

the vote of any person entitled to vote under the rules of the said party, or shall knowingly receive the vote of any person or persons not qualified as aforesaid, he shall, on conviction, be fined not exceeding two hundred dollars; and if any judge, inspector, clerk or any other officer of a primary election as aforesaid, shall be guilty of any willful fraud in the discharge of his duties, by destroying or defacing ballots, adding ballots to the poll, by false counting, by making false returns or by any act or thing whatsoever, the person or persons so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, or either, at the discretion of the court.

Repealer.

390. SEC. 3. That all acts inconsistent with the provisions of this act be and the same are hereby repealed.

An act concerning the right of suffrage in this state.

P. L. 1890, p. 241.

Approved April 8, 1890.

Who may vote for municipal officers.

391. SEC. 1. That every citizen of this state entitled to vote at a general election for members of the legislature shall be entitled to vote at any election of municipal officers held in the city, town or other municipality where such citizens may reside.

Repealer.

392. SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act, be and the same hereby are repealed, and that this act shall take effect immediately.

An act to provide for the election of members of the general assembly for each county of this state by the vote of the legal voters of said counties respectively.

P. L. 1894, p. 303.

Passed May 15, 1894.

Assemblymen shall be elected by the legal voters of the counties respectively.

393. SEC. 1. That hereafter the member or members of the general assembly of this state to which any county is or may be entitled by law shall all be voted for by the legal voters of the counties respectively, and the person or persons having the highest number of votes cast for him or them in any county for such office, wherever therein said votes shall be cast, shall be elected such member or members.

Eminent Domain.

1. Appeal from commissioners allowed.
2. Proceedings before chancellor for distribution of money awarded when lands are incumbered by mortgage, &c.
3. Amended by section 6.
4. Amended by section 7.
5. Roads and streets on lands acquired by the state for public use vacated.
6. When lands are acquired for use of the state, commissioners shall be appointed by statute.
7. Power of such commissioners. When governor to take lands.
8. Streets and highways on lands taken to be vacated.
9. Amended by section 19.
10. City council may limit amount to be expended in acquiring lands, &c., by condemnation for market purposes.
11. Commissioners to report if they cannot agree on purchase price.
12. Commissioners, when and how appointed.
13. Duty of commissioners. Appeal.
14. Titles to be taken in name of city.
15. Compensation of commissioners and how paid.
16. Temporary bonds or certificates may be issued and finally redeemed by other bonds.
17. Revenues from buildings used for market purposes, how applied.
18. When revenues are insufficient to meet interest, &c., deficiency to be raised by tax.
19. Appointment of commissioners to purchase lands, &c., for market purposes.
20. Buildings may be erected on lands purchased or condemned.
21. Freeholders may acquire by purchase or condemnation lands for county purposes.
22. May agree with owner on purchase price therefor.
23. Proceedings for condemnation on failure to agree. Appeal.
24. Proceedings in case of appeal.
25. Freeholders may make contract for settlement notwithstanding appeal.
26. Commissioners to appraise any mortgage, lease or other estate in lands taken.
27. Freeholders may borrow money and issue bonds.
28. Principal and interest of bonds, how paid.
29. Proceedings by which any school district may by condemnation perfect its title to lands used for school purposes.
30. Trustees to pay owners of lands amounts assessed.
31. Lands vested in trustees of school district.
32. Appeal and proceedings thereon.
33. Trial by jury may be had.
34. School district may vote money to carry out provisions of act.
35. Repealer.
36. Amended by section 41.
37. Proceedings by commissioners appointed to condemn lands for school purposes in cities. Appeal.
38. Titles taken in name of city.

39. Compensation of commissioners.
40. Funds to pay for lands and expenses, how raised and paid.
41. Proceedings for condemnation of lands for school purposes in cities.
42. Vacancy in office of commissioner, how filled.
43. Proceedings for condemnation of lands for any lawful public use in cities. Appeal.
44. Proceedings on appeal.
45. Proceedings for condemnation of lands in cities which are limited over after life or other estates therein. Appointment of trustees.
46. Trustees to give bond.
47. Proceedings for condemnation of lands for public use in cities, which have been dedicated or used for other public purposes.
48. Duty of commissioners. Appeal.
49. Proceedings where lands condemned have been conveyed for private special use, &c. Appeal.
50. Repealer.
51. All reports of commissioners to be filed.
52. General provisions concerning proceedings on appeal.
53. Court to fix day for trial of appeal. Trial by struck jury.
54. This act to supersede all other acts concerning practice in condemnation cases.
55. Proceedings where ownership of lands condemned is disputed or unknown.
56. Proceedings in such cases further prescribed.
57. Proceedings where city authorities cannot agree with owners for purchase of land, water, water-rights, &c., for the purpose of supplying the city with water.
58. Proceedings on appeal.
59. Repealer.

An act respecting the awards of commissioners in cases of land and real estate taken or condemned by law, and appeals therefrom.

Approved March 9, 1877. P. L. 1877, p. 137.

1. That in all cases when it is provided by any act of incorporation or law of this state that any owner of real estate, land or materials taken in pursuance of such act or law, may appeal from the decision or judgment of commissioners appointed under such act or law to the court of common pleas in the county where the land lies, such appeal hereafter may be taken by either party and shall be made to the circuit court of such county, reserving to either party the right of trial by jury in such court; and the decision of the said circuit court in the premises shall be binding and conclusive in the same manner as prescribed in the acts or laws aforesaid in cases of the decisions of the court of common pleas. (a)

Appeal from commissioners allowed.

2. That whenever it shall appear to the chancellor that the lands taken pursuant to any law or act aforesaid are incumbered by any mortgage, judgment or other lien of any kind, the money awarded to the owner or owners of said lands may, by the order of the chancellor, be paid into the court of chancery, and shall there be distributed according to law, and written notice given to such owner or owners that such money has been so paid into court, shall have the same effect as if the money so awarded had been actually tendered to the owner or owners aforesaid. (b)

Proceedings before chancellor for distribution of money awarded, when lands are incumbered by mortgage, &c.

An act to regulate the acquiring of land for exclusive public uses by the state of New Jersey.

Approved May 2, 1885. P. L. 1885, p. 309.

3. SEC. 1. [Amended by Sec. 6, *post.*]
 4. SEC. 2. [Amended by Sec. 7, *post.*]
 5. SEC. 3. That all roads, streets or alleys dedicated to public use, upon lands acquired hereafter by the state of New Jersey for exclusive public use by the state, shall be and the same are hereby declared to be vacated so soon as the said land shall be acquired for the public use of the state, and any statute hereafter passed for the acquiring of such land shall declare the vacation of any roads, streets or alleys over said land dedicated to the public use.

Roads and streets on lands acquired by the state for public use, vacated.

Supplement.

Approved February 21, 1888. P. L. 1888, p. 73.

6. SEC. 1. That section one of the act to which this is a supplement be amended so as to read after the enacting clause, as follows :

(a) The charter of a railroad company, which was irrevocable, gave the company the power to take lands by condemnation, and provided for an appeal by the landowner, from the award of damages, to a certain court. *Held*, that the act which took away the right to appeal to that court, and gave an appeal to another court, on the same terms and conditions, and with the same mode of trial, is not unconstitutional. *United Companies v. Weldon*, 18 Vr. 59. Statutes conferring the power of condemnation under the right of eminent domain are strictly construed. Every condition prescribed in the grant must be complied with, and the proceedings must be conducted in the

manner and with the formalities prescribed in the grant of power. *Vreeland v. Jersey City*, 25 Vr. 49.
 (b) The power of the court of chancery to extend protection to the mortgagee of lands which have been condemned, and also to the condemner, does not depend on the above act, but is inherent in the court. *Platt v. Bright*, 2 Stew. 128, 4 Stew. 81. See *Jersey City, &c., R. E. Co. v. Central R. R. Co.*, 3 Dick. 380. This section applies to appeals from the circuit court as well as from the court of common pleas. *Packard v. Bergen Neck R. R. Co.*, 3 Dick. 281.

