own act or transaction, in its own behalf. (*Code Civil Proc.*, § 930.)

§ 580. *How copy to be verified.*—The copy must be verified by the deposition, taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined and compared it with the original book, or the entry therein. The witness must testify that the copy produced is correct; that he made it, or compared it with the original; and that he then knew that the original book so copied, or containing the entry, was the book of the corporation; or that it was then acknowledged to him to be such, by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgement; and he must specify where, and in whose custody, the original was then kept. (*Code Civil Proc.*, § 931.)

§ 581. *References, how made of actions against the corporation.*—But a reference shall not be made, of course, upon the consent of the parties, in an action to annul a marriage, or for a divorce or a separation; or an action against a corporation, to obtain a dissolution thereof, the appointment of a receiver of its property, or the distribution of its property, unless it is brought by the attorney-general; or an action wherein a defendant, to be affected by the result of the trial, is an infant. In a case specified in this section, where the parties consent to a reference, the court may, in its discretion, grant or refuse a reference; and, where a reference is granted, the court must designate the referee. (*Code Civil Proc.*, § 1012.)

§ 582. *Judgment by default against foreign corporation, how taken.*—A judgment shall not be rendered for a sum of money only, upon an application made pursuant to the last section, except in an action specified in section six hundred and thirty-five of this act. Where the defendant is a non-resident, or a foreign corporation, and has not appeared, the plaintiff, upon the application for judgment in such an action, must produce and file the following papers:

1. Proof, by affidavit, that a warrant of attachment, granted in the action, has been levied upon property of the defendant.

2. A description of the property, so attached, verified by affidavit; with a statement of the value thereof, according to the inventory.

The undertaking mentioned in section twelve hundred and sixteen, if one has been required. (*Code Civil Proc.*, § 1217.)

(*Lovett v. German Ref. Church*, 12 Barb., 83; *Lott v. Sweeney*, 29 id., 87.)

By section 2146, the expression "body or officer," as used in the Code, in regard to determinations, reversible by certiorari, includes corporations. By section 2441, corporations having property, or indebted to judgment debtors, may be proceeded against in proceedings supplementary to the execution; but the proceedings supplementary to execution do not apply when the corporation is the judgment debtor. Section 2526 prescribes the manner of the service of a surrogate's citation upon the corporation. Section 3268 requires security for costs from a foreign corporation when plaintiff. Section 1879 declares that the article of the Code, in regard to a judgment creditor's action, does not apply when the judgment debtor is a corporation created by or under the laws of the State.

CHAPTER 41.

THE HUDSON RIVER BRIDGE COMPANY AT
ALBANY.

- § 583. The charter; chapter 146, Laws of 1856.
§ 584. Amendatory act; chapter 454, Laws of 1857.
§ 585. Amendatory act; chapter 243, Laws of 1864.

§ 583. *The charter; chapter 146, Laws of 1856.*

SECTION 1. *Location of bridge.*—All persons who shall become stockholders pursuant to the provisions of this act, shall be and they are hereby constituted a body corporate, by the name of "The Hudson River Bridge Company at Albany," for the purpose of erecting and maintaining a bridge, for the purposes of railroad travel and transportation across the Hudson river, from some proper point on the westerly side or shore of the said river, in the city of Albany, to some proper point on the opposite side or shore of the said river, in the county of Rensselaer, as may be fixed and determined upon by the commissioners hereinafter named, with all the general rights and powers of a corporation conferred by law, and with all such incidental powers as may be requisite to carry out and accomplish the provisions of this act.

Section 2. *Capital stock.*—The capital stock of the said corporation shall be five hundred thousand dollars, to be divided into shares of one hundred dollars each, nor shall such capital stock exceed in amount the actual cost of said bridge and appurtenances necessarily appertaining thereto. The said shares shall be deemed personal property, and be transferable on the books of the corporation in such manner as the directors may provide. Any railroad corporation may subscribe to and become the owner, with the like rights as an individual, of any part of the capital stock of the said corporation hereby created, not exceeding, however, six per cent upon the cost of the road of any such corporation so subscribing; and rails may be laid upon the said bridge for the free passage of railroad trains over the same, in such manner as the directors may deem proper, and under such agreement as to compensation, and on such terms in all respects as may be agreed upon with any railroad corporation or corporations; provided, that at least fifty per cent of the

amount of stock to be created under this act shall be distributed to individuals, in case so much shall be subscribed for.

