

Burlington, John A. Roebing, of Mercer, in the second district; Isaac R. Cornell, of Somerset, Henry Aitkin, of Union, in the third district; Abraham S. Hewitt, of Passaic, Andrew B. Cobb, of Morris, in the fourth district; William M. Force, of Essex, J. R. Wortendyke, of Hudson, in the fifth district; and power is hereby given to the said board, or a majority of them, to fill any vacancies which may occur. (See *Sec. 17*).

**Supplement.**

Approved March 24, 1868. P. L. 1868, p. 455.

15. *Sec. 1.* That so much of the act to which this is a supplement, as directs and requires the geological survey of this state to be completed within a period not to exceed four years, be and the same is hereby repealed.

So much of act as requires survey to be completed in four years, repealed.

**Supplement.**

Approved April 9, 1875. P. L. 1875, p. 94.

16. *Sec. 1.* That the board of managers authorized by section four of said act are hereby authorized to increase the number of their members from eleven to fifteen, one of whom shall be the governor of the state, who shall be president of the board, and two members from each of the seven congressional districts of the state; and the powers and duties of the board thus constituted shall be the same as defined in the act to which this is a supplement.

Board of managers, how constituted.

**Supplement.**

Approved March 30, 1876. P. L. 1876, p. 68.

17. *Sec. 1.* That for the purpose of completing said survey, an annual appropriation of eight thousand dollars be and is hereby made and continued for the period of five years; and that the treasurer of this state, upon the warrant of the comptroller, be and is hereby authorized to pay such bills as may be audited and approved by the board of managers in favor of the state geologist.

Amount of appropriation for completing survey.

**Taxes.****I. GENERAL TAX LAW.**

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## I. General tax law.

### An act concerning taxes.

Approved April 14, 1846.

Rev. 308, 465, 546.

Harr. 47, 212.

P. L. 1839, p. 109.

" 1841, p. 68.

" 1845, p. 113,  
242.

R. S. 1003.

Lists of taxable property to be made out.

1. That the assessor of every township shall, between the twentieth day of May and the twentieth day of August, annually, take a true account, and make out an exact list of the persons, lands, chattels, effects, and estates, including certainties made ratable by law in that year, by which all assessments during the said year shall be regulated and made; and every inhabitant of the township shall, on application of the assessor, forthwith render a full and true account of his name and his ratable lands,

chattels, effects, and estates as aforesaid, which the assessor shall set down in writing, in order that the legislature may ascertain the proportion or quota of each county, and that every individual may be duly and justly assessed. (a)

2. That if any inhabitant shall neglect or refuse to render such account, or shall render a false or fraudulent account, he shall be taxed in a sum double to what the said assessor may suppose his ratable estate would be taxed; which shall not be reduced or altered by the commissioners of appeal, unless the offender can make it appear, by the testimony of credible witnesses, that he was not guilty of such neglect or refusal or did not render a false or fraudulent account as aforesaid. Penalty for refusing account, etc.

3. That when any money shall be directed to be assessed, collected, and paid into the treasury of this state, agreeably to this act, it shall be the duty of the assessors of the several townships, in every county, to meet at the hour of ten in the forenoon of the first Monday in September, in every year, at the place of holding the court of common pleas in such county, and at such meeting to furnish full, true, and accurate abstracts, under oath or affirmation, from their respective tax books, of ratable lands, chattels, effects, estates, and certainties, so by them respectively made, as required in the first and second sections of this act, and then and there to ascertain the amount of the certainties required by law to be rated in the assessment to be made, and to estimate the estate, real and personal, taken by the assessor of each township, at such valuation as they or a majority of them then present shall think reasonable and just, according to the law for the time being for that purpose, and thereby to adjust and fix the proportion or quota of the tax to be levied and collected in each township. (b) Assessors to fix quota.

4. That it shall be the duty of the said assessors, at such meeting, to make out two abstracts of the amount of all the ratables in each township, in the manner heretofore practised, designating in separate columns in said abstracts the amount of quotas, if any, of county, poor and road tax, to be assessed and collected in the different townships, and also the number of taxable inhabitants in each township; which shall be signed by every assessor present, and on the same day delivered to the county collector, who shall lay one of the said abstracts before the legislature, during the course of the first week of their stated annual session. Abstracts made out.

5. That the said assessors shall within fifteen days after such meeting, deliver to the township collector a true transcript or duplicate of the said assessment, in which they shall add together the sums contained in each column, and place such aggregate sum at the foot of each column, through every page. Duplicate furnished.

6. That the amount of the certainties shall be deducted by the said assessors from the quota or sum apportioned to every township, and the remainder of the said quota or sum, with the fees of assessment, collection, How assessment made.

(a) The assessor's demand of an account of taxable property may be made at a place other than the owner's dwelling house, if he do not refuse, on that ground, to render such account, *State v. Thomas*, 2 *Harr.* 160. The prosecutor, being called on by the assessor of his ward, and furnished with a blank to be filled up with the particulars of his property, under oath, told the assessor that he would see his attorney, and if it was right, &c., he would fill up the blank and return it to the assessor's office. *Held*, that the assessor, hearing nothing further from the prosecutor, was justified, by the provisions of the eighth section of the tax law of 1866, in assessing his property at its highest estimated value, *State, Young v. Parker*, 5 *Vr.* 49. Since the act of 1862, the person taxed is bound, if required, to state to the assessor the particulars of his property under oath or affirmation, and if he declines to do so, he is not entitled to appeal or to relief by *certiorari*, *State, Sharp v. Appgar*, 2 *Vr.* 358. But it was held that such refusal only deprived the party of his right to appeal, and that his remedy by *certiorari* was unaffected, *State, Easton Bridge Co. v. Metz*, 3 *Vr.* 199, 203. *State v. Bentley*, 3 *Zab.* 532. *State, International Co. v. Haight*, 6 *Vr.* 279, 284. Assessor not required to take the oath or affirmation of taxpayer, *State, Paulison v. Taylor*, 6 *Vr.* 184. Under the eighth section of the tax law of 1866, it is not necessary, in order to make a valid assessment, that the assessor shall examine persons to be assessed, by oath or affirmation, *State, Keeler v. Tindall*, 7 *Vr.* 97. The essential thing to be done by the assessor under this act is to ascertain, to the best of his ability and according to his own judgment, the names of the persons taxable, and the actual value of all taxable property; and this he is to do

by diligent inquiry, by the oaths or affirmations of the persons to be assessed, or of other persons if necessary, and by personal examination of the property to be valued, *Ibid.* With respect to the enumerated means or sources of information, by or from which the value of property is to be ascertained by the assessor, the act is not mandatory, but merely directory, *Ibid.* An affidavit setting forth that the deponent has no property in the ward subject to taxation, is sufficient and conclusive, unless the contrary is shown by other evidence, *State v. McClurg*, 3 *Dutch.* 253. *State v. Randolph*, 1 *Dutch.* 427. An assessment for taxes in a school district made upon real estate only, is illegal, and the assessor has no authority to alter the duplicate by extending the assessment to the personal estate of those assessed, and adding the names of others not assessed, after the duplicate has been delivered to the collector, *State, Roll v. Perrine*, 5 *Vr.* 254.

(b) The power of making an apportionment or voting a tax, cannot be delegated, *State v. Sickels*, 4 *Zab.* 125. *State, Wharton v. Koster*, 9 *Vr.* 308. *State, Verhule v. Saalmann*, 8 *Vr.* 156. The board of assessors in apportioning the state and school tax among the several townships in a county, must distribute it according to the value of the property, after deducting debts, as shown by the duplicates of the assessors of the several townships of the then present year, and not of the preceding year, *State, Skirm v. Cox*, 9 *Vr.* 302. After the apportionment is fixed the officers have no right to add any sum to the assessment, for contingencies, *State v. Jersey City*, 4 *Zab.* 108. *State v. Flavell*, 4 *Zab.* 370. *State, Verhule v. Saalmann*, 8 *Vr.* 156.

- and paying over to the treasurer, shall be assessed on the other taxable property within such township, according to the valuations aforesaid, at such rate per dollar, as will be sufficient to produce the sum required.
- Penalty on assessor for neglect. 7. That if any assessor shall neglect or refuse to perform any service or duty as required by law, he shall, for every such neglect or refusal, forfeit and pay the sum of thirty-two dollars, to be recovered, with costs, by action of debt, in the name of the clerk of the township for which such assessor was elected or appointed, and for the use of the said township.
- Appeal. 8. That if any person shall think himself aggrieved by such assessment, he may appeal to the commissioners of appeal in cases of taxation, in and for the proper township, who are hereby required to convene on the fourth Tuesday of November, annually, for the purpose of discharging the duties of their office in all matters arising under this act.
- Majority of assessors may act. 9. That if any assessor shall not attend at the time and place before directed for the meeting of the assessors of the county, it shall and may be lawful for a majority of the said assessors convened as aforesaid, to proceed to business, and to ascertain the proportion of the tax to be assessed and levied on the township of the non-attending assessor, according to the best of their knowledge and information; which proportion shall be assessed and collected by the assessor and collector of the said township.
- Township collector to advertise. 10. That the collector of every township shall annually, on the first day of October, give notice, by advertisements set up in at least four of the most public places of the township, of the said tax, and that, if it be not paid by a certain day therein mentioned, the name of the defaulter, with the tax, will be returned to a justice of the peace for prosecution; in which advertisements, notice shall also be given of the time and place of the meeting of the commissioners of appeal in cases of taxation.
- To demand tax. 11. That the township collector, within sixty days after receipt of the transcript or duplicate of the said assessment, shall demand payment of the tax or sum assessed on each individual in his township, in person or by notice left at his or her place of residence, and also give notice of the time and place of the meeting of the said commissioners of appeal; and the said collector shall pay the taxes by him collected, and the fines and forfeitures by him received, by virtue of any law of this state, to the collector of the county, by the twenty-second day of December in every year.
- And return delinquents to justice. 12. That in case of the non-payment of taxes at the time appointed, the township collector shall make out a list of the names of the delinquents, with the sums due from them respectively thereto annexed, and deliver the same to some justice of the peace of the county, on the twentieth day of December in every year, except when the said day shall happen on a Sunday, and then on the next day following.
- Justice to administer oath and give receipt. 13. That it shall be the duty of the said justice of the peace, on receiving a list of the names of such delinquents, to administer an oath to the said collector that the moneys in the said list mentioned had been duly demanded, or due notice thereof given or left at the usual place of residence of each delinquent who can be found, or who may then reside in the said township, and thereupon to give to the said collector a receipt for such list, certifying therein the names of the delinquents, and the sums at which they were respectively assessed; *and further*, that the said township collector shall not be charged by the county collector with the sums in such list contained, until he shall have received the same from the constable.
- Penalty on collector for neglect. 14. That if any township collector shall neglect or refuse to perform any service or duty as required by law, he shall, for every such neglect or refusal, forfeit and pay thirty-two dollars, to be recovered, with costs, by action of debt by the county collector, and applied to the use of the county.
- Liability of assessor and collector for deficiency. 15. That if any assessor or township collector shall neglect or refuse to perform any duty or service required of him by law, whereby the proportion or quota of any tax or taxes or other sum of money, fixed and ascertained at any meeting of the assessors of the county, to be assessed and levied in the township for which he has been chosen or appointed assessor or collector, or any part thereof, shall not be assessed or collected

as by law directed, the deficiency arising from any such cause shall and may be recovered, with interest and costs of suit, against such assessor or collector, in an action of debt or trespass on the case in any court of competent jurisdiction, by the board of chosen freeholders of the county in which such township is situate, for the use of said county; but such recovery shall not affect the liability of such assessor or collector to forfeit and pay the penalties mentioned in the seventh and fourteenth sections of this act.

16. That the assessors and collectors of the several townships, cities, wards and boroughs of this state, shall each be entitled to receive eight cents, and no more, for each name on their respective duplicates, for assessing, levying and collecting the township, city, ward, borough, county and state taxes.

Fees of assessor and collector.

17. That the time by this act appointed for the meeting of the assessors to ascertain and apportion the quota of the townships, for making and delivering the assessments to the township collectors, for delivering a list of the names of the delinquents to a justice of the peace, and for the payment of tax moneys by the township collectors to the county collectors, shall extend to and govern all future assessments for the use of the state.

Time to govern assessments for state.

18. That it shall be the duty of the justice of the peace, within five days after the receipt of the list of the names of the delinquents, to make out and deliver to the constable or constables, a warrant or warrants, requiring him or them to levy the tax so in arrear, with costs, by distress and sale of the goods and chattels of the delinquent, giving at least four days' notice of the time and place of such sale, by advertisements set up in three of the most public places in the township; and it shall be the duty of the said constable(a) or constables to pay the tax for which such warrant is issued to the township collector, within forty-five days after the date thereof; and the said warrant shall further direct, that if goods and chattels of the delinquent cannot be found, or not sufficient to make the money required, the constable shall take his or her body, if to be found in the county, and deliver the same to the sheriff of such county or his jailer, to be kept in close and safe custody until payment be made of the said tax, with costs.

Justice to issue tax warrants.

Constable to collect and pay over.

Delinquent imprisoned.

19. That the justice who shall issue the said warrant, shall be allowed two cents for every delinquent's name therein contained; and the constable shall be allowed thirty-four cents for each distress, and not more, although two or more taxes shall have been specified in the said warrant; and after deducting the tax and costs, the constable shall pay the surplus money to the delinquent.

Fees of justice and constable.

20. That if any justice of the peace shall neglect or refuse to perform any service or duty required of him by this act, he shall for every neglect or refusal forfeit and pay thirty-two dollars, to be recovered, with costs, by action of debt, by the county collector, and be applied to the use of the county.

Penalty on justice for neglect.

21. That it shall be the duty of the constable to return the said warrant to the justice who issued the same, with a schedule thereunto annexed, containing a particular account of the money by him levied of the goods and chattels of or received from each delinquent, and in what manner in other respects he had executed the said warrant; and the said justice shall, upon receipt of such return, deliver a copy of the said warrant and return to the township collector, upon his application for it, and shall return the original warrant, if not fully executed, to the constable, who is hereby commanded to proceed on and execute the same.

Tax warrants to be returned.

22. That if any constable to whom such warrant shall be delivered, shall neglect or refuse to execute the same as therein directed, or shall neglect or refuse to pay the tax money, which he shall have levied and made by distress and sale as aforesaid, to the township collector, or shall neglect or refuse to perform any other service or duty required of him by this act, he shall forfeit and pay for every such neglect or refusal thirty-two dollars, to be recovered, with costs, by action of debt, by the township collector, for the use of the township.

Penalty on constable for neglect.

(a) As to the liability of a constable's sureties for his delinquency, and the method of proceeding against them see *Hugg v. Camden, Spen. 583.*

Liability of constable on suit brought.

23. That every such constable, besides the penalty prescribed by the preceding section, shall be liable for the amount of the taxes which, by the said warrant, he was required to make by distress and sale as aforesaid, or for such part thereof as he shall not have paid to the township collector, except the deficiencies happen without any neglect, fraud or default on his part, to be recovered, with interest and costs, by action of trespass on the case, at the suit of the township collector, for the use of the township, before any judge of the court of common pleas of the county, who is hereby authorized and required to hear and determine the same, and immediately on entry of judgment to issue his warrant, directed to the sheriff of the county, and commanding him to levy and make the sum so adjudged, by distress and sale of the goods and chattels of the said constable; and the said sheriff shall return the said warrant, with his proceedings thereon, to the said judge, at the time therein specified.

Money to be paid county collector.

24. That it shall be the duty of the township collector to pay the moneys which he shall have received by virtue of any such assessment to the county collector by the twenty-second day of December, in every year, and, upon receipt of any tax money from a constable, to make immediate payment thereof to the said county collector.<sup>(a)</sup>

Township collector may be sued.

25. That if any township collector shall not pay the tax money by him collected, or by him received from the constable, or shall pay only part thereof at the time appointed by law, he shall be liable for the same, to be recovered, with interest and costs, by action of trespass on the case, at the suit of the county collector, for the use of the state, before any judge of the court of common pleas of the said county, who is hereby authorized and required to hear and determine the said action, and, immediately on the entry of judgment, to issue a warrant, directed to the sheriff of the county, and commanding him to levy and make the sum so adjudged, by distress and sale of the goods and chattels of the said township collector; and the said sheriff shall return the said warrant, with his proceedings thereon, to the said judge at the time therein specified.

Tax paid to treasurer.

26. That it shall be the duty of every county collector to pay the tax money which he shall have received of the township collectors, to the treasurer of this state, by the twentieth day of January in every year; and also, to pay any tax money which he shall have received of the sheriff, to the said treasurer, within ten days after receiving the same; and for the moneys so paid, the treasurer shall give receipts, which shall be sufficient vouchers to exonerate and discharge the said county collector to the amount therein contained.

Fee of county collector.

27. That every county collector shall be allowed one cent per dollar for all taxes which he shall receive and pay to the treasurer of this state, and also, for the payment of each general assessment, seven cents for every mile that his place of residence may be distant from the office of the said treasurer.

Liability of county collector to penalty.

28. That if any county collector shall not pay to the treasurer of this state, the tax money by him received from the township collector or sheriff, or shall pay only part thereof, at the time appointed by law, or shall neglect or refuse to perform any other service or duty required of him by this act, he shall, for every offence, forfeit and pay fifty dollars, to be recovered, with costs, by action of debt, by the treasurer of this state for the time being, for the use of the state, before any justice of the supreme court, who shall have exclusive cognizance of the same, and who is hereby authorized and required to direct the proper process in such action to the sheriff of the county in which such collector resides, whose duty it shall be to execute the same; and on entry of judgment in the said action against the county collector, the said justice shall issue his warrant thereon, directed to the sheriff of the county, commanding him to levy and make the sum so adjudged, by distress and sale of the goods and chattels of the said county collector; and such sheriff shall return the said warrant, with his proceedings thereon, to the said justice, at the time therein specified.

<sup>(a)</sup> That such money has been stolen without the collector's fault is not an excuse for non-payment, nor a justification in an action on his sureties' bond, *New Providence v. McEachron*, 4 Vr. 339; 6 Vr. 528.

29. That if any county collector shall not pay the tax moneys by him received, or shall only pay a part thereof, at the time appointed by law, he shall be liable for the same, to be recovered with interest and costs, by action of trespass on the case, by the treasurer of this state, for the use of the state; in which the other proceedings shall be the same as are designated in the section next preceding.

And to a suit, for tax money unpaid.

30. That if any township collector or constable shall squander, waste, embezzle or become insolvent and unable to pay any tax moneys or other moneys or property belonging to this state, and by him received in virtue of his office, then the said township for which such collector was chosen or appointed, shall be liable for and make good such deficiency or loss, by adding the same to the quota of such township, in the next assessment to be made therein by the authority of this state; and the assessor of the said township is hereby required to assess the same, under the like penalties as are hereinbefore referred to for neglect of duty.

Liability of township for money embezzled, etc.

31. That if any county collector shall squander, waste, embezzle or become insolvent and unable to pay any tax moneys or other moneys or property belonging to this state, and by him received in virtue of his office, then the said county for which he was appointed, shall be liable for and make good such deficiency or loss, by adding the same to the quota of such county, in the next tax to be levied therein by the authority of this state; and the assessors are hereby required to apportion the same among the several townships, under the like penalties as are hereinbefore referred to for neglect of duty.

Liability of county for the same.

32. That it shall be the duty of the treasurer of this state to add the annual deficiency of every county to the quota of such county, in the next tax to be raised therein by the authority of this state; and it shall be the duty of the county collector to charge such deficiency to the deficient township or townships, which shall be assessed on and collected from the same, over and above the quota of such township or townships, in the next tax as aforesaid; and to prevent all delay or neglect in this particular, it is hereby made the further duty of every county collector to attend and deliver to the assessors, when they meet to adjust and apportion the county's quota of the said tax among the several townships, an accurate account of the whole deficiency of each township, which said deficiency shall be assessed on such township, in the same manner and proportion as the tax then to be raised is required to be assessed.