When lands are acquired for use of the state, commissioners shall be appointed by statute.

Proviso.

Power of such commissioners.

When governor to take lands.

When land taken, streets, &c., vacated.

[That whenever it shall be deemed necessary by the legislature to acquire land for the exclusive public use of the state of New Jersey, commissioners shall be appointed by a statute duly passed for that purpose, designating by general description the land necessary to be acquired, and empowering and directing the commissioners therein and thereby appointed, to acquire the same by contract of bargain and sale to be made by them with the owners of the estate in fee-simple in said land, and such other persons as may hold or be entitled to special, legal or equitable rights or easements in said land, if they can ascertain such owners or persons; *provided*, such owners or persons can make and execute valid conveyance for the same; and such statute shall fix and designate the limit of the purchase-money to be paid therefor and prescribe the mode of payment thereof.]

7. SEC. 2. That section two of said act be amended so as to read as follows: That in case the said commissioners shall be unable to ascertain, or to agree with the owners of the estate in fee-simple in said land, and with the persons entitled to legal or equitable rights therein or easements therein or thereon, or if the said owners or persons shall be unable to make valid conveyances of the same, then the said commissioners shall be authorized and directed by said statute to examine into and adjudge the true value of the said lands, rights and easements, upon due notice to all persons whom they can ascertain to be interested; and the governor of the state, upon compensation being paid into a competent court for the use of such owners and persons, to the amount of the award of said commissioners, shall take the said lands in fee, and the said rights and easements, for the public use; and the moneys necessary to make such compensation shall be provided and appropriated in such statute, to be paid out of the treasury of this state in the manner prescribed by such statute.

8. SEC. 3. That upon said lands being taken in fee, as above provided, all streets, highways, ways, rights and easements, on or over any of the said lands, shall become and be vacated and made void.

An act to authorize the purchase and condemnation of land and the erection of buildings for market purposes in the cities of this state and other places in which market facilities are or may be required for public use, and to provide therefor.

P. L. 1886, p. 268.

Passed April 22, 1886.

City council may limit amount to be expended in acquiring lands, &c., by condemnation for market purposes.

9. SEC. 1. [Amended by Sec. 19, *post.*]

10. SEC. 2. That such council or other governing body may fix a limitation upon the amount of money which the said commissioners may expend in the purchase of such lands in the erection of such buildings, and may require a report from them before entering into a contract therefor, with a description of lands to be purchased and plans of buildings to be erected, for approval, and the said commissioners shall in no case proceed in the purchase of such lands or the erection of such buildings until such approval is obtained, where the same is required.

Commissioners to report if they cannot agree with owners as to price, &c.

11. SEC. 3. That in case it should, in any case, be found that suitable property cannot be purchased by agreement with the owner or owners, or in case the price demanded by such owner or owners is, in the judgment of the commissioners, in any case exorbitant and more than a fair equivalent therefor, then the said commissioners shall report the same, with a description of the said lands, to the common council or other governing body, and the said council or other governing body may order and direct the condemnation thereof.

Commissioners, when and how appointed.

12. SEC. 4. That if the said common council or other governing body shall, in any case, direct the condemnation of any lands, as provided for in the preceding section, the said commissioners shall forthwith apply to a judge of the circuit court of the county wherein said city or place is situate for the appointment of three commissioners to make an appraisal of the value of the lands so to be condemned for the purpose aforesaid, and of the damage which any owner or owners of such lands may suffer by reason of the taking thereof.

13. SEC. 5. That the said commissioners appointed by the circuit court, having taken an oath faithfully and impartially to execute the duties of their office, shall forthwith proceed to estimate and determine the fair value of the lands and real estate so to be taken and condemned as aforesaid, and of the damages which the owner or owners thereof will suffer by reason of the taking thereof, first having given at least ten days' notice in writing to the said owner or owners, either personally or by leaving the same at his or her place of abode, of the time and place when and where they may be heard in relation to the matter; in case any owner shall be an infant, married woman, non compos mentis, or absent from the city or place where such condemnation proceedings are taken, or be from any cause incapacitated to act in this behalf, then notice of the time and place, and object of said meeting shall be advertised or other notice given as the said judge may direct, and said meeting or meetings may be adjourned from time to time, at the discretion of said commissioners, and as soon as they shall have determined upon said valuation, they shall make and sign a certificate thereof, and file the same in the office of the city clerk of such city or at such other place as the said judge may direct; and immediately upon the payment to said owner or owners of the amount of the said valuation, or in case he or they will not or cannot receive the same, upon deposit of the same in such bank or institution as the said court or judge may direct, the title to and the right of possession of such property shall immediately become vested in such city or place; and any owner conceiving himself or herself aggrieved by the proceedings of said commissioners, may appeal therefrom to the supreme court of this state at any time within sixty days after the filing of the said certificate, and the said court shall thereupon order a trial by jury to assess the value of the said property and the said damage, which trial shall be conducted in all respects as in other cases of trial by jury, and the final judgment of the said court upon the verdict rendered therein shall be conclusive upon all parties as to the said valuation and damages, and the amount already paid or deposited as aforesaid shall be increased or diminished accordingly.

Duty of commissioners.

Persons aggrieved may appeal.

14. SEC. 6. That all titles taken for the purposes mentioned in this act shall be in the name of the city or place in which the lands are purchased and the buildings erected by virtue of the provisions of this act.

Titles taken in name of city, &c.

15. SEC. 7. That the commissioners so to be appointed by the said judge of the circuit court shall receive such compensation for their services as the said judge shall order and direct, and the same shall be paid as well as all other expenses incident to the condemnation proceedings from the funds provided, as herein directed, for the purchase of lands and the erection of buildings.

Compensation of commissioners, and how paid.

16. SEC. 8. That to pay for the land so purchased or condemned, and for the damages for the taking thereof, and for the cost of such buildings and other expenses connected therewith, the said city or place may, from time to time, issue its temporary loan bonds or certificates of indebtedness, on which shall be indicated the purpose for which they were issued, and the proceeds thereof shall be used only to defray the expenses aforesaid; and upon the final completion of the duties hereby imposed upon the said commissioners, they shall report to the said common council or other governing body their proceeding, and shall make a full and detailed statement of the entire cost of the lands purchased, the buildings erected, and of all the expenses incurred by them in the execution of their duties, and the said common council or other governing body, upon the ascertainment of such cost and expenses, are hereby authorized to issue the bonds of such city or place for an amount not to exceed three hundred and fifty thousand dollars, which bonds shall be of such denomination as the said common council or other governing body shall direct, and shall be made payable within not more than thirty years nor less than ten years from the date of their issue, and shall bear such rate of interest not exceeding five per centum per annum, and be made payable as the said body may determine, and may be negotiated and sold at not less than their par value; such bonds shall be denominated "market bonds," and the proceeds thereof

Temporary loan bonds or certificates of indebtedness may be issued for purchase of lands, &c.

Commissioners to make final report, &c.

Bonds may be issued.

shall be used to retire the temporary bonds or certificates hereby authorized, and for no other purpose whatever.

Revenues from buildings used for market purposes, how applied.

17. SEC. 9. That the net revenues from all lands and buildings used for market purposes in every such city or place shall be devoted exclusively to the payment of the interest which may accrue upon the said bonds, and to a sinking fund for their redemption and payment when due, where not otherwise appropriated by existing laws, and shall, where sinking fund commissioners exist in any such city or place, be annually paid over to them for this purpose, and where sinking fund commissioners do not exist, shall be kept separate and apart from the other funds of such city or place and exclusively devoted to this purpose.

When revenues are insufficient to meet interest, &c., the deficiency to be placed in the tax levy annually.

18. SEC. 10. That if after the lapse of five years from the time when said bonds are issued it shall be ascertained that the said revenues are insufficient in any such city or place to provide a fund sufficient to meet the annual interest due upon the said bonds and furnish a sinking fund for their payment and redemption when due, that it shall be the duty of the common council or other governing body of such city or place, annually thereafter, to place in the tax levy and collect such sums in addition to the revenue aforesaid as will be sufficient to provide a fund to pay such interest and redeem and pay such bonds at their maturity.

