

of a quo warranto, wherein such relator or relators shall theretofore have had judgment of ouster in said court, shall be entitled at once upon the entry thereof to enter, possess and enjoy the office in respect to which the said proceedings, whereon the said judgment may be founded, were or shall be taken; and that the said court or any judge thereof may, upon the entry of such judgment, thereupon make an order on any defendant in such proceedings requiring him immediately to surrender any such office or franchise, with all the books, papers and insignia thereof, to the relator or relators; and no writ of error or other proceedings shall in anywise affect the right of such relator or relators to immediate entry into such office or franchise; *provided*, that such relator or relators shall, upon his or their entry into such office or franchise, give bond to the defendant or defendants in such sum and with such surety or sureties as the supreme court or any judge thereof shall approve, conditioned for the repayment to the defendant of the emoluments of the office or franchise during such relator's incumbency therein to which such defendants may be adjudged to be entitled, as well as the costs of the defendant, in the event of the subsequent reversal of the judgment of ouster in the said proceedings.

Court may make order for surrender of office, &c.

Proviso.

An act in relation to the writ of quo warranto.

Approved February 18, 1895.

P. L. 1895, p. 82.

12. SEC. 1. That in all actions of quo warranto, the supreme court may, if the writ, return and pleadings are properly framed for the purpose, determine by its judgment, not only the title of the respondent to the office or franchise in question, but also the title of the relator or relators to the same office or franchise, and shall have power, by appropriate process or orders, to enforce its said judgment.

Supreme court may determine title of respondent or relator to office.

Railroads and Canals.

I. GENERAL RAILROAD LAW.

1. Proceedings for the formation of a company.
2. Amended by sections 42 and 46.
3. Certified copy to be evidence of incorporation.
4. Directors may receive subscriptions until whole capital stock is subscribed.
5. Amended by section 55.
6. Directors to appoint president and other officers.
7. Proceedings in case of forfeiture of stock.
8. Stock to be deemed personal estate.
9. Capital stock may be increased.
10. Proceedings in case of indebtedness by contractor for labor performed in construction of road.
11. Amended by section 83.
12. Proceedings when company and owner of lands cannot agree.
13. Appeals to be made in writing and filed with clerk of circuit court.
14. Amended by sections 59, 68 and 84.
15. May transport freight and passengers.
16. Dividends.
17. Amended by section 55.
18. Penalty for injury to property.
19. Statement of cost of road shall be filed with comptroller.
20. Amended by section 43.
21. Proceedings when additional lands are taken.
22. Conductors, brakemen, &c., to wear badges.
23. May connect with other roads.
24. Proceedings when agreement cannot be made for carrying United States mails.
25. In case of refusal of passenger to pay fare.
26. Notice to be made of the time of starting and running cars.
27. Checks for baggage.
28. Lumber or freight cars not to be placed in the rear of passenger cars.
29. Bell on locomotive to be rung on street and road crossings.
30. Signboards to be erected.
31. Penalty for intoxication while in charge of engine, &c.
32. Fences to be kept up and maintained.
33. Company not liable for injury to passengers riding on platform.
34. Time for commencement and completion of road.
35. Penalty for violation of certain provisions of this act.
36. Amended by sections 57 and 61.
37. Who may ride free.
38. Franchise heretofore or hereafter granted not to be exclusive.
39. Legislature may alter, amend or repeal act.
40. Railroad companies may establish and operate ferries.
41. Route of railroad relocated.
42. Amended by section 46.
43. Corporation may borrow money to build and repair road, &c., and issue bonds therefor.
44. Repealer.
45. Railroad company in possession of bridge may apply to riparian commissioners for adjudication respecting bridge structure when under indictment for obstructing navigation.
46. Articles of association not to be filed until \$2,000 of stock for every mile is subscribed and paid to state treasurer.
47. Repealer.
48. Number of persons requisite to form a company for underground railway.
49. Rates of freight to be charged.
50. Right of way not to include permanent use of surface of the earth.
51. Right to maintain and operate railroad, how acquired.
52. Railroad companies may sell tickets at less than limited rates.
53. Repealer.
54. Writs of *certiorari* to remove proceedings by commissioners appointed to assess damages, &c. Not to operate as a stay, &c.