Deficiency of tax assessed next year.

33. That the tenants or other persons in possession or having the care of any lands or tenements, and their goods and chattels, shall be and they hereby are made liable for the payment of taxes, which are or shall be imposed on the said lands; and if any such tenant or other person shall pay, or his or her goods and chattels shall be levied on and sold to pay any such tax, it shall be lawful for him to deduct the sum so paid out of the rent, or to recover the same from the landlord or owner by action of debt, with costs; *provided always*, that nothing in this act shall affect or extend to any contract made or to be made between landlord and tenant.(a)

Tenants liable for tax.

May recover of landlord. Proviso.

34. That if the tax which shall be laid on any unimproved or untenanted(b) land, be not paid agreeably to law, or if tenanted by any person or persons (not the lawful proprietor) who are unable to pay his or her(c) tax as aforesaid, it shall be the duty of the township collector to make return thereof to a justice of the peace of the county, who is hereby authorized and required to issue a warrant to any constable of the said county, commanding him to levy such tax by distress and sale of so much of the timber,(d)

Of tax on unimproved or untenanted land.

(a) Taxes on real estate may be assessed either against the tenant or owner, and the fact that by the lease the tenant must pay the taxes, does not prevent taxes from being assessed to, and collected from, the owner, *State v. Blundell*, 4 Zab. 402. See *State, Edgar v. Jewell*, 5 Vr. 259.

(b) Means land having no visible occupant or possessor, *State v. Hoffman*, 1 Vr. 346, 347. *Elmer, J.*

(c) The singular pronoun "his" or "her," refers to "proprietor," and not to the plural "person or persons;" the true reading is, "if tenanted by any person or persons who are unable to pay the proprietor's tax as aforesaid," which shows that the tax referred to is regarded as the owner's tax, for which the tenant is merely surety, *Morrow v. Dows*, 1 Stew. 459, 462.

(d) The operation of the act upon the sale was to sever the timber from the land, and pass an absolute title to the purchaser. No distinction is made between the timber and the wood and herbage or other vendible property of the owner. If the timber was sold, it would necessarily be

taken by the purchaser from the premises, otherwise it would be useless to sell it. In fact, the thirty-seventh section expressly authorizes the purchaser to enter upon the premises at any time within two months after the day of sale and take away the timber. The timber is not susceptible of division as to its title; it must necessarily be sold as an entirety. The sale being ordered under the same terms as herbage and other vendible property, its severance and an absolute title in the vendee must have been contemplated by the statute, *Morrow v. Dows*, 1 Stew. 459, 466. Sections thirty-three and thirty-four are not repealed by the first section of the act of 1854, (*Infra*, § 114), requiring the assessment of lands to be made in the name of the owner. The owner will be returned as delinquent, and upon the tax warrant issued against the owner, the tenant's goods can be seized and sold as a stranger's goods on demised premises were at common law taken on a distress for rent against the tenant, *Ibid.*

- wood, herbage, or other vendible property of the owner, and on the premises, as will be sufficient to pay the same, with costs, in the manner prescribed by the eighteenth section of this act.
- Of collecting tax by sale of timber, etc. 35. That any constable who shall or may hereafter have occasion to collect any tax, by distress and sale of any timber, wood, herbage, or other vendible property, according to the thirty-fourth section of this act, shall, and is hereby required to annex to the names of the several delinquents in the advertisements, the amount of tax and costs due from each of them respectively.
- Notice of sale to be given. 36. That before any constable shall collect any tax by distress and sale of any timber, wood, herbage, or other vendible property, according to the thirty-fourth section of this act, it shall be his duty to put up notices of such sale in five of the most public places in the township where the premises are, at least thirty days previous to such distress and sale, and shall advertise the same in a newspaper printed in the county, or circulating therein, at least four weeks, successively, prior to such sale, and shall therein set forth the names of all the persons to whom such tax is assessed, and the day and hour of sale, which sale shall be held between the hours of twelve and five o'clock of said day; and the constable, for his trouble and expense of so advertising the same, shall be entitled to an additional cost of twenty-five cents for each tax, over and above the necessary expense of advertising as aforesaid.
- Advertisement. 37. That it shall and may be lawful for the purchaser or purchasers of any timber, wood, herbage or other property, so as aforesaid, to enter upon the premises for the purpose of conveying away the property by him purchased, for the space of two months next after the day of sale, and no longer.
- Time of sale. 38. That if any person or persons shall enter upon said premises for the purpose of cutting or conveying away any timber, wood, herbage, or other property, after the time allowed in the thirty-seventh section of this act shall expire, he or she so offending shall be guilty of trespass, and on conviction shall be fined in any sum not less than twenty dollars, or exceeding one hundred, to be prosecuted and recovered by the owner or owners in any court of competent jurisdiction.
- Costs. 39. That all justices of the peace, constables and township collectors, shall render to the township committee of their respective townships, when by them required, a true account of all the moneys which they or any of them shall have received, on any assessment made or to be made, and not paid over to the county collector agreeably to law; which moneys the said justices of the peace, constables and township collectors are hereby directed to pay on demand to the said township committee; and if any justice of the peace, constable or township collector shall not account and pay as aforesaid, then the clerk of the township is hereby authorized and required to prosecute him for the same, in the name of the inhabitants of the said township, in the manner prescribed in and by the twenty-fifth section of this act; and the moneys so recovered shall be disposed of for the use of the township.
- Purchaser may enter within two months. 40. That when any constable shall be prosecuted for not collecting or paying any tax money agreeably to law, and complaint shall be made by the prosecutor that he is in fear that the said constable will make use of or not pay forward any such money to be collected, then it shall be the duty of the judge or justice before whom such prosecutions shall be had, to demand and take the warrant of distress from the said constable, giving him credit for the taxes not collected, and to direct the same, or to issue another warrant, to any other constable, who is hereby commanded to execute such warrant; and if the said constable shall neglect or refuse to give up the said warrant, or to render a true account of the taxes not received thereon, then it shall be the duty of the said judge or justice to commit such constable to the common jail of the said county, there to remain without bail or mainprise until he give up such warrant or render such account.
- But not after, under penalty. 41. That where the sheriff to whom any warrant shall be directed by virtue of this act, cannot find goods or chattels to distrain, or cannot find sufficient to make the full sum, then the said sheriff, after making sale of such goods and chattels as he may have found, shall return the said
- Officers to account to township committee. Prosecution. Warrant may be taken from one, and given to another constable. Constable may be imprisoned. How lands of defaulting officer may be sold.

warrant, endorsing thereon how far he has executed it, to the judge who issued the same; and it shall be the duty of the said judge to transmit, under his hand and seal, a true copy of the entry of the judgment and awarding of the warrant and the sheriff's return to the clerk of the supreme court, if such prosecution be at the suit of the treasurer of this state, or to the clerk of the court of common pleas of the county, if it be at the suit of the county or township collector, who is hereby authorized and directed to file the same, and thereupon to enter in the minutes of the said court, judgment against such defaulting county collector, township collector or constable, for the amount of the debt or tax money, with interest and costs, as endorsed on the said warrant, or the residue thereof, as the case may require, and on such judgment to issue, record, direct and deliver to the sheriff of the proper county a writ of execution against the lands, tenements, hereditaments and real estate of the said county collector, township collector or constable; which lands, tenements, hereditaments and real estate shall be levied on, seized, advertised, sold and conveyed by the said sheriff in the manner directed by the act entitled "An act making lands liable to be sold for the payment of debts," and by the act entitled "An act to regulate sales of real estate made under a public statute or the directions of a court;" for all which services, the said judge, sheriff and clerk shall be allowed the same fees as are by law allowed for the like services in other cases.

Judgment entered.

Execution issued.

42. That if the money arising from the sale of the lands, tenements, hereditaments and real estate so levied upon and seized, be not sufficient to satisfy the sum mentioned in the said execution, with the costs, then it shall be the duty of the said clerk to issue a *capias ad satisfaciendum* against such county collector, township collector or constable.

If deficiency, ca. sa. to issue.

43. That if the sheriff shall not execute the said warrant of distress agreeably to this act, or shall not pay the money therein directed to be made, within ninety days after receiving such warrant, he shall, for every offence, forfeit and pay one hundred dollars, to be recovered, with costs, by action of debt, by the treasurer or the county or township collector, as the case may require, for the use of the state, and shall also be amerced by the court of common pleas of the county to the amount of the sum in the said warrant mentioned, with interest and costs; which amercement shall have the force and effect of a judgment, whereon execution shall instantly, and without any further proceedings, be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the sheriff so amerced.

Sheriff liable to forfeiture and amercement.

44. That if the sheriff shall not execute the writ of execution agreeably to this act, or shall not pay the money therein directed to be made, within ninety days after receiving such execution, he shall, for every offence, forfeit and pay one hundred dollars, to be recovered, with costs, by action of debt, by the treasurer or the county or township collector, as the case may require, for the use of the state, and shall also be amerced by the court out of which such execution issued to the amount of the sum in the said execution mentioned, with interest and costs; which amercement shall have the force and effect of a judgment, whereon execution shall instantly, and without any further proceedings, be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the sheriff so amerced.

And so for failure to execute execution.

[SEC. 45 repealed].

45. SEC. 46. That in case of the neglect or refusal of the president and directors of any such bank to pay, or cause to be paid, into the treasury of the state, the amount of tax levied upon such company by this act, for the space of thirty days after the annual period in the forty-fifth section of this act prescribed, it shall be the duty of the treasurer of this state to make return to one of the justices of the supreme court of the amount of the tax levied as aforesaid and unpaid, whose duty it shall be to issue a warrant under his hand and seal, in the name of the treasurer of the state, directed to the sheriff of the county where the goods, chattels, lands, tenements, and hereditaments and real estate of such delinquent company are situated, requiring him to levy the tax so in arrear, with interest and costs, by distress and sale of the personal and real estate of such delinquent company, who shall proceed to make levy and sale thereof, as in

On refusal to pay, how collected.

- other cases where executions issue against personal and real estate, and shall pay the amount levied to the treasurer of the state, and in default thereof, shall be proceeded against in the manner prescribed by the act entitled, "An act concerning sheriffs,"
- Commissioners of appeal to meet. 46. SEC. 47. That the commissioners of appeal in cases of taxation, in and for every township, shall, for the purpose of discharging the duties of their office, convene at the usual place of holding town meeting, and at such times, where it is not otherwise directed by law, as they shall appoint, giving at least eight days' previous notice of every such meeting in writing, under their hands, and fixed up at six or more of the most public places in such township.(a)
- Notice. 47. SEC. 48. That it shall be the duty of the assessor who made the assessment appealed from, to attend at the said time and place before the said commissioners, and to offer such reasons as he may think proper in support of the said assessment.
- Assessor to attend. 48. SEC. 49. That the said commissioners, after due examination of the facts and consideration of the case, shall give such judgment as shall be agreeable to the principles of justice; which judgment shall be final and conclusive, and shall be rendered within three days after the hearing of the said appeal.(b)
- Commissioners to decide. 49. SEC. 50. That it shall be the duty of the said commissioners to give a transcript of their judgment to the appellant, in case such judgment shall pass in his or her favor, which transcript shall be a sufficient voucher to such appellant; and the collector of such township, in collecting the taxes of the same, and every other officer whom it may concern, is hereby directed to govern himself accordingly.
- To give a transcript to appellant. 50. SEC. 51. That such commissioners shall have full power to bring before them, by subpoena or otherwise, any person as a witness on the hearing of such appeal, to whom they are hereby empowered to administer the necessary oath or affirmation.
- May subpoena witnesses. 51. SEC. 52. That every commissioner of appeal shall be paid out of the public money in the hands of the collector of such township, the sum of one dollar a day for every day he shall have attended on the hearing and determining of such appeal, whose receipt shall be a sufficient voucher to such collector for so much of the said money as shall be paid by him for that purpose.
- Compensation. 52. SEC. 53. That all costs accruing on any such appeal shall abide the event thereof, that is to say, if the appellant shall be discharged from the payment of the whole or of any part of the said tax, then the costs to be paid out of the public money in the hands of the collector of such township, by an order signed by the said commissioners; but if no abatement be made in such tax, then the costs shall be paid by the appellant.
- Who to pay costs. 53. SEC. 54. That if any of the said commissioners shall neglect or refuse to perform the duties required of him in and by this act, then he shall, for every such neglect or refusal, forfeit and pay ten dollars, to be recovered with costs, by action of debt, in any court having cognizance of that sum, by the clerk of the township in which the said commissioner resides, for the use of such township.
- Penalty on commissioners for neglect. 54. SEC. 55. That the term township, made use of in this act, shall be construed to comprehend precinct and ward.
- Construction.

## II. Supplements.

### Supplement.

Approved March 9, 1848.

P. L. 1848, p. 230.

Collector to make assessments against persons omitted.

55. SEC. 1. That it shall be lawful for the collector, at any time before the meeting of the commissioners of appeal in cases of taxation, to enter the name of any person with a proper assessment which may have been

(a) The tribunal of the commissioners of appeal is a special tribunal, and it is well settled that such tribunals should show upon the face of their record all facts necessary to give jurisdiction. *Nixon v. Ruple*, 1 Vr. 58. All parties are bound to take notice of the day appointed by law for the meeting of the commissioners of appeal in cases of taxation; but if the commissioners meet at any other time than that appointed by law, such meeting must be upon notice, and must also be at the place of holding the town meeting, in order to obtain jurisdiction of the person of the assessor; and they cannot, therefore, without such notice, alter his

assessment, *Ibid*. The commissioners can meet only on the day prescribed by law, except perhaps by adjournment. *Den. State v. Helmes*, Pen. \*1050, \*1059. In the absence of evidence to the contrary, it will be presumed that the commissioners met at the time and place required by law. *State v. Johnson*, 1 Vr. 452, 454. If they meet at an improper time or place, the error is cured by the appellant appearing before them, and not objecting to their jurisdiction, on that ground. *State v. Thomas*, 2 Harr. 160.

(b) See *infra*, § 78, note (—).

omitted or overlooked by the assessor, giving said person immediate notice of such entry, and of the time and place of the next meeting of the said commissioners of appeal. Notice.

56. SEC. 2. That if any person or persons, body politic or corporate, shall be assessed at too low a rate, or be omitted in the assessment, it shall be lawful, upon complaint made, for the commissioners of appeal in cases of taxation, after five days' notice in writing to the party interested, by the party complaining, and after due examination of the facts and consideration of the case, to make such addition to the assessment as shall be agreeable to the principles of justice; and the judgment of the said commissioners shall be final and conclusive, and shall be rendered within ten days after the making of said complaint. *(a)* (See *Sec. 79*). Commissioners of appeals to hear complaints as to omitted assessments or those at too low a rate.

### Supplement.

Approved March 24, 1864. P. L. 1864, p. 440.

WHEREAS, by an act approved February twenty-third, eighteen hundred and sixty-three, entitled "A further supplement to the act entitled 'An act concerning taxes,'" approved April fourteenth, eighteen hundred and forty-six, it is among other things provided that "the tax to be imposed upon associations or corporations whose business is that of assurance upon lives, shall be one-half of one per centum on the amount of premiums received for such assurance during the year next preceding the time appointed for the payment of such tax;" and whereas, taxation should be equal, and the mode of assessment, as far as practicable, uniform, and the act above named is alleged to be defective in these respects, and does not conform to the general tax law of the state relating to incorporated companies; and whereas, associations of the beneficial character referred to, whose contracts cover large amounts and extend over long periods of time, should, to enable them to meet their liabilities have the benefit of equal and just legislation, and the rate of taxation imposed on them should be definitely fixed; therefore, Preamble.

57. SEC. 1. That all associations or corporations whose business is that of assurance on lives, shall be assessed and taxed for the full amount of their property and valuable assets after deducting the amount of their debts and liabilities, and that to ascertain the said amounts, a statement of the assets and debts and liabilities as they existed in the month of January preceding such statement, shall be annually made to the assessor in the township or city where the company is located, upon the oath of the president, secretary or treasurer of said association or corporation, and no other tax or assessment shall be imposed on any such association or corporation; *provided*, that in stating the liabilities on policies, the basis of such statement shall be the then present value of such policies at the time of such statement, and not the gross amount insured thereby; and *provided*, that the amount of tax to be assessed against the Mutual Benefit Life Insurance Company, which accepted the provisions of the above recited supplement, shall not be less than five thousand dollars in any one year, nor less than the assessment on the value at the rate other property is taxed in the city of Newark, of the full amount of the mortgages held by the said company at the time of the assessment, on taxable property in said city, without any deduction therefor; and *provided also*, that the said company shall not be subjected to the foregoing provisions Assessment of life insurance companies.  
Proviso.  
Tax on Mutual Benefit Insurance Company.  
Proviso.

*(a)* If other lands in the township are assessed much below their value, it is no ground for setting aside an assessment made upon a correct valuation; but the remedy of the latter is to appeal from his assessment, and at the same time apply to the commissioners of appeal to raise such assessments as may be too low, *State v. Randolph*, 1 *Dutch*, 427. *State, Paulison v. Taylor*, 6 *Vr.* 184, 189. *State, Wharton v. Koster*, 9 *Vr.* 308. When any persons or corporations are assessed at too low a rate, commissioners of appeal are authorized by law, to make such additional assessment as shall be agreeable to the principles of justice. *Held*, that where the commissioners added a certain sum to the assessment, without specifying the amount of tax to be paid thereon, it was within the meaning of the law, *State, Mutual Ins. Co. v. Uter*, 5 *Vr.* 489. Under a provision authorizing the commissioners to increase the assessment, where the taxpayer has been assessed "at too low a rate," they may add to the assessment taxable property entirely omitted by the assessor, *Ibid.*, 494, 4 *Vr.* 188. When commissioners of appeal make an additional assessment, and assess persons for property not owned by them at the time, such additional

assessment will be set aside, *State, Hudnut v. Murphy*, 2 *Vr.* 288. Where additions to an assessment for taxes are made by commissioners of appeal, on complaint made, under the second section of the supplement to the general tax law, passed March 9th, 1848, it must appear on the face of the proceedings of the commissioners, that judgment upon the complaint was rendered within ten days, as required by the supplement, *State, Folwell v. Warford*, 3 *Vr.* 207. No increase of valuation can legally be made without notice, *State, Perrine v. Parker*, 5 *Vr.* 352. *State, Paulison v. Taylor*, 6 *Vr.* 184. Under the eighth section of the act for equalizing assessments for taxes in the county of Hudson, (*P. L.* 1873, p. 794), notice must be given to the taxpayer before the commissioners decide that his assessment shall be increased, *State, Hoboken Land Co. v. Anderson*, 9 *Vr.* 82. If the notice given by the party complaining is shown to be informal, unmeaning, and different in tenor and effect from that recited in the certificate of the commissioners, the judgment will be set aside. *State, Folwell v. Warford*, 3 *Vr.* 207. Service of a notice upon a prosecutor's tenant, is not sufficient, *State v. Drake*, 4 *Vr.* 194.

of this act until by an instrument duly executed under its corporate seal, filed in the office of the secretary of state of this state, it shall have signified its assent to this act.(a)

Repealer.

58. SEC. 2. That the above recited supplement, and all acts and parts of acts inconsistent with this act, be, and the same are hereby repealed.

P. L. 1866, p. 971.

Bounty poll tax not to be assessed against honorably discharged soldiers.

59. SEC. 1. That hereafter no assessment as a poll tax for the purpose of raising in any county, city or township, money for the payment of any soldiers' bounty granted during the continuance of the late war for the suppression of the rebellion, shall be made against any citizen of New Jersey who has been in the service of the United States for nine months during said war, and been honorably discharged, and so far as any law of this state conflicts herewith the same is hereby repealed; *provided, nevertheless*, that this act shall not affect the collection of any assessment already made.(b)

Supplement.