Supplement.

Approved April 18, 1889.

P. L. 1889, p. 305.

19. SEC. 1. That section one of the above-mentioned act [see Sec. 9, *ante*] be and the same hereby is amended so as to read as follows:

Appointment of commissioners to purchase lands for market purposes.

[That whenever, in the judgment of the common council or other governing body of any city, additional market facilities are or may be required for public uses, it shall and may be lawful for such council or other governing body to appoint five commissioners to purchase such lands and erect suitable buildings thereon, to be used as a public market; and that such commissioners shall receive as compensation for their services in relation thereto, such sum or sums of money as such council or other governing body shall deem just and proper.]

Supplement.

Approved June 20, 1890.

P. L. 1890, p. 488.

Commissioners authorized, in the erection of buildings, to locate on lands purchased or condemned.

20. SEC. 1. That the provisions of the act to which this is a supplement shall be held and construed to include the right on the part of the commissioners appointed thereunder, in the erection and construction of any buildings erected or to be erected, to locate the same or any part thereof wholly or partly on the grounds purchased or condemned, or wholly or partly on other lands owned by such city, devoted to market purposes; *provided*, the consent of the common council or other governing body of such city has been or shall be obtained to the location thereof.

Proviso.

An act to authorize the boards of chosen freeholders in the respective counties of this state to acquire by purchase or condemnation lands for public use in such counties and to provide for the issue of bonds to pay for the same.

P. L. 1887, p. 201.

Approved April 21, 1887.

Chosen freeholders may acquire by purchase or condemnation, land for county purposes.

21. SEC. 1. That it shall be lawful for the board of chosen freeholders in any county of this state to acquire by purchase or condemnation, as hereinafter provided, any tract or tracts of land, not exceeding in all thirty acres of land, for the purpose of adding the same to the county farm, to be used for the purposes of almshouses, jails, workhouses, lunatic asylums and such other public buildings as may be required, and to furnish use for the prison and pauper labor of any such county; *provided*, that said lands, when so purchased or acquired, shall, with the lands

Proviso.

already purchased or acquired and owned by said county, form one contiguous and compact tract of land. (a)

22. SEC. 2. That it shall be lawful for any such board of chosen freeholders to make a contract or contracts of purchase of such lands with the owner or owners thereof upon such terms and conditions as to such board shall seem best and most advantageous to the interest of such county, and the said board of chosen freeholders shall be able and capable to acquire, purchase, receive and have and hold said lands for the use of their counties respectively, as provided in section one of this act, and to pay for the same in such manner and upon such terms and conditions as shall be deemed most beneficial to the interest of such county.

Freeholders may contract for the purchase of such lands, &c.

23. SEC. 3. That if any such board of chosen freeholders shall fail to agree with the owner or owners of any such tract or tracts of land for the purchase, either as to quantity required or the price to be paid for the same, or upon any other of the terms and conditions of such purchase, so that the purchase of any such tract or tracts of land cannot be consummated and completed by mutual agreement between said board of chosen freeholders and the owner or owners thereof as to any one or more of said tracts of land, or if for any other reason the said board of chosen freeholders shall be unable to contract for and purchase and acquire said lands, then it shall be lawful for such board of chosen freeholders to cause a survey or surveys to be made of such tract or tracts of land required and which cannot be purchased by agreement as aforesaid, and to ascertain the owner or owners of such tract or tracts of land, if the same can be ascertained, and after such survey or surveys have been completed, and a map or maps made of the same, said map or maps, survey or surveys shall be filed in the office of the clerk of any such county, and it shall be lawful for said board of chosen freeholders, at any time within three months after the date of the filing of such map or maps, survey or surveys, to apply to the justice of the supreme court holding the circuit court in and for any such county for the appointment of three commissioners to condemn and appraise said tract or tracts of lands, and the said application to the justice of the supreme court shall be made in writing, by virtue of a resolution of such board, certified to by the clerk of said board and annexed to said application, which application shall be signed and verified either by the director or clerk of said board, and presented to such justice, and when so presented said justice shall make an order fixing a time and place when and where said commissioners will be appointed, which shall not be less than fifteen days from the making and presentation of such application, and the said justice shall direct a notice to be served on all the owners of said tract or tracts of lands, if known and in this state, or if unknown and out of this state, to make publications thereof, as he shall direct, for any term not less than ten days, of the particular time and place for the appointment of said commissioners, at which time upon satisfactory evidence to him of service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial and judicious freeholders, residents of the state of New Jersey, commissioners to examine and appraise the said tract or tracts of lands, and to assess the damages, upon such notice to be given to the owner or owners and persons interested as shall be directed by said justice making such appointment, and to be expressed therein, not less than twenty days, and it shall be the duty of the commissioners (having first taken and subscribed an oath or affirmation before the clerk of the county faithfully and impartially to examine the lands in question and to make a true appraisement and report, according to the best of their skill and understanding, which oaths shall be filed with the county clerk), to meet at the time and place appointed and proceed to view and examine the said tract or tracts of lands, hear the statements of parties interested and others, and adjourn said hear-

Proceedings in case of failure to agree with owners of lands for the purchase or price to be paid.

Survey and map to be made and filed.

Freeholders may apply for appointment of commissioners.

Justice of supreme court to appoint commissioners.

Commissioners to meet and appraise lands, &c., and to make report.

(a) A resolution by the board of chosen freeholders of Hudson county to purchase lands under this act, the price agreed to be paid being so excessive as to show that the resolution was in

fraud of the act, is not a legal exercise of the power conferred by it. *Jersey City v. Hudson County*, 24 Vt. 531.

Freeholders to pay amounts awarded and to enter and take possession of lands, &c.

Proviso.

Appeal.

Proceedings in case of appeal from decision of commissioners.

ing from time to time, if necessary, and to make a just and equitable assessment or assessments of damages to be paid by the board of chosen freeholders for such tract or tracts of lands and damages aforesaid; and the lands of different owners shall be appraised at the same time by said commissioners, and separate appraisements made for each separate tract, which separate appraisements shall be reported by a report, made in writing under the hands and seals of said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land and the appraisement aforesaid, in the clerk's office of such county, to remain of record therein, and said report shall, upon ten days' notice, in writing, by either party in interest to the other, be confirmed by the circuit court of the county wherein said lands are situate and said report filed; and thereupon the said board of chosen freeholders shall pay the amount awarded, unless proceedings in appeal shall be taken as hereafter provided, and upon payment or tender of payment of the amount awarded as herein provided, the said board of freeholders in any such county is hereby empowered to enter upon and take possession of said tract or tracts of lands for the use of the inhabitants of such county; and the said report, or a copy thereof, certified to by the clerk of said county, and proof of payment or tender of the amount awarded, shall at all times be considered as plenary evidence of the right of said board of chosen freeholders to have, hold, use, occupy, possess and enjoy the said lands; and the said justice of the supreme court shall, upon the application of either party, and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the supreme court, commissioners, counsel and other persons performing any of the duties prescribed in this or any other section of this act, as he shall think equitable and right, which shall be paid by the county collector upon the certificate of such justice; *provided, always,* that should any such board of chosen freeholders or the owner or owners of any of the lands feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the circuit court of any such county within sixty days after the filing of the said report by the said commissioners, but in case no such appeal be taken, either by said board or by any owner or owners as aforesaid, then the said board shall be conclusively bound to pay said award or awards so as aforesaid reported by said commissioners, and said owner or owners shall be conclusively bound to accept payment of the amount so awarded, and neither said board of chosen freeholders nor the owner or owners of said lands shall be allowed to reject the awards so as aforesaid made, and the owner or owners shall be entitled to recover the amount of said award or awards, with interest and costs, in an action of debt against such board of chosen freeholders in any court of competent jurisdiction, if payment be neglected or refused for thirty days after demand made for the payment thereof, and said report, or a copy thereof, certified as aforesaid, shall be plenary evidence of the said owner or owners' right to said recovery.