55. Companies may purchase real estate for depots, warehouses, workshops, &c. May lease road or consolidate and merge its stock, &c., with any other company.
56. Number and election of directors. Vacancies, how filled.
57. Companies may build viaducts over rivers, streams, &c.
58. Directors may reduce capital stock upon consent of two-thirds of stockholders.
59. Amended by sections 68 and 84.
60. Upon abandonment of part of route, state treasurer to refund moneys deposited with him.
61. Company may build viaducts over rivers and streams.
62. Corporations organized in 1883 may change previous location and terminl.
63. May increase or decrease capital stock.
64. Time for construction of road extended.
65. Company may construct railroad over certain portion of street or highway.
66. Repealer.
67. When restrained by court from discharge of duty, the time of such restraint not to be computed as part of time limited for discharge of duty.
68. Amended by section 84.
69. Railroad corporations may purchase or rent boats, wharves, &c.
70. Act to apply to what companies.
71. Company for constructing and operating tramways may be formed. How incorporated. Powers.
72. Certified copy of articles of association evidence of incorporation.
73. Directors and officers.
74. What acts to apply to such corporations.
75. State treasurer to refund moneys deposited with him in certain cases.
76. Appointment of commissioners to condemn lands lying in two counties.
77. Report of commissioners.
78. Repealer.
79. Railroad corporations may erect piers in highways for support of bridges.
80. Such bridges not to impede travel.
81. Railroad companies may acquire lands for terminal purposes.
82. Railroad corporations may merge and consolidate.
83. Width of road prescribed. Company may enter upon lands, &c., for purpose of surveying, &c. Survey to be filed.
84. Railroads to keep in repair bridge over, under and across roads and streets.
85. Repealer.
86. Railroad corporations may use motive power best adapted to their railways, &c.
87. Repealer.
88. Time extended for completion of railroad.
89. Railroads may cross each other at a certain angle.
90. Priority of right over location at crossing.
91. Repealer.

II. GENERAL CANAL LAW.

92. Number of persons that may form company.
93. Certificate to be filed.
94. Certified copy to be presumptive evidence of incorporation.
95. Subscriptions to capital stock.
96. Election of directors.
97. Officers.
98. Subscriptions to capital stock may be paid in installments.
99. Stock transferable.
100. Capital stock may be increased.
101. May enter upon lands, &c., for exploring, surveying, &c.
102. Proceedings when company cannot agree with owners.
103. Proceedings in case owners are dissatisfied.
104. Bridges to be constructed and kept in repair.
105. May borrow money and issue bonds.
106. May make contracts and agreements with other corporations.
107. May purchase and construct boats, &c.
108. Dividends.
109. Statement of costs and expenses to be made.
110. Roads may cross over or under canal.
111. Canal not authorized in limits of city.

III. RAILROADS AND CANALS.

I. PROVISIONS FOR REGULATING THE USE OF RAILROADS, TO SECURE THE SAFETY AND COMFORT OF PASSENGERS, PROTECT THE PUBLIC AND PROPERTY.

112. Employes who willfully break orders punishable.
113. Repealed by section 206.
114. Oil cars not to pass passenger trains in tunnels or on bridges.
115. Parlor and sleeping cars authorized and regulated.
116. Unlicensed venders may be ejected from the trains.
117. Bell or whistle required at crossings.
118. Signboard required at crossings.
119. Penalty for neglect.
120. Penalty for injuring signs.
121. Companies may fence in their stations.
122. Passage of railroads through cities.
123. Penal actions regulated.
124. Communication of fire from engines prohibited.
125. Company responsible may insure against loss.
126. Locomotives to be supplied with screens.
127. Proof in action for recovery of damages.
128. Penalty for refusal to comply with provisions of act.
129. Penalty on passengers practicing frauds on the company.
130. When discovered may be arrested.
131. Carriage of explosive articles no duty; how regulated.
132. Railroads may employ policemen.
133. Governor to appoint.
134. Powers of police.
135. Shield to be worn.
136. Compensation.
137. Vacation of commission.