Approved April 5, 1866.

P. L. 1866, p. 1078.

Poll tax to be assessed.

P. L. 1877, p. 18.

60. SEC. 1. That a poll tax not exceeding one dollar shall be assessed upon every male inhabitant of this state, of the age of twenty-one years and upwards, except the polls of all volunteers and sailors who have served in the armies or navies of the United States, and been honorably discharged therefrom, and of all paupers, idiots and insane persons; *provided*, that nothing in this act shall in anywise interfere with the poll tax required to be raised by any special law in payment of bounties.(c) (See *Sec. 100*).

Supplement.

Approved April 11, 1866.

Valuation and rate of taxation.

61. SEC. 2. That all real and personal estate within this state, whether owned by individuals or by corporations, shall be liable to taxation at the full and actual value thereof, on the day in each year when by law the assessment is to commence, at such rate per dollar as will be sufficient to produce the sum required to be raised, together with an addition thereto, not exceeding ten per centum of such sum to meet contingencies, after deducting the poll tax and the tax derived from foreign insurance companies.

Term real estate, what to include.

62. SEC. 3. That the term real estate, as used in this act, shall be construed to include all lands, all water power thereon or appurtenant thereto, and all buildings or erections thereon or affixed to the same, trees and underwood growing thereon, and all mines, quarries, peat and marl beds, and all fisheries.(d)

(a) Manner of taxing mutual insurance companies, *State, Mutual Insurance Co. v. Receiver*, 4 *Vr.* 183; 5 *Vr.* 489. A policy holder in a mutual life insurance company, cannot be assessed on the amount of such policy, *State, Mutual Ins. Co. v. Ulter*, 5 *Vr.* 489, 494.

(b) The authorities of T., in 1866, assessed against the prosecutor a poll tax of five dollars. The prosecutor showed that he came within the provisions of the act of April 5th, 1866. *Held*, first, that the act of said 5th of April, 1866, was not unconstitutional as impairing the obligation of contracts; and secondly, that it was not repealed by the thirty-second section of the act of 11th of April, 1866, *State, Hall v. Parker*, 4 *Vr.* 312.

(c) No poll tax can be levied upon a person temporarily resident in the state. The statute directs it to be levied upon "inhabitants," which implies more than mere residence; it requires the domicil to be within the state, *State v. Ross*, 3 *Zab.* 517. The seventy-second section of the act for the organization of the national guard of N. J., approved March 9th, 1869, does not exempt a member of the guard from the special poll tax imposed in the county of Essex, under the law of 1865, for the payment of war bonds, *State v. Mills*, 5 *Vr.* 77. It does exempt him from the payment of a poll tax under the general law, *Ibid.* Such an interpretation of a special law for the collection of a special poll tax, should not be adopted, as will interfere with the purpose of a general law, unless there is the clearest language to justify it, *State, Pierson v. Douglass*, 4 *Vr.* 362. See *State v. Branin*, 3 *Zab.* 484.

(d) Real estate must be assessed in the name of some person or persons or corporation, as the owner thereof, *State, Tindall v. Vanderbilt*, 4 *Vr.* 38. "Untenanted land" applies to that which has no visible occupant or possessor, *State v. Hoffman*, 1 *Vr.* 346, 347. *State, Cosset v. Reinhardt*, 2 *Vr.* 218, 219. That part of the land taxed lies below high water, or even below low water mark, does not, of itself, vitiate an assessment, for although such land was originally in the state, yet it may have been granted by the state, and it is

susceptible of ownership, *State v. Collector*, 4 *Zab.* 108. Whether lands of the state conveyed by statute for a term of years, or for any other term, are taxable or not, depends not on the qualities of the estate so granted, but on the legislative intention expressed in such act, *State, Morris Canal Co. v. Haight*, 7 *Vr.* 471, affirming 6 *Vr.* 178. Where a license is given to owners of land lying on a navigable stream to wharf out below high water mark so far as the grant extends, the property is vested in the grantees, and is liable to taxation, *State v. Sipple*, 1 *Dutch.* 530. Where a person owns land above and below high water mark, and an assessment of taxes is made upon the whole for an amount not greater than the value of the land above high water mark, it will be sustained; but if a separate assessment is made on the land below high water, it cannot be supported, *State v. Jersey City*, 1 *Dutch.* 525. *State, Morris Canal Co. v. Haight*, 6 *Vr.* 178; 7 *Vr.* 471. If a bridge is assessed to a company as real estate the assessment is good, and it makes no difference whether the interest is leasehold, or fee simple, *State v. Metz*, 5 *Dutch.* 122. All toll bridges are liable to taxation, unless specially exempted, *Bridge Proprietors v. State*, 1 *Zab.* 384; 2 *Zab.* 593. Under the tax laws in force in 1849, it was erroneous to assess and value as real estate, property directed to be assessed as certainties, such as mills, furnaces, &c., *State v. Frawell*, 4 *Zab.* 370. A farm lying in two townships, upon which there was a dwelling house situate in each of said townships, one of which was occupied by the owner, and the other by his son, who tilled the farm upon shares. *Held*, to be all occupied by the owner, and to be rightfully taxed to him in the township wherein he resided, *State, Appar v. Hoffman*, 1 *Vr.* 346. Where a farm, on which is a dwelling house, is situate in two townships, and the owner does not in person occupy the property, but leaves it in the charge and care of his servant, the gardener, the occupation of the servant will be considered the occupation of the owner, and the property taxable in the township where the principal dwelling house is situate, *State, Cosset v. Reinhardt*, 2 *Vr.* 218.

63. SEC. 4. That the term personal estate, as used in this act, shall be construed to include goods and chattels of every description, including steamboats and other vessels, money, debts due or owing from solvent debtors, whether on contract, note, bond, mortgage or book account, public stocks and stocks in corporations, whether said personal estate be within or without this state. (a)

64. SEC. 5. That the following persons and property shall be exempt from taxation, viz.:

1. The property and the bonds and other securities of the United States and the bonds and securities of this state, which are by law exempt from taxation, the property of the counties, townships, cities and boroughs of this state, and stocks and other personal estate owned by citizens of this state, situate and being out of this state, upon which taxes shall have been actually assessed and paid within twelve months next before the day prescribed by law for commencing the assessment; (b)

Where a farm, situate in two townships, in one of which the owner resides, although on a different property, is assessed in both townships, the assessment made by the township in which the owner does not reside, will be set aside as to so much as is actually tilled by the owner. The dwelling house and garden on that portion of the property, having been leased for a money rent and occupied by a tenant, will, for the purposes of taxation, be held to be a separate property, and the assessment thereon properly made. *State, Boyer v. Hay, 2 Vr. 275.* A farm consisted of two hundred and ninety acres of land, of which two hundred and twenty acres were in the township of W., and seventy acres in the city of R., and the latter tract contained a dwelling house and curtilage, occupied by tenants who had no connection with the farm, which was cultivated by one P., living in a small tenement on part of the seventy acres in the city of R., and receiving for his labor and services, as farmer, a certain share of the product of said farm. *Held,* that the owner living on other premises, in the township of W., cannot be taxed in the city of R. for the entire farm, but only for the dwelling house and curtilage. *State, Edgar v. Jewell, 5 Vr. 259.* Under the act of 1869, p. 1225, (the five county act), all lands to which it applies are to be taxed in the township wherein they lie. This repeals, by necessary implication, the provision in the general law of 1866, (*Infra*, § 65), that an occupied farm or lot lying partly in one township and partly in another, shall be assessed in the township where the occupant resides. *State, Savage v. Jones, 10 Vr. 246.* No error in form of assessing lots by blocks, where no fraud or prejudice is shown. *State, Paulison v. Taylor, 6 Vr. 184.* Even when such lots are of different values. *State v. Collector, 4 Zab. 108.* Where a farm lying within the city limits is mapped in lots on city atlas, no error to assess in lots, instead of by the acre. *State, Paulison v. Taylor, 6 Vr. 184.* Nor are lands so mapped out by the owner, within the statute, (*P. L. 1876, p. 240*), directing certain lands within incorporated districts to be assessed by the acre. *State, Combes v. Vanhorne, 10 Vr. 444.*

(a) A resident of this state must be assessed for all his personal property in the township where he resided on the day prescribed by law for commencing the assessment, and if assessed in another township for any part of his personal property, although it may be actually located in that township, such assessment will, to that extent, be set aside. *State, Perkins v. Bishop, 5 Vr. 45.* Under the act of November 2d, 1810, to tax bank stock, although the capital of the bank may have been diminished by losses, yet the tax must be paid on the whole amount of the capital stock subscribed and paid in. Neither the treasurer, nor the supreme court could look into the losses of the bank, and make proportional allowances upon the tax to be paid. *Gordon v. New Brunswick Bank, 1 Hal. 100.* But where the legislature reduces the shares of the stock two-fifths, it is in effect declaring that the capital is reduced two-fifths, and the bank shall only pay tax on the remaining three-fifths. *Ibid.* The stock of incorporated banks, although the bank pays a tax on its capital, may be taxed in the hands of stockholders, if authorized by the legislature, although it is a second tax upon the same property. *State v. Branin, 3 Zab. 481.* Stocks in foreign corporations, held by individuals resident in this state, are personal estate within this state, and subject to taxation. *Newark City Bank v. Assessor, 1 Vr. 13. State v. Bentley, 3 Zab. 532. State v. Danser, 3 Zab. 552. State v. Branin, 3 Zab. 481. Mechanics Bank v. Bridges, 1 Vr. 112.* Goods and chattels without the state, (except vessels belonging to inhabitants of this state), are not taxable in the state. The words, "within or without the state," refer to all articles enumerated after the word "included," before steamboats. *State v. Rahway, 4 Zab. 56.* The term "accumulated surplus," as applied to a stock insurance company, is the fund it has in excess of its capital stock paid in, after payment of its debts or fixed liabilities. *State, People's Fire Ins. Co. v. Parker, 5 Vr. 479; 6 Vr. 573. State, Mutual Ins. Co. v. Uller, 5 Vr. 489, 493.* The liabilities to losses upon policies issued and unexpired, is a contingent, not a fixed liability, and therefore does not affect the character of the fund arising from premiums as surplus capital or accumulated surplus. *Ibid.* The usual form of fire policies being

a fixed sum paid, or secured to be paid in advance for a definite term of insurance, the contract is entire; and the premium, when the risk is begun, is the property of the company for the purpose of taxation, if held by them subject to contingent losses. *Ibid.* The total amount of capital stock paid in, and premium and interest account, as shown by the company's statement in this case, less the sum invested in non-taxable securities, is liable to taxation. *Ibid.* The twelfth section of the tax law of 1862, repeals those parts of the act of 1854, which relate to mortgages, so that all personal estate, including all debts secured by mortgage, is to be taxed. *State, Warne v. Johnson, 1 Vr. 452. State v. Perkins, 4 Zab. 409, 412.* The holder of an annuity bond made in the penalty of \$3,000, conditioned for the payment to the obligee of the annual sum of \$166.66, in semi-annual payments, can be taxed only on the sum actually due and payable at the time of the assessment. *State, Howell v. Cornell, 2 Vr. 374.* Where, under an order of the court of chancery, lands are sold, and a proportion of the proceeds invested in bonds and mortgages for the use of the widow, in lieu of her estate as tenant in dower, a tax can be levied only upon the amount of interest which had become due and was unpaid upon the bonds and mortgages at the time of the assessment. *State, Hill v. Hansom, 7 Vr. 50.* A company owning coal lands in Pennsylvania sent coal, mined on their lands, by railroad to Elizabethport, in this state, where it was deposited on the wharf for separation and assortment, for the purpose of being shipped in vessels to purchasers in New York and New England. *Held,* that the commission agents of the company, who resided in this state, whose duties were to obtain orders for coal from purchasers in other states, and to superintend its shipment on board vessels at Elizabethport, had no such property in or possession or control of the coal as to be taxable for it under the seventh section of the act of 1866. *State, Detmold v. Engle, 5 Vr. 425.* The property of citizens of another state, sent across this state to markets in other states, and delayed within this state merely for separation and assortment for shipment, has no situs within this state for the purpose of taxation. *Ibid.* A foreign corporation, whose business is the mining of coal in Pennsylvania, which is sent by railroad across this state to tide water for shipment to customers in other states, and whose office for receiving orders for coal and transacting its business, is in New York city, is not taxable on coal lying on its dock, which is delayed within this state, awaiting shipment to other states. *State, Lehigh and Wilkesbarre Coal Co. v. Currihan, 10 Vr. 35.* Such corporation is not taxable on coal shipped direct from its mines and delivered in this state, in cars, to local dealers, on orders transmitted through its office in New York city. *Ibid.* Cattle stopping in a township for the temporary purpose of resting and feeding while on a journey, are not taxable. *State v. Falkinburge, 3 Gr. 320, 327.*

(b) The power of taxation is an essential attribute of sovereignty, reaching to all property and persons belonging to a body politic. If the legislature grant an exemption from taxation to some corporations, nothing should be left to implication, but the extent of the intended relief must appear, and be clearly expressed in the legislative act. *State v. Newark, 2 Dutch. 519.* It does not follow that if the state should lease a portion of the public domain, the lands so leased would be exempt from taxation. *State, Morris Canal Co. v. Haight, 6 Vr. 178; 7 Vr. 471.* A grant of the franchise of taking tolls on a bridge for a term of years, after which it reverts to the state, does not exempt such bridge from taxation. *Bridge Proprietors v. State, 1 Zab. 384; 2 Zab. 593.* Lands purchased for the Brotherton Indians in this state, exempted from taxes by the act authorizing the purchase, and afterwards sold by them, are subject to taxation. *State v. Wilson, Pen. \*300, reversed, 7 Oranch. 164.* A tax assessed for the year 1865, against the prosecutors, on stock owned by them in a national bank, whose capital is wholly invested in United States bonds, is illegal. *State, Matheson v. Boyd, 3 Vr. 273.* A stockholder in a national bank, whose capital is invested principally in United States bonds, may be taxed by the laws of the state, only for such proportion of the amount of his shares, as is not

Colleges, academies, etc.

II. All colleges, academies or seminaries of learning, public libraries, school houses, buildings erected and used for religious worship, and the land whereon the same are situate, necessary to the fair use and enjoyment thereof, not exceeding five acres for each one, the furniture thereof and the personal property used therein, the endowment or fund of any religious society, college, academy, seminary of learning or public library; *provided*, that no building so used which may be rented for such purposes and rent received by owner therefor shall be exempted; the stock of any corporation of this state, which by a charter or other contract with this state is expressly exempted from taxation, the stock of any corporation of this state, the capital whereof is by this act made taxable to and against said corporation, pews in churches, grave yards not exceeding ten acres of ground, cemeteries and all buildings erected thereon, and all buildings used exclusively for charitable purposes, with the land whereon the same are erected, and which may be necessary for the fair enjoyment thereof, and the furniture and personal property used therein, the funds of all charitable institutions and associations collected and held exclusively for the sick or disabled members thereof, or for the widows of deceased members, or for the education, support and maintenance of the children of deceased members. (a)

Where taxes to be assessed.

65. SEC. 6. That the poll tax and the tax on personal property shall be assessed upon each inhabitant liable to a personal tax in the township or ward where he resides, on the day prescribed by law for commencing the assessment in each year; (b) all lands shall be assessed in the township or ward in which they are situate, and every person shall be assessed in the township or ward where he resides for all lands then owned or possessed by him within said township or ward, either occupied or unoccupied; (c)

made up of the value of said bonds, *State, Jewell v. Hart*, 2 Vr. 434. To the extent in which United States securities stand as the capital or property of such bank, the shares of stock owned by private persons can be taxed by state authority only with the sanction of congress, and in the mode prescribed by that body, *State, Fox v. Haight*, 2 Vr. 399. The forty-first section of the act of congress provides that all the shares of such banks held by individuals or incorporations, may be included in the assessments made by the state authorities, at the place where such banks are located and not elsewhere, at the same rate as other property is taxed, *Ibid.* The act of congress of July, 1863, enacting that all stocks, bonds and other securities of the United States held by individuals, corporations, or associations, shall be exempt from taxation, by or under state authority, was only declaratory of the result of previous adjudication, *State, Mutual Insurance Co. v. Haight*, 5 Vr. 128. Such securities are also exempt from taxation by section five of the state tax law of 1866, *Ibid.* Certificates which seem to have been given for a loan, are of that class of securities which are exempted from taxation, *Ibid.* Corporations are entitled to have deducted from the amount of their capital stock paid in, and accumulated surplus, the amount of the bonds of this state and the stock and public securities issued by the United States owned by them at the time of assessment, *Newark City Bank v. Assessor*, 1 Vr. 13. *State, Easton Bridge Co. v. Metz*, 3 Vr. 199. *State, Peoples Insurance Co. v. Parker*, 5 Vr. 479; 6 Vr. 575. *State, International Ins. Co. v. Haight*, 6 Vr. 279. Bonds issued by this state under the act of 1861, (*P. L.* 1861, p. 554), are exempt from taxation when held by individuals or corporations, *Ibid.* So, lands acquired by a city for purposes purely municipal, *State, Water Com'rs v. Gaffney*, 3 Vr. 131. Mortgages deposited with the treasurer by a foreign insurance company, under the act of March 10th, 1853, to enable the prosecutor to do business in another state, are not exempt from taxation, *State, International Ins. Co. v. Haight*, 6 Vr. 279. The fourth section of the supplement of 1863, exempting from taxation property out of the state belonging to residents in this state, does not apply to corporations, *State, Easton Bridge Co. v. Metz*, 3 Vr. 199. *State, International Ins. Co. v. Haight*, 6 Vr. 279. [*Infra*, § 101].

(a) The dwelling houses erected by the College of New Jersey for the accommodation of professors and stewards, are exempted from taxation, by the exemption in the act of 1851, exempting all colleges, academies, or seminaries of learning, and the lands whereon the same are erected, *State v. Ross*, 4 Zab. 497. An academy or seminary kept by an individual on his own account, and at his own risk, not being a common public school, or incorporated, is not an academy or seminary within the meaning of the exemption in the tax act of 1851, *Ibid.* The supplement to the tax law, passed April 10th, 1866, exempts from taxation the endowment or fund of any religious society. *Held*, that the parsonage belonging to a church, although purchased by the voluntary contributions of the members of the congregation, was liable to taxation as real estate, *State, First Reformed Dutch Church v. Lyon*, 3 Vr. 360. Lands held by

trustees for a church, situated apart from the church edifice, do not constitute a part of the "endowment or fund" of a religious society, and are not exempt from taxation, *State, Nevin v. Krollman*, 9 Vr. 323, 574.