24. SEC. 4. That every appeal from the decision of the commissioners appointed under the preceding section of the act shall be made in writing and in the form of a petition to said court, and filed with the clerk of the said circuit court in and for such county; and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof, which proceeding shall vest in the circuit court full right and power to hear and adjudge the same, and to direct a proper issue for the trial of said controversy to be formed between the said parties, and to order a jury to be struck, which, upon demand of either party, shall be a foreign jury, and a view of the premises to be had; and the said issue to be tried at such time as the said court shall order, upon the like notice and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the land and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon with costs shall be entered against the said board of chosen freeholders and execution awarded therefor; but if the said jury shall be

applied for by the owner or owners and shall find a less sum than the said commissioners shall have awarded, then said costs shall be paid by the applicant or applicants and either deducted out of said sum found by the said jury or execution awarded therefor, as the said court shall direct; but such application shall not prevent the said board of chosen freeholders from taking the said land upon filing the aforesaid report; *provided*, that in no case whatever shall said board of chosen freeholders enter upon or take possession of any land of any person or persons until they have paid to the party or parties entitled to receive the same the amount assessed by the commissioners as the value of such land, in case the report of the commissioners is not appealed from, or if the same is appealed from, then the amount which shall be found by the jury by whom the issue shall be tried; but in case the party or parties entitled to receive the amount assessed by the commissioners in case there should be no appeal, and in case of appeal the amount found by the jury, shall refuse, upon tender thereof being made, to receive the same, or shall be out of the state or under any legal disability, then the payment of the amount assessed or found as aforesaid into the circuit court of such county shall be deemed a valid and legal payment; *and further*, that the party or parties entitled to receive the amounts assessed by the commissioners may, upon tender thereof being made, receive the same without being barred thereby from his, her or their appeal from the report of the commissioners; and on such tender or payment of money into court in case it be refused as aforesaid, the said board of chosen freeholders shall take possession of the said lands; *and provided, further*, that in case any money paid into court shall belong to any infant, insane person or idiot, said money shall be paid over by such court to any guardian appointed to take charge of such infant, insane person or idiot, estate when it shall appear to the court that such guardian has filed a good and sufficient bond to cover said amount with the court or surrogate appointing such guardian, or the money may, by said court, be ordered to be invested by the clerk of the court for the benefit of such infant, insane person or idiot.

Proviso.

Proviso.

Proviso.

25. SEC. 5. That it shall be lawful for any such board of chosen freeholders to make and enter into a contract or contracts as provided in section two of this act, in settlement or otherwise, notwithstanding an appeal may be taken by either party as hereinbefore provided and pending the determination of the same.

Freeholders may enter into contract for the settlement, notwithstanding an appeal may be taken, &c.

26. SEC. 6. That if any person shall have a mortgage, lease, life estate, or any other less estate than a fee in any lands taken, said estate shall be appraised by the commissioners, or in case of an appeal by the jury, and deducted and paid out of the amount assessed or awarded by [for] the whole fee.

Commissioners to appraise mortgage, lease or life estate in lands.

27. SEC. 7. That in order to pay for the said land purchased under this act by mutual agreement between said board of chosen freeholders and the owner or owners thereof, or in order to pay the award or awards of the commissioners or assessment or assessments of value and damages by a jury in case of an appeal for the lands taken under this act, it shall be lawful for any such board of chosen freeholders of any of the counties of this state to borrow any sum of money equal to the amount required to pay for such lands so purchased or taken, and to cause bonds to be prepared and issued in sums of one thousand dollars each, payable in from one to thirty years after date, at the discretion of the board, with interest not exceeding six per centum per annum, payable half yearly, which bonds shall be given in the name of the board of chosen freeholders of such county for and in behalf of the inhabitants of such county, and they shall be signed by the director of such board and the county collector, with the seal of such board affixed; said bonds shall be either registered or coupon bonds and payable, both principal and interest, at such place as such board shall designate, and the same may be made payable to bearer, and by resolution of said board registered bonds may be exchanged for coupon bonds and coupon bonds exchanged for registered bonds upon the request of the holder thereof; *provided*, that said bonds shall be sold to the highest bidder, upon bids or proposals duly advertised for the space of one

Board of freeholders to borrow money and to issue bonds.

Rate of interest, &c.

Proviso.

Proviso.

week before such bids or proposals be received by said board ; *and provided,* also, that said bonds shall not be sold at less than the par value thereof.

Principal and interest on bonds, how paid.

28. SEC. 8. That said board of chosen freeholders shall, each year, place in the tax levy for such county for such year, so long as such bonds shall run, a sufficient sum to pay all interest on said bonds during such year, and, also, a sufficient sum to pay the principal of said bonds falling due within the year ; the same to be levied and raised in the same manner as other county taxes are levied and raised.

An act for the condemnation of lands which any school district of this state has purchased, or may hereafter purchase, and upon which said school district has built, or may hereafter build, a school-house, the title to which said lands is, or may be, in any way defective, and to provide money for the payment thereof.

P. L. 1888, p. 41.

Approved February 15, 1888.

Proceedings by which school district may perfect its title to lands.

29. SEC. 1. That in case any school district of this state has purchased any lands in this state, or may hereafter purchase any lands, and has built or may hereafter build thereon any school-house or school-houses, the title to which said lands is in any way defective, it shall and may be lawful for any justice of the supreme court of this state, and the said justice is hereby directed, upon application by the trustees of said school district, upon two weeks' previous notice, served in person, or by leaving a copy thereof at the dwelling-house or usual place of abode of the owner or owners of said lands, or in case of the absence from the state or legal disability of the owner or owners, then the said notice shall be published in a newspaper published in the county where said lands are situate, for two weeks prior to the time fixed for such application, to appoint three disinterested persons commissioners, which said commissioners shall be residents of the county where said lands are situate, to condemn and assess and ascertain the value of the lands so purchased as aforesaid, which commissioners shall appoint a time and place at which they shall meet and execute the duties of their appointment, and shall cause two weeks' notice thereof to be given to the owner or owners thereof, either by personal service or by leaving a copy thereof at the dwelling-house or usual place of abode of said owner or owners, or in case of the absence from the state or legal disability of said owner or owners, then said notice shall be published in a newspaper printed in the county where said lands are situate, for two weeks prior to the time of such meeting ; at which time and place the said commissioners, or any two of them, shall meet and view the premises and lands, and hear all the parties interested, and take evidence, if any shall be offered, and for that purpose shall have power to administer oaths and affirmations, and to adjourn from time to time ; and the said trustees of said school district shall make and exhibit to the said commissioners at their meeting aforesaid, a description of said lands purchased as aforesaid, either in writing or by maps or drawings or both ; and the said commissioners, or any two of them, shall thereupon ascertain and assess the value of said lands and shall execute under their hands and seals, or the hands and seals of any two of them, an award to said trustees of said school district of the lands by them sought in the description aforesaid, stating therein the amount of compensation therefor by them assessed in favor of said owner or owners, and a description of the said lands, which said award shall be acknowledged by the commissioners making the same and filed in the clerk's office of the county where said lands are situate, and recorded by the said clerk in the same manner and in the same books that deeds for real estate are now recorded.

Notice to be given to owner of appointment of commissioners.

Commissioners to meet and view premises and hear parties interested.

To assess value of lands and award compensation.

Trustees to pay owners of lands amounts assessed, &c.

30. SEC. 2. That when the said commissioners, or any two of them, shall make their award and assess the value of the lands aforesaid, that it shall be the duty of the trustees of said school district to pay to the owner or owners of said land the amount so assessed by the said commissioners, and in case the said owner or owners refuse to receive the same, or reside out of this state, or are legally disqualified, or cannot be found, then the

said trustees shall pay the said amount so assessed to the clerk of the circuit court of the county where said lands are situate.

31. SEC. 3. That the award of the commissioners aforesaid, or any two of them, and the payment of the money so assessed as aforesaid by the trustees of said school district in the manner aforesaid, shall vest in the trustees of said school district the lands and premises described in said award, the same estate as would have vested in them had the owner or owners thereof conveyed the same to the trustees of said school district under their hands and seals in fee-simple.