Section 3. *Commissioners.*—The following persons, viz.: Moses H. Grinnell, of the city and county of New York; Joseph D. Monell, of Hudson, Columbia county; William Chamberlain, of Dutchess county; Palmer V. Kellogg, of Utica, Oneida county; Hamilton White, of Syracuse, Onondaga county; Delos De Wolf, of Oswego county; Orville V. Brainard, of Watertown, Jefferson county; Jacob Gould, of Rochester, Monroe county; James S. Wadsworth, of Geneseo, Livingston county; Albert H. Tracy, of Buffalo, Erie county; William Keep, of Lockport, Niagara county; Levi Dimmick, of Broome county; Richard Franchot, of Otsego county; and Charles Courter, of Schoharie county, who are hereby appointed commissioners for that purpose, or a majority of them, may, at any time hereafter, on at least ten days' previous public notice in the State paper, receive subscriptions to the capital stock of the said corporation, at such place and under such regulations in all respects as they may prescribe; and in case of an excess of subscriptions, they may apportion the stock among the subscribers, in such manner as they shall deem most likely to promote the interests of the said corporation and the speedy erection of the said bridge; and at the time of subscribing, five dollars shall be paid on each share subscribed for, or such subscription shall not be received. The books when opened by one or more of the commissioners shall remain so, at least through the business hours of the day, so that all persons may have a fair opportunity of becoming subscribers.

Section 4. *Notice of location of bridge and election of directors.*—As soon as the stock to the amount of five hundred thousand dollars shall be subscribed for, the said commissioners, or a majority of them, shall, without delay, give fifteen days' notice by advertisements in the State paper, of their intention to locate said bridge; and after the publication of said notice, shall, without delay, proceed to locate the place where the said bridge shall be constructed, and sign a certificate of such location, and file the same in the office of the clerk of the county of Albany; and after said location is agreed upon by said commissioners, or a majority of them, they shall fix the time and place for holding the first election of directors of the said corporation, and shall give notice thereof, in the State paper, for at least thirty days previous thereto, and shall also appoint three of the subscribers to the stock, inspectors of the first election, which shall be held by the said inspectors, or such

of them as may attend, and be conducted as required by law; and at every election of directors, each stockholder shall have one vote for each share of stock held by such stockholder, and may vote in person or by proxy; and all votes at every such election shall be by ballot.

Section 5. *Surveys to be made.*—The said commissioners hereinbefore named shall have power to cause such examinations and surveys to be made as may be necessary in their judgment for the selection of the most advantageous site for the said bridge, and the avenues and approaches leading to and from the same; and for such purpose, the commissioners, or the corporation hereby created, shall have power to appoint an engineer, agents or officers, who are authorized to enter upon the lands or waters of any person for such purpose, but subject to proper responsibility for all damages which they may do thereto; all the powers and duties of the said commissioners may be exercised by a majority of their number.

Section 6. *Number of directors.*—The directors of the said corporation shall be nine in number, and be elected annually from the stockholders, at such time and place as the directors may appoint, of which public notice shall be given in the State paper, at least ten days previously; at such election of directors, three inspectors of the next election for directors shall be chosen by the stockholders, by ballot, from among their own number.

Section 7. *President and by-laws.*—The directors shall appoint one of their number as president of the said corporation, and they may also from time to time appoint such other officers and agents as they may deem necessary. They may also require payment of the amount remaining unpaid on the stock of the said corporation, giving at least thirty days' previous notice of such call, in two newspapers published in the said city of Albany, under the penalty, in case of non-payment, of forfeiture of the said stock, and of all previous payments made thereon, for the benefit of the said corporation. The said directors may also from time to time ordain and establish such by-laws and adopt such measures as they may deem proper to further the interests of the corporation and to promote the speedy construction of the said bridge. All vacancies happening in the board of directors, by resignation, death or otherwise, may be filled by the board.