(b) The phrase "owner" or "owners" was used to denote the owner of an estate in possession at the time of the assessment, and not a prior owner, or the owner of an estate in expectancy, or of any executory or contingent interest, and the design of the act was to make the interest of such owner only, and those claiming under him, liable for the tax assessed, *Hopper v. Malleson*, 1 C. E. Gr. 382. See *State, Tindall v. Vanderbilt*, 4 Vr. 38. After the assessor has ascertained and set down the name of the owner and the real estate to be assessed, in the course of his duties in making the assessment, he is not obliged to substitute the name of a subsequent owner, even if requested before the time to complete the assessment has expired, *State, Force v. Williamson*, 4 Vr. 77. The residence required by the tax law of 1866, to make one liable to a personal tax in a particular township or ward, is precisely the same in kind as that which will entitle him to vote there, *State, Sharp v. Casper*, 7 Vr. 367. *State, Tatem v. McChesney*, 6 Vr. 548, 551. *Zabriskie, C.* A mortgagee is bound to pay the tax on his mortgage, and cannot recover it of the mortgagor, *Pond v. Causdell*, 8 C. E. Gr. 181. Under *P. L.* 1876, p. 180, (*Infra*, § 110), a mortgagee must pay the tax upon his mortgage in the township where the lands covered by the mortgage lie, and not in the township where he resides, *State, Wyckoff v. Nunn*, 10 Vr. 422. Bonds secured by mortgages on land situated in a township or city wherein the mortgagee does not reside, are not taxable to the mortgagee where he resides; it makes no difference if the land is in a city or place where, by a special law, it is taxed according to its value without regard to encumbrances, and where bonds and mortgages are not taxed at all, *State v. Massaker*, 2 Dutch. 564, reversing 1 Dutch. 531. A person who harbors a dog, as well as the owner, is liable to be taxed therefor, under *Rev. p. 17, § 18, State v. Falkinburge*, 3 Gr. 320, 324, 327. Under the tax law of 1866, property owned in partnership is liable to be taxed in the same way as other property, *State, Forst v. Parker*, 5 Vr. 71. Whether the assessment be against the partners individually, or against the firm as such, the whole partnership property is to be assessed at its full value. *Ibid.*

(c) A mortgagee may pay the tax on the land, and add the amount to his mortgage, *Stonington Savings Bank v. Davis*, 1 McCart. 286. *Elmer v. Loper*, 10 C. E. Gr. 475. *Dolan v. Cook*, 1 McCart. 56. A mortgagee in possession must pay the tax on the land, *Shields v. Lozear*, 7 C. E. Gr. 441, 453. As between a tenant for life and remainderman, the court of appeals declined to make any order respecting the payment of the taxes assessed, or to be assessed, on the property, *Kearney v. Kearney*, 2 C. E. Gr. 505, affirming *Id.* 59. Where after a contract for sale of part of a tract of land the vendor paid the taxes upon the whole tract together, the vendee will be charged with a proportionate part of them, with interest from the time of their payment, *Locander v. Lounsbury*, 9 C. E. Gr. 418, case modified, 10 C. E. Gr. 554.

and when the line between two townships or wards divides a farm or a lot owned or possessed by the person taxed, the same shall be taxed, if occupied, in the township or ward in which the occupant resides; and if unoccupied, each part shall be assessed to the owner thereof in the township or ward in which the same may be, and this whether such division line be a township, ward or county line.

66. SEC. 7. That every person shall be assessed in the township or ward where he resides, for all personal estate in his possession or under his control, as trustee, guardian, executor or administrator; (a) and in case the owner or owners of personal estate shall be non-resident of this state, then and in that case the said personal estate shall be taxed in the township or ward where the same may be situate; (b) that the personal estate of every incorporated company liable to taxation, shall be assessed in the township or ward where the principal office shall be, or if such company have no principal office or place of transacting its financial concerns, then in the township or ward where the operations of such company are carried on; (c) and where the tolls of any bridge, turnpike, railroad or canal company are collected in the several townships or wards, the personal estate of such company shall be assessed in the township or ward in which the treasurer, or other officer authorized to discharge the general pecuniary obligations of said company, resides; and the real estate of incorporated companies, liable to taxation, shall be assessed in the township or ward in which the same shall lie, in the same manner as the real estate of individuals.

Property held in a representative capacity, when assessed.  
Non-residents.

Corporations.

67. SEC. 8. That the assessor of every township or ward shall, between the days prescribed by law, annually ascertain by diligent inquiry, and by the oath or affirmation of the persons to be assessed, and, if necessary, of other persons, according to the best of his ability, and according to his own judgment after examination and inquiry, the names of all the persons taxable in their respective townships or wards, and the actual value of all the property, real and personal, taxable therein; and in case any inhabitant of the township or ward shall refuse to swear or affirm and answer in regard to all the particulars of his property when required by such asses-

Duty of assessor in making assessment.

(a) A tax upon personal property in possession, or under control of an executor, should be against the person holding the office in his representative character, and not against "the estate of" testatrix; and such tax can be assessed only in the township where executor resides, for all such property wherever situate. *State, Ely v. Holmdel*, 10 Vr. 79. Commissioners appointed to divide real estate, having invested for the benefit of the widow, (who has relinquished her dower), one-third of the money arising from the sale of the land, in pursuance of section twenty-three of the "act for the more easy partition of lands," &c., do not fall within the class of trustees designated by this section, and are not to be taxed as such. *State, Parker v. Irons*, 6 Vr. 464. An assignee, to whom an assignment for the benefit of creditors has been made, is taxable as such trustee, and not entitled to a deduction of the debts due from the assignor. *State, Clarke v. Grover*, 8 Vr. 174.

(b) The real estate and personal chattels of non-residents are to be taxed in the township where they are found. *State v. Ross*, 3 Zab. 517. See *State, Tatem v. McChesney*, 6 Vr. 548. The bonds of corporations in this state, or of residents thereof, or the stock of corporations in this state held by inhabitants of another state, are not liable to taxation in this state. *Ibid.* A tax against a non-resident stockholder in a national bank, laid where the bank is located, is good. *State, Farmers Bank v. Cook*, 3 Vr. 347. *State, Jewell v. Hart*, 2 Vr. 434. *State, Fox v. Haight*, 2 Vr. 399. Stock of a national bank located in New Jersey, held by a resident of Pennsylvania, is not liable to taxation in the latter state. *Bucks County v. Ely*, 6 Phila. Rep. 414. The act of 1854, by which bonds and mortgages are made liable to taxation, does not include the bonds, mortgages, stocks, or other choses in action of persons who are not inhabitants of this state. *Dolman v. Cook*, 1 McCart. 56. An incorporated company of this state is not liable to be taxed for so much of its capital as is represented by stock standing in the name of non-resident stockholders, and owned by them. *State v. Thomas*, 2 Dutch. 181. Owner of lands lying in a township which repairs roads by hire, is liable for tax, although he resides in another township, and works roads there. *Van Dien v. Hopper*, 2 South. \*764. If F. resides in one county and owns land in another, on which he grazes cattle, he is liable to be taxed for such cattle in the township where they graze. *State v. Falkinburge*, 3 Gr. 320. Ferry boats owned by a foreign corporation, enrolled in the New York custom house, used for carrying freight and passengers between Jersey City and New York, and having no permanent location in Jersey City, are not liable to be taxed there; such property cannot be said to be situate in any township or

ward. *State, New York and Erie R. R. Co. v. Haight*, 1 Vr. 428.

(c) The prosecutor being a private corporation, principally engaged in the business of insuring lives, but not a mutual insurance company, is from the character of its business, subject to taxation within the fair meaning of the tax act of 1864. *State, International and Life Assurance Co. v. Haight*, 5 Vr. 279. Mutual loan and building associations are to be assessed at the full amount of their capital stock and accumulated surplus. *State, Washington Building Ass'n v. Creveling*, 10 Vr. 465. The fund which has accrued from monthly payments on shares, being compulsory, constitutes the capital stock of such association. The premiums and interest on loans and fines, being in effect optional payments, represent its profits, and make up the accumulated surplus. *Ibid.* An assessment to a corporation in a name not known, is void. *State, Tindall v. Vanderbilt*, 4 Vr. 38. Under the supplement to the tax laws, approved March 28th, 1862, private corporations must be assessed on the full amount of their capital stock paid in without deduction for losses, and not according to the market value of the stock at the time of the assessment. *Rudderow v. State, West Jersey Ferry Co.*, 2 Vr. 512, reversing 1 Vr. 405. *State v. Tunis*, 3 Zab. 546. Savings banks without capital stock, being taxable for the full amount of their property and valuable assets, without any deduction for debts or liabilities, are to be taxed for their deposits. *State, Bridgewater v. Amerman*, 8 Vr. 408. A plank-road company is in fact, a turnpike company within the meaning of the tax law of 1854, requiring "the personal estate of such company to be assessed in the township or ward in which the treasurer or other officer authorized to discharge the general pecuniary obligations of such company, resides." *Haight v. State, Jersey City and Bergen Point Plank Road Co.*, 3 Vr. 449, affirming 1 Vr. 443. A railroad company, furnishing their own conveyances, carrying nothing but passengers, and charging a certain price as fare, cannot be considered a toll-collecting company. *State, Jersey City and Bergen R. R. Co. v. Haight*, 1 Vr. 447. The personal property of such company shall be taxed in the township or ward where the principal business is transacted. *Ibid.* A tax, under the act of 1862, was rightly assessed on the Warren Railroad Company, in the town of Belvidere, where the office of its secretary was. *State, Warren R. R. Co. v. Person*, 3 Vr. 134, 566. Where the real estate of a corporation is situate partly in one township and partly in another, and is occupied by the corporation, it will be subject to taxation in the township where the corporation resides. *State, Warren Co. v. Warford*, 8 Vr. 397.

sor, or in case such inhabitant cannot be found by the assessor after a diligent effort, it shall be the duty of said assessor to estimate his property at the highest value he has reason to suppose it may be placed; and in case the person assessed shall appeal to the commissioners of appeal, they shall not reduce the said estimate, if it shall appear that the person appealing had refused to be sworn or affirmed, and to answer all proper questions respecting the particulars of his estate and of his debts, or had absented himself for the purpose of evading the assessor; nor unless he shall satisfactorily prove by his own oath or affirmation, or otherwise, what was the true value of all his taxable property; *provided*, that nothing herein contained shall be construed to prevent the said commissioners of appeal from increasing the valuation made by the assessor, if it shall satisfactorily appear the same ought to be increased. (a)

Secretary of state to prepare schedule of taxable property.

68. SEC. 9. That it shall be the duty of the secretary of state, before the time prescribed by law for commencing the assessments, in each year, to prepare a schedule of the leading classes of taxable property, both real and personal, and the deductions allowed by law, to be printed, with blank form of affidavit attached, and distributed to the several counties for the use of assessors in making their assessments.

Duplicate, how to be made out.

69. SEC. 10. That the assessor shall so make out his duplicate as to show in separate and distinct columns the names of all persons assessed, the number of acres and lots of land and appurtenances assessed to each person, the value of such land, the value of the personal estate assessed to each one, including the amount of mortgages held and the amount of debts due and owing to each person from solvent debtors in addition to debts secured by mortgage, the amount deducted from the said value for debts due and owing, the net value assessed to each person, the rate per dollar assessed, and the several sums assessed on each person for state, county, city, township, poor, school, road, poll, dog and other taxes; and the said assessor shall also add to his duplicate, by way of appendix or otherwise, in all cases where real estate is taxed to any person from whom he has reason to suppose it may be difficult to collect the tax by warrant against his goods, chattels and person, a designation of the said real estate by such short description as will be sufficient to ascertain the location and extent thereof, to the end that said tax may be collected in the manner prescribed by the act entitled "An act to make taxes a lien on real estate, and to authorize sales for the payment of the same," approved March seventeenth, eighteen hundred and fifty-four. (b)

(a) The income of property is no criterion for an assessor in making a valuation. *Ibid*; *State v. Collector*, 4 Zab 108, 118. Adjacency to tide-water is a circumstance which may properly enter into the estimate of valuation of lands for the purposes of taxation, *State. Trask v. Carragan*, 8 Vr. 264. Any additional value which may be impressed upon lands, by reason of this adjacency to tide-water, shall be assessed not on the fringe as a separate and distinct property, but on the entire lot of the assessable owner fronting on high water-mark. *Ibid*. Proximity to an extensive water-power is an advantage to be considered, and a legitimate ground of valuation, *State v. Flavel*, 4 Zab. 370. In estimating the value of a toll-bridge, for the purpose of assessment, the franchises of the company or the profits from the tolls are not to be considered, *State. Easton Bridge Co. v. Metz*, 2 Vr. 378. In valuing the prosecutors' bridge over the Delaware at Phillipsburgh for the purpose of assessment in this state, the one-half of the bridge, including the abutments and piers to the centre of the river upon the New Jersey side, should be estimated at its full and fair value at the time of the assessment, as part of the structure, without reference to the extent of travel upon it or the profits derived therefrom. *Ibid*. In this estimate may also be considered the value of the land occupied by the abutments, its location, and other relative circumstances which affect the value of land generally; but in no case should the extent of profit in its use, under the franchise of the company, be taken into account. *Ibid*. Under the charter of the city of Trenton, it was necessary to have regard to the value as well as the rents, *State v. Bramm*, 3 Zab. 481, 497. The objection that the valuation was based upon the rental of the property assessed, is one of fact, and must be grossly excessive to be set aside, *State. Keeler v. Tindall*, 7 Vr. 97, 100. If an increased valuation has been confirmed by the board of appeals, it cannot be set aside because the assessor before his election issued a printed card addressed to the voters of the township, pledging himself to increase the old valuation, *State v. Quaise*, 3 Zab. 89, 91. It is no ground of complaint by a plaintiff in *certiorari*, that a third person was rated too high, *McCarty v. Brick*, 6 Hal. 27, 37. The second section of the statute of 1846, authorizing the assessor to

estimate and then double the assessment of a taxpayer who refuses to make a return, is repealed by the act of 1854, *State v. Union*, 3 Dutch 433. Assessors of townships are required to take an official oath that they will truly, faithfully, honestly, and impartially, value and assess the rateable estates in their townships, and that in making such assessments they will, to the best of their knowledge and judgment, observe the directions of the law respecting the same, and make a true return, &c. The fourteenth section of the act of 1862, requires all assessors to assess and value property at its full and fair value, and at such prices as in their judgment said property would sell for at a fair and bona fide sale by private contract; and that every assessor shall annex to his duplicate an oath or affirmation, in writing, that all assessments in his duplicate have been made according to the requirements of that section, *State. Easton Bridge Co. v. Metz*, 2 Vr. 378. In this case, the assessor of P. having taken the proper oath of office and made his assessment, annexed to the duplicate returned by him an affidavit that the statements contained in the assessment were true, to the best of his knowledge and belief. *Held*, sufficient, *Ibid*.

(b) Assessments for taxes must relate to the day in each year when, by law, the assessment is to be commenced, *State. Shippen v. Hardin*, 5 Vr. 79. *State. Tindall v. Vanderbilt*, 4 Vr. 38, 39. *State. Force v. Williamson*, 4 Vr. 77. See *State v. Murphy*, 2 Vr. 288. Lands must be assessed in the name of the owner, at the time when the assessment is to be commenced, *State. Rutherford Park Ass'n v. Union*, 7 Vr. 309. *State. Stevens Institute v. Krollman. June*, 1876. An assessment to the "estate of J. B. Coles, deceased," where a large estate is shown to have been well known by that name, is sufficient, *State v. Collector*, 4 Zab. 108. See *Hopper v. Malleson*, 1 C. E. Gr. 382, 389. A taxpayer cannot complain of the misnomer of another taxpayer, *McCarty v. Brick*, 6 Hal. 27, 37. The assessor, in describing real estate under the act concerning taxes, may use abbreviations so long as they are intelligible, and leave no uncertainty as to the property upon which the impost is intended to be laid, *State. Alden v. Newark*, 7 Vr. 288. A description "Joseph L. Alden, No. 16 Front street, real estate, H., L. and stable," is full

70. SEC. 11. That where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name or representative character, and such assessment shall be carried out on a separate line from his individual assessment; and in cases where the same property is held by several trustees, guardians or executors, only one of them shall be taxed for the same; and such property shall be assessed in the hands of such one of said executors, or guardians or trustees as have the actual possession or control of such property, or the bonds, mortgages or other securities by which the same is held.

Person assessed as trustee, &c., to be assessed as such.

71. SEC. 12. That when any money shall be directed to be assessed for state or county purposes, it shall be the duty of the assessors of the several townships and wards in the county to meet at the time prescribed by law in every year at the place of holding the court of common pleas in such county, and each of the said assessors shall produce his duplicate of the value of real and personal estate to be by him assessed, with the amount of each column and the total of all the columns correctly added together, and shall also produce an affidavit by him subscribed and taken upon his oath or affirmation before some person authorized to administer oaths, of the following or like tenor and effect, viz.: "I, \_\_\_\_\_, assessor of \_\_\_\_\_ do hereby swear (or solemnly affirm), that I have diligently inquired, respecting the nature and value of the real and personal estate liable to taxation in the township (or ward) whereof I am assessor, and have to the best of my ability, and without favor or partiality, valued all the said property liable to taxation in said township (or ward) at its full and fair value, at such price as in my judgment said property would sell for at a fair and *bona fide* sale by private contract on the day prescribed by law for commencing the assessment, and have deducted from such value only such balance of debts as is prescribed by law;" and if any assessor shall be unable to attend such meeting, it shall be his duty to send his duplicate with the affidavit aforesaid, and in case any assessor neglecting to attend, or to produce or send his duplicate and affidavit aforesaid, the majority of the assessors convened shall estimate the value of the property liable to assessment in the township or ward of the absent assessor, according to the best of their information and belief. (See Sec. 3).

Annual meeting of board of assessors.

72. SEC. 13. That the board of assessors, when met as aforesaid, shall compute and ascertain the whole value of real and personal estate, after deduction of debts, to be taxed according to the value thereof contained in the duplicates of the several assessors or estimated as aforesaid, and shall fix and adjust the proportion or quota of tax to be levied and collected in each township or ward in proportion to said value; *provided*, that if it shall appear to the assessors so met as aforesaid, that the value of the property contained in any duplicate is relatively less than the value of other property in the county, they may, for the purpose of fixing and adjusting the said proportion or quota, and for that purpose only, add thereto such per centage as shall appear to them just and proper, but not otherwise; and it shall be the duty of such assessors, at such meeting, to make out two abstracts of the net value of taxable real and personal property, designating the amount of real estate and personal property in each township and ward, which shall be signed by every assessor present, and shall within three days be delivered to the county collector, who shall

Duties and powers of board of assessors.

enough, *Ibid.* "Farm assessed on two hundred and eighty-five acres, and two houses and lots," is insufficient, *State, Shippen v. Hardin*, 5 Vr. 79, 81. Nor can such imperfect description be amended, *Ibid.* 82. "Knapp and McPherson; or R. P. Association; number of acres. 2. Valuation of real estate, \$50,000. Amount taxable, \$50,000," is too defective to warrant a sale, *State, Rutherford Park Ass'n v. Union*, 7 Vr. 309, 312. "Estate of John Malleson. 1 H. & 1 L." is not a sufficient description to authorize a sale, *Hopper v. Malleson*, 1 C. E. Gr. 382, 384. An assessment blending together the state, county and township taxes, is illegal, *C. and A. R. Co. v. Hillegas*, 3 Harr. 11. *State v. Falkinburge*, 3 Gr. 320. That the several taxes are blended together, and that the duplicate does not show directly the value per acre of the land assessed, are objections going merely to the form, and not to the substance of the assessment, and insufficient since the act of March 26th, 1852, to justify the court in setting it aside, *State, Perkins v. Bishop*, 5 Vr. 45. When an assessor, in making out his duplicate, has blended together and placed in one column the town-

ship taxes other than the township tax for school purposes, the assessment will not be avoided for the non-compliance with the precise terms of the tax law of 1866, in the particular mentioned, if it has not, in any wise impaired the substantial rights of the prosecutor, *State, Verhule v. Saalman*, 8 Vr. 156. A tax against a stockholder in a national bank, resident in the township where the bank is located, and taxed on the same duplicate for other personal property. *Held*, to be good, although the valuation was carried out separately, *State, Farmers Bank v. Cook*, 3 Vr. 347. If taxable and non-taxable property are joined in one assessment, and the whole amount is not greater than the value of the taxable, it will be sustained, *State, Morris Canal Co. v. Haight*, 6 Vr. 178, 7 Vr. 471. *State v. Jersey City*, 1 Dutch, 525. If the assessor in his duplicate omits to carry out the amount assessed to any person, so that it does not appear how much his tax was, the assessment will be set aside. It is not sufficient to give the valuation of the property, and mention the rate per cent., *State v. Perkins*, 4 Zab. 409.

forthwith file one of them and transmit the other to the comptroller of the state for the use of the legislature, and each of the said assessors shall, within fifteen days after said meeting, deliver to the collector, whose duty it is to collect the taxes by him assessed, a true transcript or duplicate of the assessment of taxes for the said township (or ward) completed as herein directed, and by him certified under his hand to be a true duplicate of the taxes assessed; *and provided also*, that if a majority of the assessors of the county shall fail to meet on the day prescribed by law, those met shall adjourn from day to day, at the same place, until a majority shall attend.<sup>(a)</sup>

Penalty for neglect of duty on part of assessor.