Lands and premises vested in trustees of school district.

32. SEC. 4. That if the trustees of said school district or the owner or owners of said lands are not satisfied with the assessment of the said commissioners of the amount to be paid to the owner or owners of said lands, then and in that case either party may appeal to the next or second term thereafter of the circuit court of the county where said lands are situate, by filing a petition with the clerk of said circuit court, and serving a notice of such appeal upon the opposite party, three weeks prior to such term, or by publication in a newspaper printed in the county where said lands are situate for four weeks prior to such term; which petition, when filed, and the notice served or published as aforesaid, shall vest in said court full power to hear and determine said appeal.

Appeal and proceedings thereon.

33. SEC. 5. That in all cases of appeal from the assessment of the commissioners it shall and may be lawful for either party to demand and have a trial by jury, and the assessment of the court or jury shall be final.

Trial by jury may be had.

34. SEC. 6. That it shall and may be lawful for any school district in this state, at their annual meeting, to vote money to carry out the provisions of this act, as money is now voted for said school district under any existing law.

School districts may vote money to carry out provisions of act.

35. SEC. 7. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act to authorize the condemnation of lands in the cities of this state whereon public school buildings may be erected, and which shall be devoted to use for public school purposes.

Approved April 4, 1889. P. L. 1889, p. 185.

36. SEC. 1. [Amended by Sec. 41, *post.*]

37. SEC. 2. That such commissioners appointed by the circuit court having taken an oath faithfully and impartially to execute the duties of their office, shall forthwith proceed to estimate and determine the fair value of the lands and real estate so to be taken and condemned as aforesaid, and of the damages which the owner or owners thereof will suffer by reason of the taking thereof, first having given at least ten days' notice in writing to the said owner or owners, either personally or by leaving the same at his or her place of abode, of the time and place when and where they may be heard in relation to the matter; in case any owner shall be an infant, married woman, non compos mentis or absent from the city or place where such condemnation proceedings are taken, or be from any cause incapacitated to act in this behalf, then notice of the time and place and object of said meeting shall be advertised or other notice given, as the said judge may direct, and said meeting or meetings may be adjourned from time to time at the discretion of said commissioners, and as soon as they shall have determined upon said valuation they shall make and sign a certificate thereof, and file the same in the office of the city clerk of such city, or at such other place as the said judge may direct; and immediately upon the payment to said owner or owners of the amount of the said valuation, or in case he or they will not or cannot receive the same, upon deposit of the same in such bank or institution as the said court or judge may direct, the title to and the right of possession of such property shall immediately become vested in such city or place; and any owner conceiving himself or herself aggrieved by the proceedings of said commissioners, may appeal therefrom to the supreme court of this state at any time within sixty days

Proceedings by commissioners appointed to condemn lands for school purposes in cities.

Proceedings in case owner is an infant, married woman, &c.

Owners aggrieved may appeal.

after the filing of said certificate, and the said court shall thereupon order a trial by jury to assess the value of the said property and the said damages, which trial shall be conducted in all respects as in other cases of trial by jury, and the final judgment of the said court upon the verdict rendered therein, shall be conclusive upon all parties as to the said valuation and damages, and the amount already paid or deposited as aforesaid shall be increased or diminished accordingly.

Titles taken in name of city.

38. SEC. 3. That all titles taken for the purposes mentioned in this act shall be in the name of the city in which the said lands are purchased or condemned by virtue of the provisions of this act.

Compensation of commissioners.

39. SEC. 4. That the commissioners so to be appointed by the said judge of the circuit court shall receive such compensation for their services as the said judge shall order and direct, and the same, as well as the other expenses incident to the condemnation proceedings, shall be paid by the said city in which the lands are situate.

Funds to pay for lands and expenses, how raised and paid.

40. SEC. 5. That any city in which such condemnation proceedings are taken shall provide the necessary funds to pay for the lands so condemned and the damages for the taking thereof, and such other expenses as may be incidental thereto, and for this purpose shall have power to raise money by taxation.

Amendatory act.

Approved March 22, 1895.

P. L. 1895, p. 452.

41. SEC. 1. That section one of the act entitled "An act to authorize the condemnation of lands in the cities of this state whereon public school buildings may be erected and which shall be devoted to use for public school purposes," and approved April fourth, one thousand eight hundred and eighty-nine [see Sec. 36, *ante*], be and the same is hereby amended so as to read as follows, namely :

Proceedings for condemnation of lands for school purposes in cities.

[That whenever in the judgment of the board or body having control of the public schools in any of the cities in this state, the price demanded by the owners of any land or real estate which may be deemed by such board, or body necessary for the use of the public schools of any such city, is exorbitant and more than the fair market value thereof, it shall and may be lawful for such board or body, with the concurrence of the common council (whenever the concurrence of the common council or other governing body of such city is necessary for the purchase of lands for public school purposes), to apply to a judge of the circuit court in and for the county in which such city is located, for the appointment of three commissioners to make an appraisal of the value of the lands, and of the damages which the owner or owners may suffer by reason of the taking and condemnation thereof; such application shall be made upon petition, setting forth that the said board or body or the said common council or other governing body has been unable to agree with the owners for the purchase of such lands, and that the price demanded therefor is in the judgment of said board or body exorbitant and more than the market value thereof, and praying that the same may be condemned, giving in the said petition a description of the lands which it is desired shall be condemned for the purposes aforesaid, and thereupon it shall be the duty of the said judge to appoint as commissioners three suitable persons, who shall be freeholders and residents of the county within which such application is made to make an appraisal of the value of the lands so to be condemned and of the damages which the owner or owners of such lands may suffer by reason of the taking thereof.]

An act relative to commissioners for taking lands for public use.

Approved March 11, 1891.

P. L. 1891, p. 185.

Vacancy in office of commissioner, how filled.

42. SEC. 1. That in all cases where commissioners have been or shall be appointed pursuant to any law of this state, to appraise the value and damages for the taking of lands for public use, if it shall appear that any one or more of the said commissioners has died pending the proceedings,

or is disqualified, or is unable to act, or has failed or refused to act and perform the duties of the appointment, and there is no law providing for the appointment of other commissioners in such cases, a vacancy shall be deemed to exist, and it shall be the duty of the justice, or other authority appointing said commissioners, to fill the vacancy, on such notice as such justice or other appointing power shall direct, and when the vacancy shall be filled the commissioners shall proceed to perform the duties of their appointment with the same powers as if all the commissioners had been appointed under the original order of appointment. (a)

**An act to empower cities to acquire land for public use by
condemnation**

Approved March 17, 1891.

P. L. 1891, p. 172.

43. SEC. 1. That when the proper board or other proper municipal authority of any city of this state shall deem it proper to acquire certain land, whether situate within or without said city, for any lawful public use or purpose, and the said city or its agents cannot agree with the owner or owners of such land as to the price and terms of the purchase thereof, or when by the legal incapacity or absence of such owner or owners, no agreement can be made for the purchase thereof, a description in writing of the land so desired, with the name or names of the occupants, if any there be, and of the owner or owners and other parties interested if known, and their residences, if the same can be ascertained by the said city or its agents, shall be presented to one of the justices of the supreme court of this state, who thereupon shall cause such city to give notice thereof to the persons interested if known and in this state, or if unknown or cannot be found, or if out of this state, to make publication thereof as he shall direct for any period not less than ten days; and to assign a particular time and place for the appointment of commissioners as hereinafter provided; at which time, upon satisfactory evidence to him of the service or publication of such notice, he shall appoint under his hand three impartial and judicious freeholders, residents in the county in which such lands are situated, to examine and appraise the said land and to assess the damages, upon such notice to be given to the persons interested, as shall be directed by the justice making such appointment, not less than ten days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer the same, faithfully and impartially to examine the matter in question and to make a true report and appraisal as aforesaid in writing according to the best of their skill and understanding) to meet at the time and place appointed and to proceed to view and examine the said land, and to make a just and equitable appraisal and assessment as aforesaid, to be paid by the city; which report shall be made under the hands of the said commissioners, or any two of them, and within fifteen days thereafter, together with the description of the land and the appointment and oaths or affirmations aforesaid, shall be filed in the clerk's office of the county within which such lands are situated, to remain of record therein; and thereupon, and on payment or tender of payment of the amount so awarded to the party or parties entitled thereto, the said city is hereby empowered to enter upon and take possession of the said land; and all title thereto for the purpose for which the same is taken shall upon such payment or tender pass from the said owners and parties interested to the said city, and in case of a dispute between any owners or other parties interested to their respective rights or shares in and to the sum so assessed or ascertained under this act, then the said city is hereby authorized to pay the sum assessed for the said land to the clerk of the county in which said lands are situated, to be paid out and distributed between or among the parties entitled to the same by the order of the circuit court of said county upon the application of any one or more

Proceedings for
condemnation
of lands for any
lawful public use
in cities.