2. FREIGHTS, FARES, TOLLS AND DUTIES THEREON.

138. Responsibility as common carriers may be limited by notice.
139. Freight to be delivered at terminus or junction if required.
140. Rates of freight for carrying bullion.
141. Rates on small packages.
142. Small packages defined.
143. But transit duties to be paid.
144. In charges for transportation, eighty cubic feet to be a ton.
145. Charge for passengers.
146. Freight charge for short distance.
147. Charge for heavy freight.
148. Freight on goods transported between way stations.
149. Penalty for taking unlawful tolls.
150. Pending suits not to be affected.
151. Charges to express companies not limited.
152. Express matter may be carried at double rates.
153. Proviso as to other goods than as mentioned.

3. UNCLAIMED FREIGHT.

154. Perishable goods may be sold when they cannot be delivered, and how.
155. Regulation as to fees and proceeds of sale.
156. Goods remaining unclaimed six months may be sold.
157. Distribution of proceeds of sale.
158. No responsibility for delivery except at depot.
159. Express companies may sell unclaimed goods.
160. Regulations of such sales.
161. Distribution of proceeds.

4. ANNUAL REPORTS.

162. Annual reports to be made by railroads.
163. Canal companies to make annual reports.
164. Reports transmitted and filed.
165. Penalty for failure to report and disposition of fines.
166. Fines recovered to go to school fund.

5. PROVISIONS RESPECTING RAILROADS SOLD UNDER MORTGAGE.

167. Sale of roads or canals under mortgage to vest franchises and create new corporation.
168. Whenever a railroad, canal or turnpike company becomes insolvent, receiver may be appointed.

6. CANAL COMPANIES.

169. Masters on Delaware and Raritan canal to exhibit manifest; form thereof.
170. Penalty for false manifest.

- 171. Collectors of tolls may administer oaths.
- 172. Penalty for interfering with Morris canal.
- 173. Amended by section 200.

7. MISCELLANEOUS PROVISIONS.

- 174. Foreign railroad companies with franchises in this state may hold meetings here and transfer stock.
- 175. May have transfer office in state.
- 176. Railroads may own lands at stations for railroad purposes and depots.
- 177. When judges to prescribe mode of service of notice for taking lands.
- 178. When persons held to contribute to injury and not to recover damages.
- 179. Authorized to hold necessary land in other states.

8. SUPPLEMENTS.

- 180. Any railroad company may abandon transportation by water in certain cases without forfeiture of franchise.
- 181. Intent and meaning of section 31 declared.
- 182. When foreign corporations to be deemed corporations of this state for purposes of suit.
- 183. Proceedings in case of suit for foreclosure, &c.
- 184. Proceedings in case of sale.
- 185. Proceedings for formation of new corporations.
- 186. Filing of petition in court of chancery.
- 187. Corporation to have and possess all powers belonging to corporations organized under laws of this state.
- 188. If receiver appointed, chancellor may order sale of property and franchises.
- 189. When sold, chancellor may decree conveyance to new corporation.
- 190. New corporation may have and enjoy property and franchises.
- 191. Rules, regulations, &c., of foreign corporations.
- 192. Act to apply to suits pending, &c.
- 193. Purchasers of turnpike or steamboat company under decree of circuit court to be body politic, &c.
- 194. Stockholders of railway and canal companies may agree in writing that holders of bonds may vote at meetings, &c.
- 195. Agreement to be expressed in certificate of organization or supplemental certificate.
- 196. Such agreements heretofore made valid.
- 197. Mortgage of franchises and chattels not to be filed if lodged for registry.
- 198. Award of commissioners for taking and condemning lands to be recorded.
- 199. President of corporation to be director and entitled to vote.
- 200. Governor may commission policemen for steamboat companies, &c.
- 201. Railroad company may construct branch railroads to connect with each other.
- 202. Railroad companies may perfect title to lands authorized to be acquired.
- 203. Actions for injuries to persons to be commenced within two years.
- 204. Actions for injury to property by fire to be commenced within one year.
- 205. Amended by section 207.
- 206. Repealer.
- 207. Unlawful to run passenger train without rope or bell-cord.
- 208. Repealer.
- 209. When appeal is taken by company from award of commissioners in condemnation, bond may be filed and land entered upon.