73. SEC. 14. That if any assessor shall wilfully or through gross negligence omit to make a full and fair valuation of all the real and personal estate taxable in his township or ward, as required by this act, within the time prescribed by law, or to make the affidavit prescribed by the twelfth section of this act, or to deliver to the collector a just and true duplicate as herein required, he shall be deemed guilty of a misdemeanor, and liable to a fine not exceeding five hundred dollars for each offence; and if any assessor shall neglect to attend at the time and place prescribed by law for the meeting of the assessors of any county, or shall neglect to produce or send his duplicate and affidavit as required by this act, then it shall be the duty of the said assessors to inquire and ascertain whether the said assessor was unavoidably prevented from attending and producing, or from sending his said duplicate and affidavit, and unless a majority of those met shall, by a writing by them signed, excuse the said neglect, the assessor so neglecting shall be guilty of a misdemeanor and liable to a fine not exceeding two hundred dollars for each offence; and it shall be the duty of the board of assessors to state in writing to the prosecutor of the pleas of the state the name of every assessor guilty of either of the aforesaid neglects, with the names of the witnesses to prove the same, to be by him presented to the grand jury of the county.

Private corporations, how assessed.

Exceptions.

74. SEC. 15. That all private corporations of this state, except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this state are expressly exempted from taxation, and except mutual life insurance companies specially taxed, shall be and are hereby required to be respectively assessed and taxed at the full amount of their capital stock paid in, and accumulated surplus; but any real estate which such corporations may lawfully own in any other state than this state, shall not be liable to be estimated in such accumulated surplus, and the persons holding the capital stock of such corporations shall not be assessed therefor; and such corporations as have no capital stock other than those above accepted, shall be assessed for the full amount of their property and valuable assets, without any deduction for debts and liabilities; but depositors in savings banks, taxed by virtue of this section, shall be exempted from taxation on their personal estate to the amount of their deposits; *provided*, that premium notes held by life insurance companies shall in no case be considered as future premiums, but shall be included in the valuable assets of said company.

[Sec. 16 repealed by act of April 1, 1869, *post* Sec. 99].

Duties of officers of corporations.

75. SEC. 17. That it shall be the duty of the president, secretary, cashier and treasurer, of every corporation and bank, the stock or property of which is liable to taxation, when applied to by the assessor entitled to assess the same, to give to the said assessor a true statement, under oath or affirmation, of the name of the several stockholders who owned the stock of a bank on the day prescribed by law for commencing the assessment, and of the amount of capital stock and accumulated surplus, and of all other property and assets of such bank and corporation, and the said assessor is hereby authorized to administer such oath or affirmation, and to take such other means as may be in his power to ascertain the true amount for which the stockholders or the corporation shall be taxed.

(a) When the board of assessors meet, the township to whose quota of tax an addition is proposed to be made, cannot offer evidence to rebut any alleged inequality. The assessors must determine upon their own knowledge the existence of any inequality, *State, Weehawken v. Roe*, 7

Vr. 86. Before they can interfere at all with any duplicate, they must decide that the valuation contained in it is relatively less than the value of other property in the county, and then correct it as to themselves shall seem just and proper, *Ibid*.

76. SEC. 18. That the assessors and commissioners of appeal, who shall examine any person respecting the taxable property of such persons, or of others, shall administer an oath or affirmation of the following or like tenor and effect, viz: "I, \_\_\_\_\_, do swear (or solemnly affirm) that I will true answer make to all such questions as shall be put to me touching the taxable property of myself (or of A. B.), and therein I will speak the truth, the whole truth, and nothing but the truth;" and if any person who shall be required to swear or affirm, or testify respecting his or her taxable property, or the property of any person or corporation, shall, when requested by any assessor or commissioner of appeal, refuse to be sworn or affirmed and examined, he or she shall be deemed guilty of a misdemeanor, and liable to a fine not exceeding two hundred dollars; and it shall be the duty of the assessor to furnish to the prosecutor of the pleas of the county the name of any person refusing to be sworn or affirmed, and the names of the witnesses, that the same may be laid before the grand jury of the county; and any assessor who shall refuse to take evidence when offered respecting the amount or ownership of taxable property of any person or corporation, shall be deemed guilty of misdemeanor, and liable to a fine not exceeding two hundred dollars, but the oath or affirmation of no person shall be conclusive as to the amount or ownership of taxable property, but the assessors and commissioners of appeal shall adjudge the same as may appear to them correct.

Form of oath to be administered by assessor and commissioners of appeal.

77. SEC. 19. That all corporations regularly doing business in this state, and not being corporations of this state, shall be assessed and taxed for and in respect of the business so done by them and transacted in this state, and every agent of any fire, life, health or marine insurance company not incorporated by the laws of this state and doing business in this state, shall file with the secretary of this state, on or before the first day of February in each year, the certificate now required by law respecting the business and condition of the company of which he is such agent, and shall pay at the time of such filing, to such secretary of state, the sum of five dollars fees therefor; and shall also be required, within ten days thereafter, to take from such secretary of state a license to act as such agent, and transact the business of said company during the ensuing year, and shall pay for such license the sum of twenty dollars; and such license fees so paid shall be in lieu of all other taxes to be assessed in this state on such agents for the business of said companies; *provided, however*, that the last foregoing provisions shall apply only to the agents of companies of those states whose laws do not impose a greater tax or assessment than the foregoing upon the agents of companies of this state, and doing business in those states, that the agents of companies of those states imposing larger taxes or assessments than the foregoing upon the agents of companies of this state shall pay, in the manner and at the time now provided by law, a tax of two per centum per annum on the whole amount of premiums taken or received by such agent during the year preceding the payment of said tax; and all other corporations not incorporated by this state, and agents doing business in this state as aforesaid, shall be assessed for the amount of capital usually employed in this state in the doing of such business not otherwise taxed by virtue hereof; and such assessment shall be made in the township or ward where such business is most usually carried on and transacted.

Foreign corporations, how assessed.

Proviso.

78. SEC. 20. That after making the valuation of the real and personal estate for which any individual shall be assessed, it shall be lawful for the assessor or for the commissioners of appeal in cases of taxation, to deduct from such valuation any debt or debts *bona fide* due and owing from such individual to creditors residing within this state; *provided*, that no deduction shall be made from the full and fair value of the real or personal estate of any individual, unless such individual shall make and sign a true statement in writing, under oath or affirmation, that the same is just and true, of the several debts owing by such individual, which he desires to have deducted, to whom owing and where the creditor resides, and also a statement of the total amount of real estate and of personal property of such individual, including mortgages held and other debts due and owing to such individual from solvent debtors, and shall deliver the same to the

Deductions for debts, when to be made.

said assessor on or before the time limited by law for closing the assessment; *provided*, that if it shall be made to appear to the satisfaction of the commissioners of appeal that the individual assessed was prevented by sickness or other unavoidable accident from delivering such statement to the assessor as aforesaid, the said commissioners may permit the said individual or any person in his behalf, having knowledge of the facts, to deliver such statement to them sworn or affirmed to be just and true as aforesaid, and may therefore deduct the balance of such debts in like manner as the assessor might have done in case the said statement had been duly delivered to him; and in case any assessor or commissioner of appeal shall make any such deduction, without having first delivered to him as aforesaid such statement under oath or affirmation, the said assessor and commissioner of appeal shall be deemed guilty of a misdemeanor, and liable to a fine not exceeding two hundred dollars; and all written statements and oaths and affirmations authorized and required by this act, shall be forthwith delivered to the clerk of the township wherein the assessor or person making the same resides, to be by him filed and preserved. (a)

Duty of collector.

79. SEC. 21. That the collector, immediately after having received his duplicate from the assessor, shall submit the same to the committee of the township or common council of the city or borough whereof he is the collector, and it shall be the duty of said committee and common council carefully to examine the same, and if they have reason to believe that any individual or corporation has been assessed at too low a rate, or omitted to have been assessed, as required by law, they shall thereupon authorize and require the collector to notify the said individual or corporation that complaint will be made to the commissioners of appeal in cases of taxation, and the said collector shall, at least ten days before the time of meeting of said commissioners, deliver to said individual or leave at his dwelling house or deliver to the president, cashier, treasurer, clerk or secretary, or if no such officer can be found, to any director of the corporation, or leave at the place of business of such corporation, a notice in writing or printing of the following or like tenor, viz.: "To

Notice in case of assessment at too low a rate.

: You are hereby notified that complaint will be made to the commissioners of appeal in cases of taxation at \_\_\_\_\_, on \_\_\_\_\_ next, that you have been assessed at too low a rate (or omitted to be assessed), to the end that, after due examination of the facts such addition may be made to your taxes as shall be right and proper and according to law;" and it shall be the duty of the collector to attend

(a) On an appeal to commissioners by several parties, they are to deal with each case separately and if the particular tax appealed from is remitted as being illegal, the commissioners have no authority to remit it as to others who have not appealed, *State. Roll v. Perrine*, 5 Vr. 254. The deduction of debts in cases of taxation must be claimed and made, in the first instance, at the place of the residence of the taxpayer, *State. Shreve v. Crosley*, 7 Vr. 425. *State v. Ross*, 3 Zab. 517, 520, 526. *State. Perkins v. Bishop*, 5 Vr. 45. It seems, that if the amount of debts exceeds the estate taxable where the taxpayer resides, he might, under *P. L. 1864*, p. 732, deduct the remainder from the valuation of his real estate in another county, *State v. Crosley*, June, 1867, 4 Vr. 80. A taxpayer residing in any township in this state is entitled to have a debt secured by mortgage upon lands situate in another township deducted from his taxable property in the township where he resides, *State v. Pearson*, 4 Zab. 254. *State v. Williamson*, 4 Vr. 77. There is no provision by which a non-resident owner of real or personal estate situate in this state, may be allowed a deduction for debts due and owing by him to creditors residing within this state, *State. Tatem v. McChesney*, 5 Vr. 63, 6 Vr. 548. By the express provisions of the act of 1851, the landholder is not entitled to any deduction from the amount of tax assessed upon his land for any debts due and owing by him to creditors not residing in this state. At the time of the payment of the tax for which the deduction is claimed this debt was due and owing to persons not inhabitants of this state, *Stovington Bank v. Davis*, 1 McCart. 286. *Dolman v. Cook*, 1 McCart. 56. The deduction for debts cannot be allowed to any individual assessed, whether a resident or not, without a statement in writing, &c., embracing all the particulars enumerated in the first proviso of that section, *State. Tatum v. McChesney*, 5 Vr. 63, 6 Vr. 548. *State. First v. Parker*, 5 Vr. 71. *State. Mount v. Parker*, 3 Vr. 341. *State. Perkins v. Bishop*, 5 Vr. 45. What will amount to such a refusal considered, *State. Young v. Parker*, 4 Vr. 192. To entitle a person assessed to a reduction, he must deliver the statement required by section twenty of the act of 1866

to the assessor personally, or leave it at his office or dwelling, with a proper person, *State. Robbins v. Horner*, 9 Vr. 212. Nothing but unavoidable inability to effect such delivery will afford an excuse, and empower the commissioners of appeal to entertain the application for a deduction, *Ibid.* The commissioners of appeal cannot lawfully reduce the assessment thus made without being satisfied that the prosecutor did not refuse to be sworn, &c., nor unless he satisfactorily proved what was the true value of all his taxable property, *State. Young v. Parker*, 5 Vr. 49. *State. Mount v. Parker*, 3 Vr. 341, 342. To entitle a taxpayer to have the debts he owes deducted, he must have an affidavit made out and delivered to the assessor before the time limited by law for closing the assessment roll. The assessor is not bound to do it for him. If neglected, the commissioners of appeal may waive it, and make the deduction; but if they decline to do so, the court will not set aside the tax, *State v. Johnson*, 1 Vr. 452. The party assessed, upon making application to the assessor or commissioners of appeal for that purpose, and presenting a sufficient affidavit, is entitled to have his debts owing in the state deducted from his property, both real and personal; but if he neglect to make such affidavit, he cannot correct the assessment by *certiorari*, *State v. Grey*, 5 Dut. 380. Where the whole board of commissioners of appeal in cases of taxation met, and on a motion to make a deduction of debts claimed, three voted in the affirmative, two in the negative, and one declined to vote, the record that the motion was lost is erroneous, and may be disregarded, and the deduction allowed by the court, *State. Mount v. Parker*, 3 Vr. 341. The commissioners of appeal in cases of taxation, have a right to reconsider their opinion until such opinion has been officially promulgated by them, *State. Shreve v. Crosley*, 7 Vr. 425. Where an assessment is reduced by the commissioners of appeal, the assessment merges in the judgment of the commissioners; and in the absence of any evidence that the amount fixed by the commissioners is too great, the court will not interfere, *State v. Randolph*, 1 Dut. 427.

before said commissioners and to present the complaints, and to subpoena all proper and necessary witnesses and pay them their fees, and he shall receive out of the public money two dollars for every day he shall so attend.(a)

80. SEC. 22. That each of the commissioners of appeal in cases of taxation shall have power and it shall be his duty to issue subpoenas for the attendance of witnesses before the said commissioners, on the hearing of an appeal which shall be served, and the said commissioner, the witnesses and constable shall have the same fees and be liable to the same penalties as in cases of subpoenas for witnesses to appear on the trial of actions before courts for the trial of small causes. Commissioners of appeal may issue subpoenas.

81. SEC. 23. That the real estate of private corporations and banks situate within this state, except the banking house and lot of ground whereon the same is erected, of banking institutions whose stockholders are taxed shall be assessed to said corporations or bank in the township or ward in which said real estate is located, in the same manner as the real estate of individuals, and the amount of said assessment shall be deducted from the amount of the capital stock and surplus and funded debt, or of the valuable assets of the corporation. Real estate of corporations to be assessed and deducted from capital.

82. SEC. 24. That nothing in this act shall have the effect to alter or repeal any tax imposed upon dogs. Dog tax.

83. SEC. 25. That it shall be the duty of the collectors of the townships, cities or wards in this state, out of the first moneys which shall be collected by them, to pay to the county collector of the county in which they hold their offices, the state and county taxes required to be assessed in their several townships, cities and wards, at the time required by law to pay the same.(b) First payment to county collector.

84. SEC. 26. That if any county, township, city or ward collector, or any receiver of taxes or collector of arrearages of taxes, shall embezzle, unlawfully loan or retain in his hands any money received or collected by him for the state, or any county, city, borough, township, ward or school, or road district, he shall be deemed guilty of a misdemeanor and liable to be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or both. Penalty for embezzlement or loaning money received for taxes.

85. SEC. 27. That if any person or corporation shall refuse or neglect to pay the tax due from such person or corporation by the time appointed by law for the payment of the same, such delinquent shall pay interest on said tax at the rate of twelve per centum per annum upon the amount of each tax from the time of such delinquency, until such tax be paid, which interest shall be added to the amount of each tax by the officer whose duty it shall be to collect such tax, and shall be collected by such officer, and accounted for and paid over by him in the same manner that the taxes of delinquents are by law required to be collected and paid over.(c) Interest to be paid by delinquent.

86. SEC. 28. That the notice first required by the eleventh section of the act to which this is a further supplement, shall be in writing or printed, and shall set forth the number of acres assessed, the value of the real estate, and of the personal estate assessed to each one, and of the rate per dollar assessed and the several sums assessed on each person or corporation for state, county, township, poor, school, road, poll, dog and other taxes, as the same are stated on the duplicate, and the time and place of the meeting of the commissioners of appeal; and if any collector shall neglect to deliver said notice as required by the said eleventh section of the aforesaid act, he shall forfeit to each person or corporation assessed, and residing in his township or ward, whose notice he shall neglect to deliver, the sum of fifty dollars, to be recovered by action of debt in any court of record of this state. Notice required by sec. 11 to be in writing or printed.

87. SEC. 29. That the warrants hereafter issued for the collection of delinquent taxes in the townships, boroughs, towns, cities, districts or wards of this state, by virtue of the act to which this is a further supplement, shall be directed and delivered to the collector of the township, Tax warrants to be delivered to collectors.

(a) See *Supra*, § 56, note (k).

(b) See *State, Pierson v. Douglass*, 4 Vr. 363, 365.

(c) Where a statute imposed a penalty of twelve per cent. on failure to pay the tax assessed. *Held*, that such penalty could not be collected after the repeal of the statute—the

rule being that the assessment of the tax was a thing passed and completed, and could not be affected by the repeal. *Contra*, with respect to the penal per centage, *Belvidere v. Warren R. R. Co.*, 5 Vr. 193, 6 Vr. 584, 587.

borough, town, city, district or ward, and the said collector shall, in the execution of said warrant, have the same powers and perform the same duties, be subject to the same forfeitures and receive the same compensation, as is prescribed to the constables by the provisions of the aforementioned act: *provided*, that this section shall not apply to any city, borough, township, town or district having special provision inconsistent herewith.<sup>(a)</sup> (See *Sec. 97*).

Compensation of assessors and collectors.

88. SEC. 30. That the several assessors and collectors of the townships and wards of this state shall be entitled to receive twelve cents, and no more, for each name on their respective duplicates for assessing, levying and collecting all the taxes by them assessed and collected: *provided*, that no name occurring on the duplicate more than once be counted more than as one man: *provided, however*, that wherever the assessors or collectors of any city, town or townships do now receive any fixed salary under any special law of this state, this act shall not entitle any such assessors or collectors to any additional fees.

Penalty for false swearing.

89. SEC. 31. That any person guilty of wilful and corrupt false swearing or affirming in taking any oath or affirmation required or authorized by this act shall be deemed to be guilty of perjury, and punished accordingly.

Repealer.

90. SEC. 32. That the forty-fifth section of the act to which this is a supplement and the several supplements to the act to which this is a further supplement, approved March twenty-sixth, eighteen hundred and fifty-two, entitled, "An act to provide for the collection of taxes due from banks and banking associations of this state," and the supplements approved March third, eighteen hundred and fifty-four, March fifteenth, eighteen hundred and sixty-one, March eleventh, eighteen hundred and sixty-two, March twenty-eighth, eighteen hundred and sixty-two, March twenty-fifth, eighteen hundred and sixty-three, April fourteenth, eighteen hundred and sixty-four, and a second supplement, eighteen hundred and sixty-four, and April fifth, eighteen hundred and sixty-five, and all other acts, or parts of acts, whether special or local or otherwise, inconsistent with the provisions of this act, be and the same are hereby repealed, except an act entitled "A further supplement to the act entitled 'An act concerning taxes,'" approved April fourteenth, eighteen hundred and forty-six, which supplement was approved March twenty-fourth, eighteen hundred and sixty-four, and such special or local acts as shall have been approved since the year eighteen hundred and sixty-two;<sup>(b)</sup> *provided*, that the supplement to the charter of Jersey City, approved March twenty-ninth, eighteen hundred and sixty-six, and the acts and parts of acts thereby reinstated shall not be affected by this act.

P. L. 1867, p. 934.

#### Supplement.

Approved April 11, 1867.

When town committee, &c., to meet and revise assessment.

91. SEC. 1. That the township committee of each township, and the common council of each town, borough and city in this state shall meet and hold meetings at their usual places of meeting in their respective townships, towns, boroughs and cities, on the third Tuesday in August of each year, for the purpose of examining, revising and correcting the duplicate of assessment to be laid before them in the manner hereinafter provided for.