Appointment of
appraisers.

Report to be filed.

Title to pass to
city.

(a) This act has been held to be constitutional, and upon the death of a commissioner to condemn lands in favor of a railroad

company, the vacancy thus created may be filled by force of its provisions. *United R. R., &c., Co. v. Nat. Docks, &c., Co.*, 25 Vt. 180.

Fees, &c., to commissioners.

of them, on due notice to the others ; and the said justice shall, upon the application of either party, or on reasonable notice to the others, tax and allow such costs, fees and expenses to the commissioners and other persons performing any legal duty in the premises as he shall think equitable and right, which shall be paid by the said city ; and if any or all of the said owners or other parties interested shall be absent from this state or under any legal incapacity that disqualifies them from receiving legal payment of the money awarded him, her or them, then it shall be the duty of the city to pay the amount awarded to such person or persons to the clerk of the county in which such lands are situated ; and it shall be the duty of the said clerk to receive the same to be paid to the parties entitled thereto by the order of the judge of the circuit court of the said county, upon his, her or their application for the same, and every and all of such payments to the clerk, as to the city, shall be equivalent to payment to the parties entitled thereto and shall operate to transfer the title to said lands to said city as if made directly to the said parties ; *provided, always*, that should the city, or the owner or owners feel aggrieved by the report and award of the said commissioners, he, she or they may appeal from the said appraisement and award in respect to her, his or their interest therein to the next circuit court in the county wherein the said lands are situated. (a)

Appeal.

Proceedings on appeal.

44. SEC. 2. That every appeal from the appraisement and award of the commissioners shall be made in the form of a petition to the said court, and notice thereof shall be given to the other parties within fifteen days after the filing of the commissioners' report and award, which proceeding shall vest in the circuit court full authority, power and jurisdiction to hear and determine the question of the value of the land and the damages sustained, if any, and thereupon the said court shall direct a proper issue to be framed between the parties for the trial of the said question and order a jury of twelve men to be struck for the trial of the same and a view of the premises to be had by them ; and the said issue shall be tried upon the like notice and in the like manner as other issues of fact in said court are tried ; and it shall be the duty of the said jury to assess the value of the land in question, and the damages sustained, if any ; and the party or parties appealing shall recover costs if he, she, it or they shall succeed at the trial on appeal in changing the valuation or assessment of the land in question and the damages in his, her, their or its favor, and shall pay costs if he, she, it or they shall fail so to do ; but no appeal shall prevent the city from taking the land upon filing the commissioners' report and award and payment, or tender to the parties of the amount thereof, as hereinbefore provided, and a party accepting from the city the amount of the award of the commissioners in his favor shall not thereby waive his appeal ; that upon the verdict of the jury fixing the value of the land and damages the court shall enter judgment for the amount thereof, with or without interest and costs, according to the provisions of this act and the principles of law applicable to the trial of similar issues in other cases, and the judgment so entered shall be the sum which the owner or owners and other parties interested are entitled to have from the city for the said land and damages, and may be enforced in manner and form similar to other cases in which judgment is pronounced in said court ; and when the commissioners' award is paid by the city into court, as hereinbefore provided, and an appeal is taken and judgment is afterwards pronounced on the verdict, it shall be the duty of the court to order the money so paid into court applied to the payment of the said judgment and the surplus, if any, repaid to the city.

(a) This act is not a mere regulation of procedure, but is a grant of power as well. Its terms which authorize the condemnation of land "for any lawful public use or purpose" apply only to such public uses as the legislature has expressed or may express its willingness to promote by the power of

eminent domain. It was held applicable to the condemnation of land by the city of Newark for the purpose of securing a supply of water for municipal uses. *Slingerland v. Newark*, 25 Pr. 62.

Supplement.

Approved March 28, 1892.

P. L. 1892, p. 326.

45. Sec. 1. That whenever in any proceeding for the condemnation of lands or real estate now pending or hereafter to be taken by or in behalf of any city of this state, or of any board, department or special commission of or for such city, the lands or real estate to be taken and condemned, or any part thereof or interest therein, shall be limited over after one or more estates for life, or any estate therein, it shall be lawful for the commissioners or other persons whose duty it is to examine and appraise the said land and real estate and to assess the damages for the taking thereof, instead of making an award and appraisement of the value of the interest or share of each owner or person interested in said lands or real estate, to ascertain and report the total value in a gross sum of all the interests, estates or shares in said lands or real estate, whether in possession, remainder, reversion or expectancy, and the total damages for the taking of the same; and such award and appraisement, otherwise lawfully made, shall bind all persons interested in said lands, whether in possession, remainder, reversion or expectancy or by any other estate; and upon the payment of such gross sum by the city to the clerk of the circuit court of such county, the city may enter upon and take possession of such lands free and discharged from all trusts, estates and interests of every kind and of every person whatsoever; and in such cases it shall be lawful for the circuit court of the county in which said lands are situate, to appoint a trustee or trustees, and successors thereto if necessary, whose duty it shall be to receive, hold and invest the money awarded and paid for said lands or real estate, and to pay the income of the same and finally to dispose of and distribute the principal thereof in accordance with the several rights, interests and shares of the respective owners of or persons in interest in said lands; *provided*, that in case the lands so taken or any part thereof shall be in the possession of a tenant or tenants under a verbal or written lease the commissioners shall ascertain and report the damages of such tenant or tenants for the taking of said lands and the court may order the sum or sums allowed, be paid out of the funds and the balance held as hereinabove provided.

Proceedings for condemnation of all estates in lands in cities which are limited over.

Upon payment, city to take possession.

Circuit court may appoint trustees.

Proviso.

46. SEC. 2. That such trustee or trustees shall give such bonds or security as the said court may require, and shall account annually, or oftener if required, to the said court, and shall be allowed their lawful and proper disbursements out of the said fund or its income, and for their services as trustees such compensation as the said court shall deem adequate and just.

Trustees to give bond.

Supplement.

Approved March 17, 1893.

P. L. 1893, p. 400.

47. SEC. 1. That whenever the land which any city or any of the boards or departments thereof require or desire to acquire for public use, has already been dedicated or used by the city for other public purposes, whether such dedication has been made by grant, devise or otherwise, such land may be acquired under the provisions of the act to which this is a supplement and the supplements thereto, and such former use diverted to and the said lands acquired and used by such city or board or departments as required, and any person who may have an interest, in any manner, in said lands or any part thereof, in law or equity, shall be notified and the commissioners shall ascertain and report the damages of such person by reason of the diversion of such use of said lands, and the amounts so allowed shall be paid, or paid into court in the same manner as provided in said act and supplements, and upon such payment, tender of payment or payment into the court of the amount as aforesaid, the city may take possession and use such lands as required and desired, freed and discharged from all former uses, trusts, interests and estates of every kind and of every person whatever, and in case the commissioners are unable to ascertain with certainty all who are, in any manner, interested in said lands and so report, then said commissioners, or a majority of them, may

Proceedings for condemnation of lands for public use in cities which have been dedicated or used for other public purposes.

ascertain and report the total value, in gross, of all the damages occasioned by such proposed diversion of the use of said lands of such person as may be interested therein, and the city may pay to the clerk of the circuit court of such county such gross sum, and thereupon may enter into and take possession of said lands and use and occupy them as desired, freed and discharged from all trusts, estates and interests of every person whatsoever, and said sum, so paid into court, shall be paid out, on order of said court, to such persons as are entitled thereto or placed in trust, as provided in said act and supplements.