IV. MISCELLANEOUS ACTS.

- 210. Transit duty on lime, wood, &c.
- 211. State treasurer may submit to supreme court questions as to arrearages for taxes and transit duties.
- 212. Railroad and canal companies may hold real estate in adjoining states.
- 213. Embodied in section 178.
- 214. No railroad to be constructed on any Delaware river bridge.
- 215. Amended by sections 217 and 219.
- 216. Receiver to apply personal effects and moneys toward payment of wages.
- 217. Amended by section 219.
- 218. When operation of part of a railroad may be suspended.
- 219. When receiver may be appointed.

- 220. Amended by section 221.
- 221. Municipal authorities may contract with railroad companies respecting street grades, &c.
- 222. Railroad companies may charge ten cents extra when fare is paid on train.
- 223. Purchasers of railroad, &c., sold under decree of court, constituted a body politic.
- 224. New corporation, how organized.
- 225. Amount of capital stock, how determined.
- 226. May issue preferred stock and bonds.
- 227. Certificate of organization to be made and filed.
- 228. Organization of new corporation, when deemed effected.
- 229. Certificate of organization, how amended and corrected.
- 230. Error in notice of meeting for organization not to impair validity, &c.
- 231. Purchasers to meet within thirty days after purchase. Organization.
- 232. Adoption of corporate name and seal and determination of amount of stock.
- 233. Purchasers constituted a body politic. Rights and powers.
- 234. Provisions concerning organization.
- 235. May issue preferred stock and bonds.
- 236. Certificate to be filed with secretary of state.
- 237. Proceedings by purchasers of railroad sold under decree for re-adjustment of interests of creditors and stockholders, &c.
- 238. Charter and franchises to inure to benefit of purchasers.
- 239. Mode of acquiring title to lands adjoining railroad.
- 240. Acquiring title to lands to straighten railroad.
- 241. Corporation having established route may transfer same to another company.
- 242. May acquire lands necessary to change location of railroad to avoid quicksands, &c.
- 243. May sell section of road abandoned.
- 244. Railroad companies operating road wholly within any county may acquire lands for terminl, &c.
- 245. Penalty for abandoning engine in case of strikes, &c.
- 246. Penalty for aiding strikes.
- 247. Penalty for molesting or obstructing any locomotive engineer.
- 248. Penalty for obstructing any track, &c.
- 249. Railroad corporations may consolidate, merge, &c.
- 250. Conditions and restrictions concerning consolidation and merger.
- 251. When merger shall take effect.
- 252. When capital stock may be increased.
- 253. Issue of bonds authorized.
- 254. Issue of preferred stock or mortgage bonds in exchange for capital stock.
- 255. Consolidated corporation may issue bonds. Dividends.
- 256. Consolidated railroad may increase capital stock.
- 257. Repealer.
- 258. Certain mortgages validated.
- 259. When such mortgages to be a lien.
- 260. Number of directors to be not less than seven nor more than seventeen.
- 261. When railroad, &c., lying partly in this state and partly in another is purchased under mortgage sales in the different states, the new company to be one company.
- 262. Companies owning or leasing lands on opposite sides of street may cross the same.
- 263. Repealer.
- 264. Railroad companies may change their corporate name.
- 265. Canal companies may extend time for completion of their works.
- 266. Amended by section 269.
- 267. Directors of railroad companies which have dissolved to act as trustees to sell property.
- 268. Repealer.
- 269. Majority of stockholders may determine to dissolve corporation. Money deposited with state treasurer to be refunded.
- 270. Rates for passenger fares limited.
- 271. Repealer.
- 272. Directors may select stockholders to act as vice presidents.
- 273. Repealer.
- 274. Railroad companies may operate telegraph lines.
- 275. Offices to be established for transmission of messages.
- 276. Rates that may be charged.
- 277. Railroad companies may make arrangements with other railroad or telegraph companies, &c.
- 278. Repealer.