Assessment, when to be completed.

92. SEC. 2. That assessors shall hereafter finish making their assessments on or before the third Monday in August of each year.

Assessors to attend meeting of town committee.

93. SEC. 3. That the assessors of the several townships, towns, wards, boroughs and cities in this state shall, on the third Tuesday in August of each year, attend the meeting of the committee or council of his township, town, borough or city, and lay before them the duplicate of assessment, to be by them examined, revised and corrected;<sup>(c)</sup> and that it shall be his duty to remain with said council, for the purpose of explaining the said duplicate, and assisting said committee or council in the discharge of the duties required of them by this act.

<sup>(a)</sup> The effect of this section was simply to dispense with the constable in the collection of delinquent taxes, and to put in his place the township collector, *McEachron v. New Providence*, 6 Vr. 528, 533.

<sup>(b)</sup> See *State, Camden and Burl. R. R. Co. v. Cook*, 3 Vr. 338, 341.

<sup>(c)</sup> The correction must relate back to the day when the assessment ought to have been made, *State, Shippen v. Har- din*, 5 Vr. 79, 81.

94. SEC. 4. That said committees and councils respectively shall have power to adjourn from time to time, as they may deem expedient, for the purpose of discharging the duties required of them by this act: *provided*, the said examination, revision and correction shall be made and completed on or before the last Saturday in August of each year.

Committee may adjourn from time to time.

95. SEC. 5. That any member of said committees or councils shall have power to issue subpoenas to bring before said meetings herein provided for, persons and papers to be examined in relation to said assessments.

Any member may issue subpoenas.

96. SEC. 6. That all acts and parts of acts inconsistent with this act be, and the same are hereby repealed: *provided*, that the provisions of this act shall not affect cities or incorporated towns where these matters are given by their charters or special laws.

Act not to affect incorporated towns.

#### Supplement.

Approved April 1, 1868. P. L. 1868, p. 559.

97. SEC. 1. That in all cases where a tax warrant has been issued, and the township collector, or other officer to whom it was delivered, has neglected or failed to execute or return the same, it shall be lawful for the justice who issued the same, upon its return to him, with an affidavit annexed that the taxes or some part of the same remain unpaid, and giving the names of the delinquents therein, with the amount of the taxes against them respectively still in arrears and unpaid, to issue an *alias* tax warrant against the said delinquents for the taxes for which they are so in arrear, to be directed to the township collector for the time being, or other proper officer, to be proceeded on in all things as in the case of the original warrant.(a)

Alias tax warrants when and to whom to issue.

#### Supplement.

Approved March 24, 1869. P. L. 1869, p. 612.

98. SEC. 1. That in all cases where a tax warrant has been or shall hereafter be issued for the collection of taxes in any township of the state, and the officer receiving the same has neglected or failed to execute or return the same, or to collect any part of the taxes thereby directed to be collected within the time now limited by law, the justice of the peace who issued the said warrant, or in case of his death or disability, or the expiration of his term of office, then any other justice of the peace of the said county shall, at the request of the township committee of the said township, issue *alias* or *pluries* warrants for the collection of such taxes as shall remain uncollected under the previous warrant, which said *alias* or *pluries* warrants shall be good and effective for that purpose, and shall be executed and returned in like manner as is provided in the case of original warrants, and shall be directed and delivered to such constable of said county as the township committee may designate, or such special constable as may be appointed by the said committee for that purpose; and such constable or special constable so designated or appointed, after giving bond, with such security as the said committee may direct and approve of shall, in the execution of said warrant, have the same powers and perform the same duties, and be subject to the same liabilities and forfeitures, and receive the same compensation as is now provided in relation to the township collectors of the several townships in the execution of warrants for the collection of taxes.

Proceedings in case of neglect to return tax warrant.

#### Supplement.

Approved April 1, 1869. P. L. 1869, p. 1149.

99. SEC. 1. That every person shall be assessed in the township or ward where he resides for all shares of the stock of any national bank in this state, or of any bank organized under the laws of this state, owned by him or in his possession or control as trustee, guardian, executor or administrator; and in case said owner, trustee, guardian, executor or administrator shall be a non-resident of this state, then, and in that case, such banks shall be assessed to the amount of such shares so owned or held by non-residents as aforesaid, in the manner now provided by statute in the case of other corporations.

Bank stock to be taxed where owner resides, except that of non-residents, which is to be taxed to the bank.

(a) After a tax warrant has been issued and the officer has neglected to return it, *alias* and *pluries* warrants may be issued, but not after the expiration of the term of the officer whose duty it was to make such return, *State, Trustees, &c. v. Lewis*, 6 Vr. 377, 380. See *Silverthorne v. Warren R. R. Co.*, 4 Vr. 372, 377. *Infra*, § 98.

P. L. 1871, p. 43.

Poll tax to be assessed.

Proviso.

P. L. 1872, p. 90.

The word "citizen" shall include bodies corporate.

P. L. 1873, p. 57.

Collector to furnish copy of duplicate of assessment when required.

One copy only to be required.

Penalty for neglect or refusal.

P. L. 1873, p. 118.

Treasurer authorized to demand interest when certain taxes are withheld for a stated period.

Treasurer authorized to bring suit against delinquents.

P. L. 1874, p. 27.

Personal property only to be taxed where situated.

Certificate of assessor shall be evidence of taxation.

**Supplement.**

Approved March 21, 1871.

100. SEC. 1. That hereafter a poll tax not exceeding one dollar shall be assessed upon every male inhabitant of this state of the age of twenty-one years and upwards, except the polls of all volunteers and sailors, who have served for the period of one year or more, also those wounded and discharged in consequence thereof, in the armies or navies of the United States, who have been honorably discharged, and of all paupers, idiots and insane persons; *provided*, that nothing in this act shall in any wise interfere with the poll tax required to be raised by any special law in payment of bounties.

**Supplement.**

Approved April 4, 1872.

101. SEC. 1. That the word "citizen," in part one, of the fifth section of the act, to which this is a supplement, shall be deemed and taken to include bodies corporate.

**Supplement.**

Approved March 21 1873.

102. SEC. 1. That the collector of taxes in any township, borough, town or ward in this state shall furnish a correct copy, in writing, under oath or affirmation, of the duplicate or transcript of the assessment of taxes and the tax warrant or warrants in his hands or possession to the committee of township or common council of the town or borough whereof he is collector, when required by a resolution of said committee or council, within five days after a copy of such resolution in writing, attested by the clerk of the township, town or borough shall be served on him.

103. SEC. 2. That but one copy as aforesaid shall be required of said collector during his term of office.

104. SEC. 3. That in case of the wilful neglect or refusal of said collector to furnish a copy as aforesaid, he shall forfeit to the said township, borough or town, the sum of fifty dollars, to be recovered by said township, borough or town, in an action of debt in the corporate name of said township, borough or town, for every five days he shall neglect or refuse.

**Supplement.**

Approved April 3, 1873.

105. SEC. 1. That when the collector of any county or the treasurer of any corporation chartered by the laws of this state, shall fail to pay into the state treasury any state or school tax levied, assessed and collected in accordance with the laws of this state, or due the state under the provisions of any act of incorporation, and shall withhold the same for more than fifteen days after the time that the law requires the said tax to be paid to the state treasurer, then the said treasurer shall be and he is hereby authorized to demand interest at the rate of ten per centum per annum upon the amount so withheld from the time the said amount was due up to the date of payment into the treasury. (See *Sec. 150*).

106. SEC. 2. That upon the failure of any county collector, or the treasurer of any corporation, to pay interest as required by the foregoing section, upon the demand of the state treasurer, then the comptroller of the treasury shall be and he is hereby authorized and directed to bring suit against such delinquent collector or treasurer for the amount of such interest, to be recovered in action of debt with costs of suit; and all interest moneys received in pursuance of this act shall be paid into the state treasury, to be used and applied in the same manner as now is or shall be provided by law for the use or application of the principal thereof.

**Supplement.**

Approved March 5, 1874.

107. SEC. 1. That hereafter, in all cases where taxes are imposed by virtue of any law of this state, upon personal property where the same is situated, such property shall not be liable to taxation elsewhere.

108. SEC. 2. That in any case, where property is so taxed, the certificate of the assessor by whom the assessment was made shall be deemed sufficient evidence thereof, and shall entitle the owner to exemption for such property in all other places.

## Supplement.

Approved April 17, 1876.

P. L. 1876, p. 160.

109. SEC. 1. That hereafter no mortgage or debt secured thereby shall be assessed for taxation unless a deduction therefor shall have been claimed by the owner of the land and allowed by the assessor.

Mortgages exempt unless a deduction is allowed by assessor.

110. SEC. 2. That hereafter such mortgages or debts secured thereby as shall be subject to taxation, shall be assessed for taxation by the assessor making the deduction on account thereof, and the tax thereon shall be collected by the collector of taxes in and for the township or city wherein the lands in the mortgage described are situate.

Mortgages subject to taxation, how assessed.

111. SEC. 3. That in case the taxes upon such mortgages or debts secured thereby, as shall hereafter be assessed, shall remain unpaid for the space of sixty days after the time appointed for the payment of taxes, it shall be the duty of every city or township collector to make out a list of the names of the delinquents, classifying them according to their residences in counties, with the sums due from them respectively for taxes upon mortgages held by them, for which deduction has been allowed, thereto annexed, and shall deliver the same to some justice of the peace of the county wherein the said delinquents reside respectively.

Township collector to make list of delinquents.

112. SEC. 4. That such justice of the peace shall, within five days after the receipt of such list as aforesaid, make out and deliver to the constable or constables of his county a warrant or warrants requiring him or them to levy the tax so in arrear, with costs, by distress and sale of the goods and chattels of the delinquents, giving at least four days' notice of the time and place of such sale by advertisement set up in three of the most public places in the place where such delinquent resides; and said warrant shall further direct that if goods and chattels of the delinquent cannot be found, or not sufficient to make the money required, the constable shall take his or her body if to be found in the county, and deliver the same to the sheriff of such county or his jailor, to be kept in close and safe custody until payment be made of the said tax with cost.

Unpaid taxes on mortgages, how collected.

113. SEC. 5. That the justice who shall issue the warrant shall be allowed two cents for each delinquent's name therein contained, and the collector shall be allowed thirty-four cents for each distress; that it shall be the duty of said constables executing any such warrant as aforesaid, to make return thereof to the justice who shall issue the same, within sixty days from the time the same shall be delivered to him, with a statement showing what moneys have been collected by him and from whom, and shall return the moneys collected by him to the said justice.

Fees to justice and collector.

Constable executing warrant to make return within sixty days.

## III. Sale of land for taxes.

An act to make taxes a lien on real estate, and to authorize sales for the payment of the same.

Approved March 17, 1854.

P. L. 1854, p. 429.

114. SEC. 1. That it shall be the duty of the assessors of the several townships in this state, in making their assessments, as now provided by law, to assess all lands, tenements, hereditaments and real estate, in the names of the owners thereof, respectively, and to designate the same by some short description as will be sufficient to ascertain the location and extent thereof.(a)

Assessors to assess lands in names of owners.

Description.

115. SEC. 2. That any assessment of taxes made in this state against any person or persons residing out of this state, or foreign corporation residing out of the county in which the land is located, on account of any lands, tenements, hereditaments or real estate of such person or persons, or corporation, shall be and remain a lien on all the lands, tenements, hereditaments or real estate, on account of which said assessment shall be made, with lawful interest thereon accruing, and all costs and fees in relation to said assessment and collection thereof, for the space of two years from the time when the taxes so as aforesaid assessed were payable.(b)

Assessment on lands of non-residents to be and remain a lien.

(a) See *Supra*, § 69, note (b).

(b) It seems, that the act to make taxes a lien on real estate, is only directory, and is indispensable only for the purpose of authorizing a sale of the land when the owner is a non-resident, *State v. Hoffman*, 1 Vr. 346. See *Infra*, § 124.

If unpaid for one year, township committee may issue warrant to constable and direct sale.

Term for which to be sold.

Warrant to be recorded by township clerk.

Constable to whom warrant directed, to advertise sale.

Constable to make sale and give deed.

116. SEC. 3. That in case any assessment of taxes, as specified in the last preceding section, together with the interest thereon, and costs and fees aforesaid, shall remain unpaid for the space of one year after the said taxes were payable, then and in every such case it shall be lawful for the township committee of the said township, or a majority of them, to issue their warrant, under their respective hands and seals, directed to any constable of the said township, therein and thereby commanding him to make said taxes, with the interest, and costs and fees as aforesaid, of the lands, tenements, hereditaments or real estate, on account whereof the same were assessed as aforesaid, and of which the assessors' description shall be therein set forth, by selling the same, or any part thereof as will be sufficient for that purpose, for the shortest term for which any person or persons will agree to take the same, and pay such taxes, with the interest thereon, and all costs, fees, charges and expenses; and further directing the said constable to pay the money or moneys raised by such sale to the said township committee of said township, and to make return of said warrant and his proceedings thereunder, to said township committee of said township, to be filed by the clerk of said township among the other papers of said township. (a)

117. SEC. 4. That the warrant specified in the last preceding section shall, before the execution thereof, be recorded by the clerk of said township, in a book to be provided for that purpose; which said record thereof shall be received as evidence in the several courts of this state.

118. SEC. 5. That it shall and may be the duty of the constable to whom such warrant shall be directed as above specified, before he sells by virtue thereof, to give notice of the time and place of the sale of any lands, tenements, hereditaments or real estate, under this act, by advertisement, signed by said constable, and inserted in a newspaper printed and published in said township, or in the county where the sale is to take place, for at least sixty days, once in each week, before the time appointed for such sale; and also set up for the same period in five of the most public places in said township, one of which shall be at or near the lands, tenements, hereditaments or real estate to be sold; *provided, however*, such sale may be adjourned from time to time, not exceeding ninety days in the whole.

119. SEC. 6. That it shall and may be lawful for the said constable, to whom such warrant shall be directed, at the time and place specified in the above required notice, or at the time and place to which he shall adjourn, as provided for in the last preceding section, to sell and strike off such lands, tenements, hereditaments or real estate, as may be set forth in said warrant, or any part thereof, to such person or persons as will agree to take the same for the shortest term, and pay such taxes as may be assessed as aforesaid on account thereof and the interest thereon, and all costs, fees, charges and expenses, and thereupon to execute and deliver to any such person or persons a deed for the same, under his hand and seal, and such person or persons, and his, her or their legal representatives, shall, by virtue thereof, lawfully hold and enjoy the said lands, tenements and hereditaments, or real estate, during the term for which he, she or they shall have purchased the same, for his, her or their own proper use and benefit, against the owner or owners (b) thereof, and all

(a) If a tax warrant is void, any sale made, or deed given by virtue thereof, will also be void. *Van Wagenen v. Mulford*, 2 *Dutch* 196. If more land is taxed to a person than he owns, and his assessment thereby becomes higher than it should be, it constitutes an objection to the validity of a sale of the land for such tax. *Martin v. Carron*, 2 *Dutch* 594, reversing *Id.* 228. If lands are not designated by such short description as will be sufficient to ascertain the location and extent, and a sale thereof cannot be made, the tax for the same may still be collected by warrant against the goods, chattels and person of the owner. *State, Rutherford Park Ass'n v. Union*, 7 *Vr.* 309. The publication of notices is indispensable, and must be made in strict conformity with the statute. *State, Alden v. Newark*, 7 *Vr.* 288. The power to sell land for the payment of taxes, is a naked power, not coupled with an interest, and must be exercised in strict accordance with the provisions of the statute. Every prerequisite must precede the exercise of the power. *Hopper v. Malleson*, 1 *C. E. Gr.* 382. *State, Baxter v. Jersey City*, 7 *Vr.* 188. To establish a title under a sale for taxes, it is incumbent on the purchaser to show that all the prerequisites to the exercise of the power of sale have been com-

plied with. The deed is not even *prima facie* evidence of that fact, *Ibid.* Where the tax warrant directs a sale to be made to raise a sum larger than the whole amount due, it is a clear excess of authority, and renders the warrant, so far as it affects the land in question, null and void, *Ibid.* An error in the notice of tax left by the collector, as to amount, &c., will not avoid the assessment, but only the tax warrant. *State v. Perkins*, 4 *Zab.* 409. The warrant for sale of land for taxes must be issued to a constable of the township. There is no authority for issuing it to the collector of taxes. *Dinsmore v. Westcott*, 10 *C. E. Gr.* 470. See *McEuchron v. New Providence*, 6 *Vr.* 528, 538. A deed made by a collector, under a sale in pursuance of a warrant issued to him under that act, is void, *Ibid.*

(b) Under a sale of lands for the payment of taxes, only the estate which the owner had at the time of the assessment passes. The estate acquired by a mortgagee prior to the assessment, is not affected by such sale. *Morrow v. Dows*, 1 *Stew.* 459, 12 *C. E. Gr.* 442. *Hopper v. Malleson*, 1 *C. E. Gr.* 382. Only the estate and interest which the taxpayer has, *cum onere*, can be sold. *State, Morris Canal v. Haight*, 6 *Vr.* 178, 183.

and every person or persons claiming under him, her or them, until said term shall be fully completed and ended, and shall be at liberty, at or before the expiration of the said term, to remove any building or buildings and materials erected and placed by him, her or them thereon, and when said term shall have ended, shall peaceably and quietly yield up the same to the lawful owner or owners thereof, in as good condition as when he, she or they took possession of the same, damage resulting from ordinary use and the elements excepted.

120. SEC. 7. That notwithstanding any mistake in the name or names of the owner or owners, or omission to name the real owner or owners of any lands, tenements, hereditaments and real estate in the said township, in assessing the taxes on account thereof as aforesaid, such assessment shall be valid and effectual in law against such lands, tenements and hereditaments, or real estate; and the same may be proceeded against and sold in the manner prescribed herein.<sup>(a)</sup>

Mistake in name of owner not to invalidate assessment.

121. SEC. 8. That the constable to whom such warrant as aforesaid shall be directed, shall be entitled to receive the sum of one dollar for executing the same, and in addition thereto, two cents on each dollar by him collected and paid over to the township committee of said township for advertising the sale of any lands, tenements, hereditaments, or real estate for each delinquent, the same fees which the sheriffs of the counties are entitled to for the like services; and for a deed to the purchaser, the sum of two dollars; and the township committee of said township shall be entitled to receive for said warrant the sum of fifty cents; and the clerk of said township, for recording and filing said warrant, shall be entitled to receive the sum of twenty-five cents.

Fees and costs.

#### Supplement.

Approved March 25, 1863. P. L. 1863, p. 497.

122. SEC. 1. That any assessment of taxes made in this state against any person or persons or corporation on account of any lands, tenements, hereditaments or real estate of such person or persons or corporations, shall be and remain a lien on all the lands, tenements and hereditaments or real estate, on account of which said assessment shall be made, with lawful interest thereon accruing, and all costs and fees in relation to said assessment and collection thereof, for the space of two years from the time when the taxes so as aforesaid assessed were payable; and in case any such assessment of taxes, together with the interest thereon, and the costs and fees as aforesaid, shall remain unpaid for the space of four months after the said taxes were payable, then it shall be lawful for the township committee of the township in which said assessment has been made, or a majority of them, to proceed for the collection of the same in the manner prescribed in and by the several provisions of the act to which this is a supplement; all which proceedings shall be as valid and effectual as in cases of assessment under said act.

All assessments of taxes on lands to be a lien for space of two years.

Collection of same.

123. SEC. 2. That in all cases of sale made of any real estate, in pursuance of this act and the act to which this is a supplement, the owner or owners thereof shall have the right to redeem the same after the expiration of one year from the time of such sale, by paying the amount paid by the purchaser therefor, with twelve per cent. interest thereon, and the purchaser, upon payment thereof, shall re-convey and restore to the owner or owners such real estate.