Duty of commis-
sioners.

48. SEC. 2. That the commissioners appointed under the said act shall estimate and assess the damages that any person or corporation may sustain by reason of the diversion of such land from its dedicated use or present use to the use desired by such city or its boards or departments, and shall in their report make a return of what in their judgment or in the judgment of the majority of them is a fair and just award for damages suffered in any manner whatsoever by such person or corporation by reason of the proposed different use of said land from that dedicated or used; and that the city shall pay the amounts so appraised and allowed for damages, and any such person or corporation or the city if aggrieved by said report may appeal from the said appraisement and award in respect to her, him or it in the manner and within the time in the said act to which this is a supplement provided, and the jury shall assess his, her or its damages in the premises, and all the provisions in relation to such appeal in said act provided not inconsistent herewith shall apply.

Appeal.

Proceedings
where lands con-
demned have been
conveyed for
private special
use, &c.

49. SEC. 3. That in case the land, or any part thereof, to be acquired for public use has been conveyed for a private special use or purpose to any person or corporation, or is so used, and the grantor or his heirs or other persons have, or claim to have, some interest in law or equity therein, and will be, or claim that they will be, damaged if said lands are devoted to or used for other purposes, the commissioners may ascertain and report the total value in gross of all the interests, estates and shares in said lands or real estate, whether in possession, remainder, reversion or expectancy, and the total damages for the taking of the same, or may, if all the parties in interest can be ascertained, report the share of each such person and the award of damages to each, the aggregate amount of which shall be the gross sum, and such award and appraisement otherwise lawfully made shall bind all persons and corporations in any manner interested in said lands; and upon payment to the parties, if all can be ascertained and all are satisfied, or to the clerk of the circuit court of such county, of such gross sum, the city may enter upon and take possession of such lands freed and discharged from all trusts, estates and interests, and of every person whatsoever; and in all such cases the circuit court of such county may appoint a trustee, or pay and dispose of such money to the persons entitled thereto, as in said act and the supplements thereto provided; and an appeal from such report and award may be taken in the manner and within the time as in the said act to which this is a supplement provided, and all the provisions in relation to such appeal not inconsistent herewith shall apply.

When city may
enter and take
possession.

Appeal, how
taken.

Repealer.

50. SEC. 4. That all acts and parts of acts, so far as they are inconsistent herewith, be and the same are hereby repealed and that this act shall take effect immediately.

An act concerning the taking of property for public use.

P. L. 1898, p. 161.

Approved March 9, 1898.

All reports of
commissioners to
be filed.

51. SEC. 1. That all reports of commissioners hereafter appointed by any court or by any justice of the supreme court to appraise the damages for the taking of lands or other property for public use shall be made or filed on or before a day to be fixed in the order of appointment, unless the court or justice shall by order extend the time, in which case the report shall be made on or before the day limited by said court or justice, and every appeal from such report shall be taken within five days after the day thus fixed.

52. SEC. 2. That whenever an appeal shall be filed from an award of damages by commissioners heretofore or hereafter appointed in any proceeding for the taking of property for public use, notice in writing of such appeal shall be given by the party appealing to the other party within ten days after the filing of the petition of appeal, by service of such notice upon each person interested personally or by leaving at his residence if he resides in the state, or by service upon his attorney if any, who shall have appeared for him before the commissioners or any other attorney authorized to appear for him, and in case of a corporation, service may be made on such attorney or on any officer or agent upon whom a summons in an action at law against the company may be lawfully served; where it shall appear by affidavit that any person or corporation being a party to the proceedings is a non-resident of the state, or cannot be found therein to be served, in such case notice shall be given in such manner as a judge of the court to which the appeal is taken may direct; the said notice of appeal shall set forth that an appeal has been taken from the award of the commissioners, and shall specify the time and place when and where the appellant will apply to the court to which such appeal is taken or any judge thereof to frame the issue and to fix a day for the striking of the jury, and a day for the trial of the appeal, which time named for said application shall be not less than five nor more than ten days from the date of service of the notice, but the court or judge may by order change the time or place on the application of either party and direct what notice of such change shall be given to the other party.

General provisions concerning proceedings on appeal.

53. SEC. 3. That after an appeal to any court from the award of commissioners appointed to assess the damages for the taking of lands or other property for public use by condemnation shall have been filed, and notice thereof shall have been given as above provided, the court to which such appeal is taken or any judge thereof on application of either party shall fix a day for the trial of the appeal either during the term or vacation when such appeal shall be filed or during the following term or vacation, which day so fixed shall be not less than twenty nor more than forty days from the date of the order, and the court or judge shall also at the same time make an order framing the issue between the parties and directing a jury to be struck and a view of the premises and property to be had, and fixing a day and place for the striking of the jury for the trial of the appeal, which day shall be at least ten days before the day fixed for the trial of the appeal, and the filing of the order shall be notice to all parties of the day and place fixed thereby for the striking of the jury and of the trial, and the jury having been struck and the jurors summoned as required by law the cause shall be tried upon the day and at the place fixed unless for good cause shown the court shall adjourn the trial to another day which the court shall fix, in which case the court shall, in its discretion, either direct the same jurors to attend or order another jury to be struck and summoned in like manner, and all parties shall take notice of the day and place fixed for the adjourned trial.

Court shall fix day for trial of appeal.

Trial by struck jury.

Trial may be adjourned.

54. SEC. 4. That all acts or provisions inconsistent with the provisions of this act shall be and are hereby repealed, and the practice prescribed by this act shall supersede the existing practice in all condemnation cases before commissioners or on appeal, so far as the provisions of this act shall extend, and the court shall make such further orders and take such further proceedings as may be requisite according to the practice of the court and the several statutes regulating appeals and the trials thereof in condemnation cases and may permit such amendments of the proceedings and plans as may be reasonable and proper for the fair trial of the case or for the promotion of the public purposes for which the power to condemn was conferred.

This act to supersede all other acts concerning condemnation cases.

An act concerning the condemnation of lands.

Approved May 16, 1894.

P. L. 1894, p. 364.

55. SEC. 1. That in all cases where lands are sought to be taken by eminent domain for the construction of a railroad, or for any other public use, and said lands are in the possession of a person or persons who claim

Proceedings where ownership of lands condemned is disputed or unknown.

to own the same, but whose ownership thereof is denied by others who are out of possession of said lands, but who claim to hold the legal title thereto, it shall be lawful for the corporation seeking to acquire said lands for public use as aforesaid to make the person or persons in possession of said lands, claiming to own the same, and also the persons out of possession thereof, who claim to hold the legal title thereto, parties to the proceedings taken to condemn said lands; and the money awarded to the owner or owners of said lands shall, by the order of the chancellor, made for that purpose, be paid into the court of chancery, and shall there be distributed according to law; and notice given, in such manner as the chancellor shall by order direct to the person or persons in possession of said lands, claiming to own the same, and to the persons out of possession thereof who claim to hold the legal title thereto, that such money has been paid into said court, shall have the same effect as if the money so awarded had been actually tendered to the true owner or owners of said lands; and in case the persons out of possession of said lands who claim to hold the legal title thereto, or any of them, are made parties to said condemnation proceedings as the unknown heirs, or the unknown devisees, of a deceased former owner of said lands, as is provided in the second section of this act, then notice given to them as aforesaid, directed to them as the "unknown heirs" or the "unknown devisees" of such former owner, shall have the same force and effect as if given to each of said persons by name.

Further proceed-
ings prescribed.