Section 8. *Bridge, how constructed.*—The bridge across the Hudson River, which the said corporation are hereby authorized to erect, shall be constructed at an elevation at least twenty feet above common tide water, so as to allow under it the free passage of canal boats and barges without

masts, and with a draw therein of sufficient width to admit the free passage of the largest vessels navigating the said river, and at least two hundred feet in width, or of two draws of at least one hundred and fifty feet each, which draws shall not be obstructed by piers or otherwise, and in such a manner as to cause no substantial impediment or obstruction to the free navigation of the said river. And the said corporation hereby created shall, at all times during the season of navigation, cause the said draw to be opened, and kept open, except for the passage of railroad trains of cars, and shut whenever the same may be necessary; and boats or vessels wishing to pass such draw shall at all times have a preference over railroad trains of cars or engines, and such draw shall be promptly opened to any such boat or vessel, on signal, if given before any railroad train or engine shall have appeared and given signal of their intention to pass; and shall at all times keep in readiness one or more steamboats or steam-tugs, suitable for towing said vessels through said draw, and shall tow all sail vessels through said draw, whenever requested so to do by the officers of such sail vessel, on their regular passage up or down the river, without charge, and shall afford such other facilities as may, in the judgment of the canal board, be requisite in passing through the said draw without hindrance or delay; and for any unnecessary delay or refusal in opening and shutting the said draw, the said corporation shall be liable to pay treble damages to any party aggrieved thereby. From sundown to sunrise, during the season of navigation, suitable lights shall be maintained upon such bridge, to guide vessels approaching the draws; and the said company shall be liable to pay owners of any steamboats or vessels, or the cargo thereof, all damages which they may sustain by reason of any neglect of the provisions of this section.

Section 9. *Bars to be prevented.*—The said corporation shall not suffer any bars or obstructions, which may be formed by reason of the said bridge or the piers thereof, to remain in said river, so as at any time to hinder or impede the free navigation thereof; and for any willful neglect in this particular, the said corporation shall be liable to a penalty of five hundred dollars to the people of the State, and pay to the party aggrieved or injured thereby such damage as he may have sustained.

Section 10. *May take real estate.*—The said company shall have the right to take and hold all real estate necessary for the erection of the said bridge, and the piers, toll-houses and other appurtenances thereof, and for all necessary avenues or approaches leading to or from the same, and

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may occupy and use the bed of the river for the said bridge, its piers and appurtenances, as far as may be necessary.

Section 11. *Manner of acquiring real estate.*—Should the said company require any real estate for the erection of the said bridge, or for any of the purposes of its incorporation, and be unable for any reason to agree with the owner thereof for its purchase, it shall have the right to acquire title to such real estate in the same manner and by the like special proceeding as are authorized and provided for obtaining title to real estate required for the purposes of a railroad corporation under the fourteenth section of the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, one thousand eight hundred and fifty, and the other sections of the said act relative thereto, and any act or acts amendatory thereof, or in addition thereto; and for that purpose all such acts shall be considered as applicable to the corporation hereby created, as far as may be, in like manner as if it were named therein; and such modifications may be made in the formal part of the proceedings, in order to apply the same to the corporation hereby created instead of a railroad corporation, as shall be approved of by the supreme court; and the said court may make such orders and regulations as to the mode and manner of conducting the proceedings, and all things relative thereto, so as to effectuate and make the same valid for acquiring title to such real estate, as to the said court may seem proper; and the title thus acquired by the said corporation shall vest in it the fee simple of the said lands; and the said court may, on sufficient cause shown, and on proof of payment or tender of the amount to be paid for any parcel of such real estate in such manner as may have been required by the said court, issue summary process, in such form as may be deemed proper, to the sheriff of the proper county, commanding him without delay, to put the said corporation, by its proper agents, in the possession of such real estate, and to enforce such process in such manner as may be conformable to law.

Section 12. *Tolls established.*—After the said bridge shall have been completed, such tolls and charges may be collected for crossing the same on foot, and with wagons, cars or carriages of any kind, and with horses or other animals, or otherwise, as the directors may from time to time establish, subject to the approval of the canal board, provided, however, that such tolls shall be so regulated that they shall not yield a net income to exceed ten per cent upon the amount of such capital stock; and any person crossing or attempting to cross said bridge without paying the proper

toll shall be subject to a penalty of ten dollars, in addition to three times the amount of toll such person or persons ought to have paid.