Owner may redeem after one year from sale.

#### Supplement.

Approved March 26, 1873.

P. L. 1873, p. 63.

124. SEC. 1. That the real estate of any person or persons residing in this state, or of any corporation of this state, may be sold for taxes in the same manner as real estate of persons residing out of this state, or foreign corporations located outside of the county in which the land is located is now sold for taxes.

Real estate of persons in this state may be sold for taxes in the same manner as if residing out of this state.

<sup>(a)</sup> While a mistake in the owner's name will not invalidate a sale, an entire omission thereof is fatal, *State, Tindall v. Vanderbilt*, 4 Vr. 38.

**A further supplement to the act entitled "An act concerning taxes," approved April fourteenth, one thousand eight hundred and forty-six.**

P. L. 1875, p. 101.

Approved April 9, 1875.

Certificate of sale not to be set aside for variance between date of notice and actual publication.  
Proviso.

125. SEC. 1. That in all cases where public notice for a specified time is required by law to be given, before proceedings are had for the public sale of lands for unpaid taxes, no certificate of sale or tax title shall be set aside and holden for naught by reason of any variance between the date of such notice, and the actual publication thereof; *provided*, that notice shall have been or shall be actually given for the specified number of days prior to such proceedings for public sale.

**IV. Taxation of railroad corporations.**

**An act to establish just rules for the taxation of railroad corporations, and to induce their acceptance and uniform adoption.**

P. L. 1873, p. 112.

Approved April 2, 1873.

Preamble.

WHEREAS, for the encouragement of railroad enterprise, laws creating and regulating railways in this state usually provide for the payment by them, in consideration of their chartered privileges, of a fixed rate upon their capital stock or the cost of their works, in lieu of all other public impositions whatever; *and whereas*, it is nevertheless contended that the property of such corporations being largely acquired for, or through the growth and extension of their prosperity, should contribute to the charges and expenses essential for municipal and county purposes; *and whereas*, it is desirable in order to the avoidance of litigation and future dissatisfaction that such municipal and county taxation shall be authorized, and that the same shall be permanently fixed and regulated; now, therefore,

Taxation on railroad companies, how made.

126. SEC. 1. That all taxation upon all railroad companies occupying and using railroads in this state, whether as lessees or otherwise, shall hereafter be made as follows: first, such companies shall pay upon the cost, equipment and appendages of said railroads respectively, a state tax after such rate of taxation as may have heretofore been fixed by law upon such companies, or in default thereof, after the rate of one-half of one per centum upon such cost: second, upon all the real property by them as aforesaid occupied, used or owned for the purposes of their road or otherwise, excepting their main stem or road bed and track, not exceeding one hundred feet in width, such companies shall pay a county and municipal tax for the benefit of the counties, townships and cities respectively where the same is situate, after the rate of one per centum upon a valuation thereof, and of all improvements thereon, not by way of repairs, now or hereafter to be made, which valuation shall be made as hereinafter stated; *provided, however*, that at the termini of their said roads, each company may hold a tract of land not exceeding ten acres, to be in one parcel, which with the buildings and improvements thereon, shall be free from the payment of county, township, and municipal taxes whatsoever.

Proviso.

President of corporation to make oath and return to state comptroller of cost of road, &c.

127. SEC. 2. That on or before the first day of January, in each year, the president of every railroad corporation shall, on oath or affirmation, make return to the comptroller of this state, of the cost of said road and cost of the equipment and appendages of said railroad used by or belonging to said corporations in this state, respectively, specifying the items and locality thereof, and further showing the cost of said property whereon said state tax is laid as aforesaid, specifying its particular items and their cost; and thereupon, within ninety days after such return, payment shall be made by the said company of the said tax to said treasurer, in default of which payment, remedy may be had therefor by suit.

Proceedings if state comptroller shall be dissatisfied with return.

128. SEC. 3. That if the state comptroller shall be dissatisfied with any statement and return aforesaid, it shall be lawful to bring suit in the supreme court in the name and for the use of the state, against such corporation making such return as for a false return, and to recover in such action, upon proof thereof, the tax aforesaid due upon any property or cost omitted or erroneously stated, and that, whether or not payment has been made according to such erroneous return and statement; *provided*, that no such action shall be brought after the expiration of six months

Proviso.

from the day of making such statement and return to such state comptroller, and that costs shall be recovered by the successful party therein, as in all civil cases.

129. SEC. 4. That on or before the close of the legislative session in every year, the governor shall appoint some responsible citizen of the state, commissioner of railroad taxation, to hold office for the space of one year, whose duty it shall be to make, certify under his hand, and return to the state comptroller a statement and valuation of all the said property occupied, used or owned by or for the purposes of any railroad corporation in any county, city or township in this state, and hereby made subject to county, township and municipal taxation, particularly specifying the same and stating also the township or city wherein the same is situate; such returns and statements shall be made separately for each railroad corporation, and arranged by counties, townships and municipal subdivisions in such a manner as to be of easy reference, and shall be recorded in books in the office of said state comptroller to be provided by him for that purpose, and shall be public records, subject to public inspection.

Commissioner of railroad taxation shall be appointed by the governor.

130. SEC. 5. That before making such valuation and assessment, said commissioner shall give written notice to said railroad corporation and each township or municipality interested respectively, for at least ten days, of the time and place at which he will proceed to perform said duty; such notice to be served in the manner provided by law for serving writs or summons upon such corporations, and shall then and there, or at such other time as he shall then and there or on any other adjourned day, appoint, judicially fix such valuation, of which such return shall be the evidence, and from which there shall be no appeal.

Commissioner to give notice before making valuation, &c.

131. SEC. 6. That nothing in this act shall be held to require that such valuation shall be made by such commissioner of the said property taxable for county, township and municipal purposes belonging to any particular railroad corporation, oftener than once in three years, and that after the first of such valuations is made no other shall be made for the space of three years thereafter; during said intervening period such valuation shall be final, and said tax of one per centum thereon shall be annually paid thereon to the collectors of the various townships or cities in which said property is situate, as if the same had been laid under the tax laws governing the same; all laws for the collection of ordinary taxes in any such township or city shall be applicable so far as possible to the collection of the tax hereby authorized, or the same may be collected by suit; and it is hereby declared to be the intent hereof, that valuations, in manner aforesaid, of the property of each railroad corporation in this state, for the purpose of county and municipal taxation, shall be made once every three years, but not oftener, and that every such valuation shall be the basis of such taxation yearly, during the intervening period.

Valuation not required to be made oftener than three years.

132. SEC. 7. That said returns by said commissioner shall be made prior to the first day of July in every year, and the said tax thereon shall be payable within thirty days thereafter.

Returns of commissioner to be made before July in each year.

133. SEC. 8. That the said commissioner shall receive a salary of one thousand dollars per annum, payable quarterly and in the manner as other state officers are paid.

Salary.

134. SEC. 9. That all railroad corporations shall be liable for city improvements, beneficial to such property for the purposes for which it is used by the said company, except that hereby made subject to state tax; *provided*, that nothing in this or any act shall have the effect to alter any law now existing in relation to such improvements;

Liable for city improvements.

AND WHEREAS, certain railroad corporations owning or occupying railroads in this state, claim exemption from all taxation whether state, county or municipal, further than is provided for by their charters or by special laws for their benefit now existing, which claims, even if legal, subject said corporations to public ill will, and make it their interest to forego the same and agree to the scheme of taxation hereby established; now, therefore,

Preamble.

135. SEC. 10. That any such railroad corporation may within six months from the approval of this act, make and execute under their common seal and the signature of their president, and file in the office of the secretary

Corporation may file certificates surrendering claim to exemption.

of state, a declaration in writing, surrendering all claim to exemption from taxation by them heretofore had or made, and accepting the provisions of this act in lieu thereof.(a)

**An act providing for state taxes on railroads and the more efficient collection thereof.**

P. L. 1876, p. 129.

Approved April 13, 1876.

Annual state tax.

Proviso.

Shall make return to the comptroller annually, the true value of road, equipment and appendages.

Tax, when due and payable.

136. SEC. 1. That all railroad corporations and companies occupying or using railroads in this state, whether as lessees or otherwise, liable to be taxed as such by a general law taxing railroads for state purposes, shall pay an annual state tax upon the true value of said railroads, their equipment and appendages of said road, at and after the rate of one-half of one per centum upon such value, and the same to be paid, notwithstanding any provisions in the charters of said corporations or companies or the laws under which said railroads are respectively occupied and used, fixing a different basis, mode or rate of taxation; *provided*, that whereas certain railroad companies, required to pay tax annually to the state, under the provisions of the act entitled "An act relative to transit duties," approved March fourth, eighteen hundred and sixty-nine, control certain other railroads within this state commonly called branch roads, by either owning or leasing them, or by owning a majority, in value, of their capital stock, or by owning or leasing other roads which own or lease them, which branch roads will be assessed under the provisions of this act; the tax paid by any such railroad company under the provisions of the said act of eighteen hundred and sixty-nine, shall be considered a full payment of all taxes hereafter to be assessed upon such branch roads under this act, so long as the amount paid by such railroad company under the provisions of said act of eighteen hundred and sixty-nine shall exceed the aggregate amount of the taxes upon such branch roads under this act, and of the tax upon such railroad company at the rate of one-half of one per centum upon the costs of their works, including all their property of any description not otherwise taxed, as provided in said act of eighteen hundred and sixty-nine, or so long as this act shall remain in force.

137. SEC. 2. That on or before the first day of February, in each year, the president, secretary or treasurer of every railroad corporation or company shall, on oath or affirmation, make return to the comptroller of this state of the true value of said road and of the equipment and appendages of said railroad used by or belonging to said corporations or companies in this state, respectively, specifying the items and locality thereof, and further showing the true value of said property whereon said state tax is laid as aforesaid, specifying its particular items and their cost; the comptroller shall forthwith file said return in his office, and thereupon the state tax to be paid by said railroad corporation or company, under this act, shall be immediately due and payable with interest thereon from the first day of March at and after the rate of ten per centum per annum, and said tax and the interest thereon shall be and remain a lien on the franchises and property real, personal and mixed of said corporation or company, and the lien of the state for said state taxes and interest shall be prior to all other liens of every nature and description on said franchises and property.

(a) The M. and E. R. R. Co. was incorporated in 1835. The incorporating act contained a provision against taxation beyond a percentage on the cost of the road, and also a reservation of the right to alter and repeal. By the third section of a supplement passed in 1865, a change was made in the time when the tax prescribed in the original act of incorporation should become payable, with a proviso that that section should not go into effect or be binding, until the company, by an instrument duly executed under its corporate seal, and filed in the office of the secretary of state, should signify its assent thereto. A certificate of assent was duly filed. *Held*, that the provision in the supplement of 1865, that the third section should not go into effect or be binding, until acceptance by the company, gave the company a mere privilege of choice, when the tax originally prescribed should become payable, and did not give it additional force as a contract with the state, *State, M. and E. R. R. Co. v. Com'r*, 8 Vr. 228, 9 Vr. 473, reversed by *U. S. Sup. Ct.*, Oct., 1877. The provision for taxing the company under the supplement was repealed by implication by the general railroad tax act of 1874, and the company is taxable in the manner prescribed in the first section of the latter act. *Ibid.* The M. and E. R. R. Co. has not an irrevocable contract with the state, and is, therefore, subject to taxation, under the act of 1873, without its consent, *Ibid.*

The tenth section applies only to railroad companies having irrevocable charters, *Ibid.* When the D. and R. C. Co., the C. and A. R. R. Co., and the N. J. R. and T. Co., were consolidated into one corporation by the name of U. R. and C. Co., by the acts of 1867 and 1872, each of these corporations had an irrevocable contract with the state, on the subject of taxation, which was embodied in the consolidating act, *State, U. R. and C. Co. v. Com'r*, 8 Vr. 240. A corporation having an irrevocable charter which provides for a special mode of taxation, and that "no other or further tax or imposition shall be levied or imposed upon the said company," may consent to other taxation, or a different mode of assessment from that specified in its charter, by the acceptance of subsequent legislative acts, without impairing the exemption from general taxation contained in its charter. In such event, the new taxation becomes part of the original contract, and modifies its terms to that extent, leaving in full force the restriction on further taxation, *Ibid.* The U. R. R. and C. Co. having an irrevocable charter and a contract therein with the state on the subject of taxation, is not taxable under the first section of the general railroad tax law of 1873, and not having surrendered their former contract and accepted the provisions of that act in lieu thereof, has not subjected itself to taxation, as provided by the tenth section, *Ibid.*

138. SEC. 3. That the comptroller, treasurer and commissioner of railroad taxation of the state shall constitute a board of railroad commissioners, and when any of the said railroad corporations or companies required by the second section of this act to make a return to the comptroller of the state as therein set forth, shall fail to make such return as therein required or shall make a return that the comptroller shall have reason to believe is untrue or insufficient, the said railroad commissioners shall forthwith proceed to estimate the true value of the railroad of such defaulting corporation or company, and the true value of the equipment and appendages of said railroad used by or belonging to said corporation, in this state, and shall also ascertain and state the amount of state tax due thereon at and after the rate of one-half of one per centum upon such true value; and such estimate of true value and the amount of the state tax thereon shall be certified to by them as follows: "We hereby certify that the above estimate of the true value of the railroad of (here insert the name of the corporation or company), and of its equipment and appendages, and the state tax due thereon for the year (here insert year), is just and true, according to the best of our knowledge and belief;" they shall sign said certificate and file said estimate, statement and certificate in the office of the comptroller, and thereupon the state tax to be paid by said railroad corporation or company, under this act, shall be immediately due and payable with interest thereon from the said first day of February, at and after the rate of ten per centum per annum, and said tax and the interest thereon shall be and remain a lien on the franchises and property, real, personal and mixed, of said corporation or company, and the lien of the state for said state taxes and interest shall be prior to all other liens of every nature and description on said franchises and property.

Board of railroad commissioners.

Commissioners to estimate value, &c., when return is deemed insufficient.

Certificate by the commissioners.

Certificate to be filed with the comptroller.

139. SEC. 4. That if any railroad corporation or company shall feel aggrieved by the action of said board of railroad commissioners, it shall have the right at any time within ten days after he shall have filed said estimate, statement and certificate in the office of the comptroller, to appeal therefrom, to a justice of the supreme court, whose duty it shall be to summarily hear and decide said appeal, upon depositions, or upon evidence taken by himself, and he may compel the attendance of witnesses before a supreme court commissioner or himself, and punish them as for a contempt upon their failure to appear or answer; and he shall control and regulate the proceedings upon said appeal so that he can decide said appeal within thirty days, unless he shall extend the time by certificate under his hand, which certificate he shall file with the clerk of the supreme court and state therein the time of such extension and the reasons therefor; the decision of said justice upon said appeal shall be certified by him under his hand and filed with the comptroller; and if said justice shall reduce the amount of said state tax as certified to by said board, he shall state the amount of said reduction and the reasons therefor, and thereupon the comptroller shall give such railroad corporations or companies credit to the amount of said reduction, but the amount of tax as fixed after such reduction shall be immediately due and payable and shall bear interest from the said first day of March at and after the rate of ten per centum per annum; and said reduced tax and the interest thereon shall be and remain a lien on the franchises and property, real, personal and mixed of said corporation or company, and the lien of the state for said reduced state taxes and interest shall be prior to all other liens of every nature and description on said franchises and property.

Proceedings in case of appeal from the commissioners.

Proceedings in case of reduction of state tax by the justice.

Tax and interest to be a lien.

140. SEC. 5. That whenever any railroad, corporation or company has failed to pay its state taxes for ten days after the same has become due and payable under this act, it shall be the duty of the attorney general to forthwith apply to a justice of the supreme court for an order that the said state tax, as returned by such railroad, corporation or company, or assessed by the board of railroad commissioners, or as revised by a justice of the supreme court, and the interest due on such tax and a reasonable sum to be certified by said justice to be paid for the expense of said proceedings, and for the services rendered by said board and said attorney general shall be made a record of the supreme court and judgment entered for said tax, interest and reasonable sum, in the name of the state of New

Proceedings in case of failure to pay state taxes, &c.

Jersey as plaintiff, and against said corporation or company as defendant, which order shall be made forthwith upon a certified copy from the comptroller of the estimate, statement and certificate on file in his office, and the certificate of the treasurer that said tax has not been paid; and also to apply for an order that execution forthwith issue on said judgment, said execution to be directed to a special master of the court of chancery to be named by said justice in his order; and such an order may be applied for and granted *ex parte*, unless said justice order notice of such application to be given, and in all cases the proceedings shall be summary; under said execution the master to whom the same is directed shall sell all the franchises and all the property, real, personal and mixed, of said corporation or company, or so much thereof as may be necessary to make the amount due on said tax judgment and the usual execution fees; such sale shall pass the absolute title to said franchises and property aforesaid sold thereunder, free and clear of all liens and incumbrances of every nature; such notice, advertisement and publication of such sale shall be given as shall be directed in and by the order of said justice, and no other notice, advertisement or publication shall be necessary, and said justice may make such further order or directions as he may deem proper to secure the rights of the state or of any corporation or company interested.

Application for order of execution.  
 Order may be granted *ex parte*.  
 Sale by master.  
 Sale shall pass absolute title.  
 Notice of sale.

141. SEC. 6. That in case of any dispute between the state and any railroad corporation or company as to its liability under this act, or as to the extent of such liability that it shall be lawful for the state treasurer to receive and for said corporation or company to pay into the state treasury, any sum that it may admit to be due for state taxes, and such amount so paid shall be credited on the state tax as it shall be finally determined and fixed under this act; and the said credit shall be made by the comptroller, upon the certificate of the state treasurer, as to said payment, and no interest shall be charged upon the amount thus paid and credited.

In case of dispute the state treasurer may receive any sum that may be admitted by company to be due for state taxes.

142. SEC. 7. That for greater certainty it is hereby declared that this act shall not apply to or affect any county, municipal or local taxation whatever.

Not to affect any county, municipal, or local taxation.

143. SEC. 8. That the comptroller, treasurer and commissioner of railroad taxation shall take and subscribe, and file in the office of the comptroller, the following oath or affirmation; "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties imposed on me by this act, to the best of my ability and understanding."

Comptroller, treasurer, and commissioner of railroad taxation to take and file oath.

144. SEC. 9 That the railroad commissioner shall have power to administer oaths and affirmations to any person to ascertain any facts proper for them to know in order to enable them to properly perform the duties of their office, and they may reduce their statements to writing, and require them to subscribe and swear thereto, and may *ex parte* apply for and obtain from any justice of the supreme court an order to compel any person to submit to such examination in reference to such matters; and such justice may punish any party as for a contempt who shall disobey any order made by said justice in the premises; and any person falsely swearing or affirming in reference to any matters inquired of by said board, or in any evidence given before any justice or supreme court commissioner under this act, shall be deemed guilty of perjury, and on conviction thereof shall be liable to all the penalties prescribed by law therefor.

Railroad commissioners empowered to administer oaths.

Penalty for false swearing.

145. SEC. 10. That if any corporation or company shall be in default under this act, in payment of the state tax aforesaid, any person having a mortgage or other lien on its franchises or property, may pay the state treasurer the amount of such state tax, and the interest due thereon, and receive from said treasurer a certificate of such payment, and such person shall thereupon be entitled to be repaid the amount of said tax, and interest thereon at the rate of ten per centum per annum, out of the first proceeds of any sale of the franchises or property of said corporation or company and such tax and ten per centum interest thereon shall continue a lien on the franchises and property of the corporation or company for the benefit of such mortgagee or lienor until paid by said corporation or company or from the sale of its franchises or property; if any proceedings have

Mortgagee or lienor may pay the state treasurer state tax of any company or corporation in default of such payment and have certificate of such payment.

been taken by the attorney general to enforce the payment of said state tax and interest thereon, then such mortgagee or other lienor paying such tax and interest shall pay such additional amount as a justice of the supreme court shall certify to be proper and reasonable to pay for the cost and expense and services on the proceedings as far as they have progressed for the collection of said tax and interest thereon; upon the payment of said tax and the interest thereon and such additional amount, (if any), all proceedings shall thereupon cease for the collection of said tax.