56. SEC. 2. That in case the persons out of possession of such lands, who claim to hold the legal title thereto, base their claim upon the fact that they are the heirs or devisees of a deceased former owner of said lands, and it shall be made to appear to the satisfaction of the justice of the supreme court before whom such condemnation proceedings are begun, by affidavit or otherwise, that the names and residences of some of such heirs or devisees cannot be ascertained by due inquiry, then the said justice of the supreme court shall by order direct that such condemnation proceedings shall be carried on against such unknown heirs or devisees as the "unknown heirs" or the "unknown devisees" of such deceased former owner of said lands, and shall prescribe by order in what manner the several notices required by the law authorizing such condemnation proceedings shall be served upon or published against such unknown heirs or devisees; and the service or publication of such several notices in the manner so prescribed shall have the same force and effect as if the same had been personally served upon each of said unknown heirs or devisees.

**An act to empower cities to acquire land and other property for
public use by condemnation.**

P. L. 1895, p. 769.

Approved April 1, 1895.

Proceedings
where city authori-
ties cannot agree
with owners for
purchase of land,
water, water
rights, &c., for the
purpose of sup-
plying the city
with water.

57. SEC. 1. That when the proper board or other municipal authority of any city of this state shall deem it proper to acquire land, water, water rights or other property within or without said city for the purpose of supplying said city with water, and the said city or its agents cannot agree with the owner or owners of such land, water, water rights or other property as to the price and terms of the purchase thereof, or when by the legal incapacity or absence of such owner or owners, no agreement can be made for the purchase thereof, a description in writing of the land, water, water rights or other property so desired, with the name or names of the occupants, if any there be, and of the owner or owners and other parties interested, if known, and their residences, if the same can be ascertained by the said city or its agents, shall be presented to one of the justices of the supreme court of this state, who thereupon shall cause such city to give notice thereof to the persons interested, if known and in this state, or if unknown or cannot be found, or if out of this state, to make publication thereof as he shall direct for any period not less than ten days, and to assign a particular time and place for the appointment of commissioners as hereinafter provided; at which time, upon satisfactory evidence to him of the service or publication of such notice he shall appoint under his hand three impartial and

Appointment of
commissioners.

judicious freeholders, residents in the county in which such lands, water, water rights or other property are situated, to examine and appraise the said lands, water, water rights or other property and assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, not less than ten days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer the same, faithfully and impartially to examine the matter in question, and to make a true report and appraisement as aforesaid, in writing, according to the best of their skill and understanding) to meet at the time and place appointed and to proceed to view and examine the said lands, water, water rights and other property, and to make a just and equitable appraisement and assessment as aforesaid, to be paid by the said city; which report shall be made under the hands of the said commissioners, or any two of them, and within fifteen days thereafter, together with the description of the lands, water, water rights or other property and the appointment and oaths or affirmations aforesaid shall be filed in the clerk's office of the county within which such lands, water, water rights or other property are situated, to remain of record therein; and thereupon and on payment or tender of payment of the amount so awarded to the party or parties entitled thereto, the said city is hereby empowered to enter upon and take possession of and appropriate to its own use the said lands, water, water rights and other property, and all title thereto for the purpose for which the same is taken shall, upon such payment or tender, pass from the said owners and parties interested to the said city; and in case of a dispute between any owners or other parties interested as to their respective rights or shares in and to the sum so assessed or ascertained under this act, then the said city is hereby authorized to pay the sum assessed upon said lands, water, water rights and other property to the clerk of the county in which said lands, water, water rights or other property are situated, to be paid out and distributed between or among the parties entitled to the same by the order of the circuit court of said county upon the application of any one or more of them, on due notice to the others; and the said justice shall, upon the application of either party, or on reasonable notice to the others, tax and allow such costs, fees and expenses to the commissioners and other persons performing any legal duty in the premises as he shall think equitable and right, which shall be paid by the said city; and if any or all of the said owners or other parties interested shall be absent from this state, or under any legal incapacity that disqualifies them from receiving legal payment of the money awarded him, her, it or them, then it shall be the duty of the city to pay the amount awarded to such person or persons to the clerk of the county in which said report is above directed to be filed; and it shall be the duty of the said clerk to receive the same, to be paid to the parties entitled thereto by the order of the judge of the circuit court of the said county upon his, her or their application for the same; and every and all such payments to the clerk shall, as to the said city, be equivalent to payment to the parties entitled thereto; and it shall operate to transfer the title and ownership of said lands, water, water rights and other property to said city as if made directly to the said parties; *provided, always*, that should the city or the owner or owners feel aggrieved by the report and award of the said commissioners, he, she, it or they may appeal from the said appraisement and award in respect to his, her, its or their interests therein to the next circuit court in the said county; *provided, however*, that no lands, water, water rights or other property purchased, condemned or held by any municipality in this state for the purposes of a water-supply, and used or intended to be used for such purpose shall be condemned or taken under the authority of this act.

58. SEC. 2. That every appeal from the appraisement and award of the commissioners shall be made in the form of a petition to the said court and notice thereof shall be given to the other parties within fifteen days after the filing of the commissioners' report and award; which pro-

Commissioners shall qualify.

And make report.
Report shall be filed.

In disputed cases, sums assessed may be paid to county clerk for distribution.

Fees, costs and expenses shall be allowed.

Proviso.

Appeal.

Proviso.

Proceedings on appeal.

Values and damages shall be assessed by the jury.

Court shall enter judgment for amount.

Repealer.

ceedings shall vest in the circuit court full authority, power and jurisdiction to hear and determine the question of the value of the land, water, water rights and other property and the damages sustained, if any, and thereupon the said court shall direct a proper issue to be framed between the parties for the trial of the said question, and order a jury of twelve men to be struck for the trial of the same and a view of the premises to be had by them; and the said issue shall be tried upon the like notice and in the like manner as other issues of fact in said court are tried; and it shall be the duty of the said jury to assess the value of the lands, water, water rights and other property in question, and the damages sustained, if any; and the party or parties appealing shall recover costs, if he, she, it or they shall succeed at the trial on appeal in changing the valuation or assessment thereof, and the damages in his, her, its or their favor and shall pay costs if he, she, it or they shall fail so to do; but no appeal shall prevent the city from taking the lands, water, water rights or other property upon filing the commissioners' report and award and payment or tender to the parties of the amount thereof, as hereinbefore provided; and a party accepting from the city the amount of the award of the commissioners shall not thereby waive the right of appeal; and upon the verdict of the jury fixing the value in damages, the court shall enter judgment for the amount thereof, with or without interest and costs, according to the provisions of this act and the principles of law applicable to the trial of similar issues in other cases, and the judgment so entered shall be the sum which the owner or owners or other parties interested are entitled to have from the city, for the said lands, water, water rights and other property and damages, and may be enforced in manner and form similar to other cases in which judgment is pronounced in said court; and when the commissioners' award is paid by the city into court, as hereinbefore provided, and an appeal is taken and judgment afterwards pronounced on the verdict, it shall be the duty of the court to order the money so paid into court applied to the payment of the said judgment and the surplus, if any, to be paid the city.

59. SEC. 3. That all acts and parts of acts, general or special, inconsistent with this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Error.

I. WHEN AND TO WHAT COURTS ERROR LIES.

1. No writ until final judgment.
2. Must be brought within three years.
3. Errors in supreme court.
4. By whom writ sued out.
5. Errors in circuit court.
6. Errors in common pleas.

II. HOW WRIT ISSUED AND RETURNED; ASSIGNMENT OF ERRORS, &c.

7. Writ, when to be returned.
8. Writs from court of errors, how tested.
9. When returnable.
10. Errors to be assigned in thirty days.
11. Joinder in thirty days.
12. Plaintiff to notice case for argument.

III. WRIT WHEN A SUPERSEDEAS.

13. How execution stayed in error, on judgment in debt.
14. Recognizance must be acknowledged.
15. Recognizance in dower and ejectment.
16. How recognizance taken.
17. Before whom recognizance in section 15 may be taken.
18. When recognizance to be filed.
19. Additional bail in error may be required.
20. Writ issued in bad faith will not stay. Bail not required in certain cases.

IV. SUPPLEMENTS.

21. Writs of error sued forth by attorney-general when returnable.
22. Argument at special term of court of errors.
23. Attorney-general may employ assistant counsel.
24. Writ of error not allowed in contested election cases.
25. Repealer.