Section 13. *Penalty for injuries.*—Any person willfully doing any injury to the said bridge, or to any of the appurtenances thereof, shall forfeit and pay to the said corporation three times the amount of such injury, and shall be considered guilty of a misdemeanor, and be subject to a penalty not exceeding five hundred dollars, and to imprisonment not exceeding six months, in the discretion of the court.

Section 14. *Liability of stockholders.*—All the stockholders under this act shall be severally and individually liable, to an amount equal to the amount of the capital stock held by them respectively, to the creditors of such company for all the debts contracted by the directors or agents of such company for its use, until the whole amount of the capital stock of said company is paid in, or as much thereof as shall be deemed sufficient for the erection of said bridge, and the purchase of the necessary real estate, and a certificate thereof filed in the office of the clerk of the county of Albany, and the whole capital stock paid in shall be one-half thereof within two years, and the other half within three years, from the time of the incorporation of said company. If the directors of said corporation shall contract debts for the company exceeding in aggregate the amount of the capital stock, they shall be personally liable for all the debts of the corporation.

Section 15. *General powers.*—This corporation shall possess the general powers and be subject to the provisions contained in title third, of chapter eighteen, of the first part of the Revised Statutes, so far as the same are applicable and have not been repealed.

(See chapter 9, *ante.*)

Section 16. *What railroads may use the bridge.*—Any railroad corporation whose road now has or shall hereafter have a terminus at, or shall run its trains to or from said city of Albany or East Albany, or shall run its trains in connection with any road having such terminus, shall be permitted to use said bridge for railroad purposes upon such terms as the directors of the several companies interested may agree, and in case they shall not be able to agree, the terms shall be fixed by the canal board.

Section 17. This act shall take effect immediately.

§ 584. *Amendatory act ; chapter 454, Laws of 1857.*

SECTION 1. Instead of constructing their bridge with a

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draw or draws therein, of the dimensions specified in the eighth section of chapter one hundred and forty-six, of the laws of eighteen hundred and fifty-six, the Hudson River Bridge company at Albany, may construct the said bridge with a draw therein of such dimensions as the state engineer and surveyor of the state of New York, John B. Jarvis, and Oliver H. Lee, civil engineers, or a majority of them, shall determine, and of sufficient width to admit the free passage of the largest vessels navigating the Hudson river, and at least one hundred and eighty feet in width, or with two draws therein of at least one hundred and ten feet each in clear width. The determination of said engineers shall be reduced to writing, and be signed by them and filed in the office of the clerk of the county of Albany.

Section 2. In case of death, resignation, neglect or inability of the persons before mentioned, or either of them, to serve or act as aforesaid, the Supreme Court, at special term, may, on the application of the said company, appoint other persons, who shall be practical civil engineers, to serve and act in their places, and with the powers mentioned in the first section of this act.

Section 3. This act shall take effect immediately.

§ 585. *Amendatory act; chapter 243, Laws of 1864.*

SECTION 1. The Hudson River Bridge Company at Albany is hereby authorized to remove the site of its bridge from the place now located for the construction thereof, to a line running across the Hudson river, under the provisions of this act, south of the north boundry line of the city of Albany, and not more than one hundred feet north of the north line of Lumber street in said city, at a proper height of not less than twenty feet above ordinary common tide-water, to be ascertained and fixed by the state engineer and surveyor as hereinafter provided.

Section 2. It shall be the duty of the state engineer and surveyor, when requested so to do by the said corporation, to ascertain and fix upon the proper place for the construction of said bridge across said river, and also upon the proper height thereof so as to comply with the requirements of this act. The determination of the state engineer and surveyor, in regard to the location and height of said bridge, shall be reduced to writing, and signed and acknowledged by him and filed in the office of the clerk of Albany county, and thereupon said corporation shall have the right to proceed in the construction of such bridge at the place so located therefor, and shall not be restrained by any court or officer by injunction or otherwise in the work of such construction, unless such injunction shall be granted by the

supreme court sitting in a judicial district of this State, at a general term of said court, nor unless at least eight days' previous notice of the time and place of the hearing of the application for such injunction shall have been served upon said corporation, with the papers upon which such application shall be founded; and application for such injunction may be made as aforesaid at a general term in any judicial district in the State.

Section 3. This act shall take effect immediately.

See Laws 1880, chapter 415, authorizing street railroads to cross the Hudson river over and by any bridge, etc. (See section 354, *ante*, for the act above referred to.)

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