## Supplement.

Approved April 21, 1876. P. L. 1876, p. 411.

WHEREAS, doubts have arisen as to the proper and legal construction of the proviso of the first section of the act entitled "An act providing for state taxes on railroads, and the more efficient collection thereof," approved April thirteenth, eighteen hundred and seventy-six, which section and proviso are in the words following: "1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That all railroad corporations and companies occupying or using railroads in this state, whether as lessees or otherwise, liable to be taxed as such by a general law taxing railroads for state purposes, shall pay an annual state tax upon the true value of said railroads, their equipment and appendages of said road at and after the rate of one-half of one per centum upon such value, and the same to be paid, notwithstanding any provisions in the charters of said corporations or companies, or the laws under which said railroads are respectively occupied and used, fixing a different basis, mode or rate of taxation; *provided, that whereas*, as certain railroad companies required to pay tax annually to the state under the provisions of the act entitled 'An act relative to transit duties,' approved March fourth, eighteen hundred and sixty-nine, control certain other railroads within this state, commonly called branch roads, by either owning or leasing them, or by owning a majority in value of their capital stock, or by owning or leasing other roads which own or lease them, which branch roads will be assessed under the provisions of this act the tax paid by any such railroad company, under the provisions of the said act of eighteen hundred and sixty-nine, shall be considered a full payment of all taxes hereafter to be assessed upon such branch roads under this act, so long as the amount paid by such railroad company under the provisions of said act of eighteen hundred and sixty-nine, shall exceed the aggregate amount of the taxes upon such branch road under this act, and of the tax upon such railroad company at the rate of one-half of one per centum upon the cost of their works, including all their property of any description not otherwise taxed, as provided in said act of eighteen hundred and sixty-nine, or so long as this act shall remain in force;" now in order to quiet such doubts, and to declare the true intent, meaning and effect of said proviso of said section,

146. SEC. 1. That it is the true intent, meaning and effect of said proviso of said section, and it shall be construed to mean, that the tax required to be paid annually to the state by The United New Jersey Railroad and Canal Company, under the provisions of the act entitled "An act relative to transit duties," approved March fourth, eighteen hundred and sixty-nine, to wit: the sum of two hundred and ninety-eight thousand one hundred and twenty-eight dollars and ninety-six cents, when paid shall be deemed, considered and taken as full payment and discharge of all taxes assessed or to be assessed, by virtue of the act to which this act is explanatory, upon and payable by all and every railroad corporation now owned or leased or controlled by the said The United New Jersey Railroad and Canal Company, or of which the said The United New Jersey Railroad and Canal Company now own a majority in value of the capital stock, or which is owned, leased or controlled by any company which is itself now owned, leased or controlled by the said The United New Jersey Railroad and Canal Company, as well as a payment in full of all taxes assessed against the said The United New Jersey Railroad and Canal Company under and by virtue of the said act entitled "An act relative to transit duties," so long as the amount paid by said United New Jersey

Preamble.

Section to be amended recited.

Construction of act as affecting United New Jersey Railroad and Canal Company.

Railroad and Canal Company, under the provisions of the said last mentioned act shall exceed the aggregate amount of the taxes upon such railroad companies so owned, leased, operated or controlled as aforesaid, under the act of which this act is explanatory, and of the tax upon the said The United New Jersey Railroad and Canal Company at the rate of one-half of one per centum upon the cost of their works including all their property of any description not otherwise taxed, as provided in said act of eighteen hundred and sixty-nine, or so long as the act to which this act is explanatory shall remain in force.

#### V. Miscellaneous acts.

##### An act regulating the proceedings of courts in cases of erroneous taxation.

P. L. 1852, p. 526.

Approved March 26, 1852.

For what assessment of taxes shall not be reversed or set aside on certiorari.

147. SEC. 1. That no assessment of taxes shall hereafter be reversed, avoided, or set aside upon any *certiorari*, brought or to be brought in any court of this state, because the state, county, township, borough, ward, or city taxes, or any of them, are blended together, nor because the aggregate amount of money levied or assessed in any township, borough, ward, or city, for taxes, is greater than called for by the law, resolution or resolutions raising, voting, or granting the same, nor because any such assessment is made upon any person or persons, body politic or corporate, his, her, or their property, at a rate or proportion higher or greater than authorized or required by the law, ordinance, resolution or resolutions, order or vote, raising, voting, or granting the money or moneys for which the said assessment of taxes is made. (a)

Court on certiorari may reduce rate or proportion of tax.

148. SEC. 2. That if it shall appear, to the satisfaction of any court wherein any *certiorari* is or may be brought, that any assessment of taxes removed thereby is at a rate or proportion higher or greater than authorized or required by the law, resolution, order, or vote authorizing such assessment, or that the amount or value of taxable property, for which any person is therein assessed, is too great, said court shall amend such assessment so removed as aforesaid, and reduce the same to the proper and just amount, and thereupon affirm the same according to such amendment and reduction, and reverse the same as to the excess only; and the court shall have power to adopt such rules and proceedings as may enable them to make the said amendment, and carry into effect the true intent and meaning of this act. (b)

(a) See *State, Verhule v. Saalman*, 8 Vr. 156.

(b) The court, on *certiorari*, will revise the assessment of taxes, so far as to correct an assessment made upon erroneous principles; but they will not review the judgment of the assessor or of the commissioners of appeals on the mere valuation of property. On that the judgment of the commissioners of appeals is by statute final and conclusive, *State v. Quaipe*, 3 Zab. 89. If more tax is assessed than authorized by the proper authorities, the assessment will be set aside to the extent of such excess, and each person against whom an assessment is made will be entitled to a reduction, in proportion to the amount of his assessment, *State v. Randolph*, 1 Dutch. 427. School taxes assessed upon property lying in a district illegally absorbed by another district, will be set aside on application of persons aggrieved, upon *certiorari*, but the whole assessment will not be set aside, although the alteration be illegal, and the notice to the assessor defective, *State v. Brouning*, 3 Dutch. 527; 4 Dutch. 556. Upon the amount of assessment, or the mere value of the property assessed, the decision of the commissioners of appeal is final, and cannot be reviewed in this court; *aliter*, as to the question, whether the property, or any part of it, is liable to taxation, *State v. Ross*, 3 Zab. 517. Where the only objection to a tax is, that the prosecutor has been assessed for a greater aggregate value of personal property than he had, and he has not made oath of the value of his property, or appealed, the *certiorari* will be dismissed, *State v. Manchester*, 1 Dutch. 531. case reversed, 2 Dutch. 564. A mistake in the name of the owner may be corrected where he has notice, *State, Rutherford Park Ass'n v. Union*, 7 Vr. 309. When the true owner has notice, and is a party to the record, the court will reverse or affirm the tax against his lands, in part or as to the whole, according to the justice of the case. [Case distinguished from *State v. Hardin*, 5 Vr. 79]. *Ibid.* The mistake of an assessor in omitting to assess taxable property, does not set aside or invalidate the whole assessment, unless it is such a plain disregard of the directions of the law as to throw the burthen of taxation upon persons and property at a different rate from that intended by the law, *State v. Collector*, 4 Zab. 108. The court will not amend an assessment of taxes on the ground that the value of the taxable property is stated at too great a sum, unless it appears that an erroneous principle of valuation was adopted, or it is clearly shown that the valuation was too high, *State, Howell v. Metz*, 2 Vr. 365. A tax affirmed by the commissioners of appeal, was carried, on *certiorari*, into the supreme court and court of errors, in both of which courts the proceedings were sustained. Before the argument in the supreme court, the statute authorizing the tax was repealed. On a *mandamus* directing the payment of such tax. *Held*, that the question of the legality thereof arising from the repeal of such statute could not be raised, on the ground that the judgments on *certiorari* had conclusively settled that question. *Belvidere v. Warren R. R. Co.*, 5 Vr. 193; 6 Vr. 584. If more tax is assessed than is authorized by law, the assessment will not be void, but will be valid for what the law allows, and the excess only will be remitted, *State v. McClurg*, 3 Dutch. 253. Where one tax alone is illegally assessed, if it is assessed separately it will be set aside, and the residue of the assessment confirmed, *State v. Quaipe*, 3 Zab. 89. On a *certiorari* to correct a tax assessment, of which no one but the prosecutor complains, the court will not set aside the whole assessment, if without so doing it can give proper relief to the prosecutor, *State v. Kingsland*, 3 Zab. 85. An executor intended, or likely, to be affected by a tax against "the estate of" his testatrix, may prosecute a *certiorari* to have such tax reviewed, *State, Ely v. Holmdel*, 10 Vr. 79. Where an assessor errs as to the quantity of land assessed, and on appeal the commissioners fail to reduce the assessment, this court will grant relief by reducing the tax to the correct amount, *State, Sigehorn v. Jersey City*, June 1876. It is not a sufficient reason for setting aside an assessment of taxes, that the year when the town meeting was held at which they were raised, does not appear in the record, if it can be shown by parol proof, *State v. Bentley*, 3 Zab. 532. A tax complained of as illegal, will not be set aside as illegal, unless there is proof of the facts necessary to show in what the illegality consisted, other than the prosecutor's *ex parte* affidavit upon which the *certiorari* was allowed, *State v. Smith*, 1 Vr. 449. A tax illegally assessed will be reversed and set aside when regularly before the court on a *certiorari*,

149. SEC. 3. That no return of taxes or list of delinquents, made by any township, borough, ward, or city collector, nor the proceedings touching or concerning such return, nor any tax warrant, shall be set aside or reversed on *certiorari*, or otherwise, for any lack of form which does not impair the substantial rights of the plaintiff in *certiorari*.

Return of taxes or tax warrant not to be set aside for lack of form.

**An act relative to taxes due from incorporated companies in this state.**

Approved March 13, 1862. P. L. 1862, p. 206.

150. SEC. 1. That when in the opinion of the governor, attorney-general and treasurer of this state, or when in the opinion of any two of them, there are taxes or other dues due to this state, and unpaid, from any incorporated company in this state, it shall be the duty of the attorney-general, with the written consent of such incorporated company, by means of a rule of the supreme court of this state, to submit the said question relative to taxes or other dues to the said court, without the intervention of a jury; and the facts pertinent to such question, when not settled by a case agreed upon by the attorney-general and the said incorporated company, shall be ascertained by depositions taken on notice and according to the rules of said court; and when the said question is determined by the said court, a rule shall be entered accordingly, which shall in every respect have the effect of a final judgment of said court.

When and how question of taxes due from incorporated companies is to be submitted to supreme court.

151. SEC. 2. That when any incorporated company of this state, on being applied to on behalf of the state to submit any question relative to taxes or other dues, as provided in the first section of this act, shall refuse or neglect to consent, in writing, that such question be so submitted, then it shall be the duty of the attorney-general, in the name of "The State of New Jersey," as plaintiff, to institute a suit against said incorporated company as defendant, in the supreme court of this state; and in any suit brought by the state against any incorporated company for taxes or other dues, a declaration containing what are known as the common or money counts, with a schedule attached, setting forth in a clear manner the amount of taxes or other dues claimed by the state from said incorporated company, for any year or series of years, shall be a sufficient statement of what the state demands in said suit; and if the said incorporated company desire to make any defence to such claim, the same shall be made by means of the plea of the general issue, with a notice or notices attached, setting forth in a clear manner such defence, and under such plea and notices all defences lawful to be made may be set up; and the said suit shall, in all other respects, proceed according to the established forms of legal proceedings in this state.

If company refuse or neglect to consent to submission attorney-general to institute suit.

although it has been collected by warrant, *State v. Clothier*, 1 Vr. 351. Where the court is unable to determine from the evidence what amount should be deducted as illegal, it may be referred to a commissioner, *State v. Sickles*, 4 Zab. 125, 127. *State v. Randolph*, 1 Dutch. 427, 433.

Under R. S. p. 1003, § 49, (*Supra*, § 48), the judgment of the commissioners as to the amount of the valuation was final, and could not be reviewed on *certiorari*. *Bridge Proprietors* ads. *State*, 1 Zab. 384, 390. *State v. Quatfe*, 3 Zab. 89. *State v. Ross*, 3 Zab. 517, 521. *State v. Danser*, 3 Zab. 552. *State v. Collector*, 4 Zab. 108, 118. *State v. Powers*, 4 Zab. 406. *State v. Manchester*, 1 Dutch. 531; 2 Dutch. 564. *State, Young v. Parker*, 5 Vr. 49, 53. See *State, Paulison v. Taylor*, 6 Vr. 184, 189. *N. J. R. E. Co. v. Suydam*, 2 Harr. 251. But under this section such valuation, if excessive may be reduced, *State v. Randolph*, 1 Dutch. 427, 432. *State, Howell v. Metz*, 2 Vr. 365. *State, Rutherford Park Ass'n v. Union*, 7 Vr. 309, 313. *State, Trumbull v. Elizabeth*, 10 Vr. 249. *State, Sagehorn v. Jersey City*, June, 1876. Ante. CERTIORARI, § 10.

The circuit courts have no jurisdiction by *certiorari* in matters of taxation, *State, Dufford v. Decue*, 2 Vr. 302. A *certiorari* will lie to correct an erroneous assessment of taxes, although the prosecutor did not apply to the commissioners of appeal for relief. But this may be good ground for the court in their discretion to refuse the writ, *State v. Benlley*, 3 Zab. 532. See *State v. Metz*, 3 Vr. 199, 203. *State, International, &c. Co. v. Haight*, 6 Vr. 279, 284. But see *State, Sharpe v. Appar*, 2 Vr. 358. If a person against whom an assessment is made, make an affidavit before the commissioners of appeal to what he believes to be the true value, and the commissioners refuse to make a corresponding reduction, relief can be obtained in this court by *certiorari*, *State v. Randolph*, 1 Dutch. 427. A *certiorari* will not generally be allowed to remove a resolution of a town meeting raising any particular tax, if the tax is simply raised or voted. The individual affected must bring up his own assessment only, *State v. Middletown*, 4 Zab. 124. School

taxes illegally assessed will be set aside on *certiorari* by the persons aggrieved, *State v. Browning*, 4 Dutch. 556. The court will only correct the assessments so far as they have been made on erroneous principles, but they will not revise valuations, *State v. Quatfe*, 3 Zab. 89.

A *certiorari* to bring up a military tax warrant should be prosecuted by one delinquent, not several, *State v. Kirby*, 2 South. \*835. This court will not in general allow a *certiorari* to remove a resolution at town meeting to raise any particular tax, if the tax is simply raised or voted. Any tax payer aggrieved can have his remedy by removing his own assessment for correction, *State v. Middletown*, 4 Zab. 124. A stockholder in an incorporated company cannot, on a *certiorari* prosecuted by him individually, have an erroneous assessment made against such corporation set aside or corrected, *State v. Flavel*, 4 Zab. 370. An individual cannot bring a *certiorari* to protect or recover his own rights and interests, in the name of a corporation, *Silk Company v. Campbell*, 3 Dutch. 539. A *certiorari* to bring up taxes assessed against the individual stockholders of a bank, upon the prosecution of the bank itself, dismissed as irregular, *State, Farmers' National Bank v. Cook*, 3 Vr. 347. After commissioners of appeal in cases of taxation, have given their decision, and returned the duplicate, with a certificate thereof, to the collector, the assessment or adjudication is not in their custody, nor can they be removed by a *certiorari* directed to the commissioners of appeal, *State v. Howell*, 4 Zab. 519. A *certiorari* brought to set aside an assessment of a tax, should be so directed as to bring up the assessment with the return. If sent to the commissioners of appeal, it is misdirected, and will be dismissed, *State v. Thomas*, 2 Harr. 160. See *State v. Falkinburge*, 3 Gr. 320. When a tax is affirmed on *certiorari*, it may be collected by attachment, *Smith ads. State*, 2 Vr. 216. *State v. Lewis*, 6 Vr. 377, 380. Or, by *mandamus*, *Person v. Warren R. E. Co.*, 3 Vr. 441. *Silverthorne v. Warren R. E. Co.*, 4 Vr. 372.

## TELEGRAPH COMPANIES.

**An act entitled an act to exempt soldiers and sailors, who served in the war of one thousand eight hundred and twelve, from poll tax.**

P. L. 1875, p. 65.

Approved April 8, 1875.

Soldiers of war of 1812, exempt from poll tax.

152. SEC. 1. That the soldiers of the war of one thousand eight hundred and twelve, shall be and they are hereby exempt from paying poll tax.

**A supplement to the act entitled "An act concerning mortgages," (revision), approved March twenty-seventh, eighteen hundred and seventy-four.(1)**

P. L. 1876, p. 159.

Approved April 17, 1876.

Owners of lands in certain counties may agree not to apply for any deduction by reason of such mortgage.

153. SEC. 1. That hereafter it shall be lawful for the owners of lands situated in the counties of Hudson, Essex, Union, Bergen and Passaic, and in the cities of Trenton, New Brunswick and Camden, to agree for themselves and their heirs and assigns with the holder of any mortgage now in existence or hereafter to be made, which binds or may bind lands in said counties or cities, not to apply for any deduction, by reason of any mortgage, from the taxable value of such lands embraced in such mortgage.

In case deduction is claimed in violation of agreement, mortgage to become immediately due.

154. SEC. 2. That in case any mortgagor or owner of lands, or the heirs or assigns of any mortgagor or owner of land situate in said counties and cities mentioned in section one, who shall have agreed not to claim any deduction from the taxable value of lands described in any mortgage, shall claim a deduction therefrom in violation of such agreement, that then and in that case said mortgage in said agreement described shall become immediately due and payable, and the amount of tax paid by the mortgagee shall be added to the principal of the debt secured thereby and recoverable therewith with interest thereon from the time of payment.

**An act relating to assessors.**

Approved March 9, 1877.

P. L. 1877, p. 227.

Penalty for not delivering to successor in office property, books, &c.

155. SEC. 1. That if any assessor in any city, town or township in this state shall not immediately, after the expiration of his term of office, or after he shall have vacated or been removed from office, deliver over to his successor in office all the property, books and papers belonging to such city, town or township, or appertaining to such office or its duties, including his field book or books used during his term of office, and all memoranda concerning property, real or personal, in said city, town or township in this state, or the valuations thereof used by him during his term of office, every such assessor shall be deemed guilty of a misdemeanor, and on being thereof convicted shall be punished by fine not exceeding one thousand dollars or imprisonment at hard labor for any term not exceeding one year, or both, at the discretion of the court.

(1) This act though a supplement to the act concerning mortgages, clearly should be classified under TAXES.

## Telegraph Companies.

1. How incorporated.
2. When building may be commenced.
3. Election of officers.
4. Charges.
5. Taxation.
6. Offices to be established.
7. Wilful injury to lines punishable.

8. Poles may be put on highways.
9. Stockholders not responsible beyond subscription.
10. Act not to apply to certain subscriptions.
11. Companies may consolidate.
12. Dispatches must be kept secret.
13. Penalty for revealing dispatches.
14. Operators, &c., exempt from militia and jury duty.

P. L. 1853, p. 304.

" 1855, p. 544.

" 1866, p. 814.

**An act to incorporate and regulate telegraph companies.**

Revision—Approved April 9, 1875.

Telegraph companies, how incorporated.

P. L. 1853, p. 304.

Amended.

1. Whenever any number of persons, consisting of two or more, shall have subscribed one-third of the capital stock necessary to be issued for the construction of any line of telegraph in this state, they shall upon depositing with the secretary of state a written or printed description of the line they propose building and constructing, the localities it is