279. Certain railroad companies may extend road to point of connection with any other railroad.
280. Amended by section 289.
281. Conditions of consolidation and merger of railroad companies.
282. Consolidated companies to be one corporation, &c.
283. Rights, privileges and franchises of new corporation.
284. New company may establish offices.
285. How suits may be brought.
286. Taxation of property of consolidated company.
287. Provisions concerning stockholder who refuses to convert stock into that of consolidated company.
288. Consolidated company may issue bonds, &c.
289. Railroad companies may merge and consolidate when they form continuous lines.
290. Consolidated company may borrow money and issue bonds for equipment of road, &c.
291. When act to take effect.
292. Repealer.
293. Passenger cars not to have bars, &c., across windows.
294. When surveys of railroad companies to be recorded by secretary of state.
295. Amended by section 297.
296. Act not to apply to prior contracts.
297. Conditional sale, lease or loan of railroad or street railway equipment and rolling stock, not valid against subsequent judgment creditors and purchasers except on certain conditions.
298. Provisions of conditional sales act not to apply.
299. Act not retroactive.
300. Time for completing certain railroads extended.
301. Repealer.
302. Railroads using air or electrical apparatus for signals on trains not liable for not using bell-cord.
303. Repealer.
304. When original road may be retained after improved or straightened line has been substituted.
305. Lawful to run trains of parlor, sleeping or hotel cars. Extra fares.
306. Repealer.
307. Certificate of authority to be given to agent to sell tickets.
308. Unlawful to sell without such authority so evidenced.
309. Penalty.
310. Agent to exhibit authority to sell.
311. Redemption of tickets.
312. Consolidation with or lease to foreign corporation without legislative consent not lawful.
313. When company desires to lease road or effect consolidation, draft of lease, &c., to be submitted to legislature.
314. Repealer.
315. Sale under mortgage of consolidated railroad lying partly in this state, effect thereof.
316. Rights and franchises of purchasing corporation.
317. Copies of charter, &c., of purchasing corporation to be filed with secretary of state.
318. Rights of exemption from taxation, &c., to be waived.
319. Railroads authorized to lease. May borrow money and issue bonds, &c.
320. Repealer.
321. Railroad companies whose mortgage indebtedness is fixed by special law may borrow money and issue bonds secured by mortgage in excess of such limited sum.
322. Repealer.
323. Canal company may be released from obligation to maintain works for navigation purposes upon filing certificate with secretary of state.
324. Existing contracts not affected or impaired.
325. Dissatisfied stockholders to receive full market value of stock.
326. Act not to apply till agreement waiving rights of exemption from taxation shall be filed.
327. Railroad sold by order of court may be purchased by company operating railroad in connection therewith.
328. Railroad and canal corporations may surrender contract of exemption from taxation and extinguish right of state to take or purchase its property.
329. Awards to be made by arbitrators as to taxes in arrears a condition to effectuating extinguishment of rights of state.
330. Railroad companies may in certain cases collect charges from consignors for detention of cars. Lien on merchandise therefor.
331. Provisions concerning the establishment of grade of street and manner in which such street shall cross a railroad.
332. Expense of making crossings, how paid.
333. Oath of commissioners appointed in such matter.
334. Repealer.
335. Awards of commissioners for taking lands by eminent domain to be recorded.
336. Record received in evidence.
337. Railroad corporation may purchase any other railroad sold by decree of court.
338. Railroad corporations may construct, &c., branch lines.
339. Branch lines heretofore constructed legalized.
340. Map of line of railroads merged and consolidated to be filed with secretary of state.
341. Rights and privileges of new company.
342. Repealer.
343. Provisions concerning manner of crossing steam railroads by steam or electric railroads hereafter constructed outside of cities.
344. New roads shall be subject to existing laws.
345. Governing body of city, town, &c., may by ordinance require protection at railroad crossings.
346. Clerk of municipality to notify railroad companies of passage of ordinance.
347. Penalties may be imposed.
348. Proceedings, how reviewed.
349. Repealer.
350. Penalty for taking unlawful toll by incorporated companies.
351. Pending suits not affected.
352. Repealer.
353. Power to employ police force.

I. General railroad law.

An act to authorize the formation of railroad corporations and regulate the same.

P. L. 1873, p. 88.

Proceedings for the formation of a company.

P. L. 1877, p. 155.

Approved April 2, 1873.

1. That any number of persons not less than seven, in case where the proposed road is less than ten miles in length, and not less than thirteen in case where the proposed road is ten miles or more in length, may form a company for the purpose of constructing, maintaining and operating a railroad for the public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use; and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the road is to be constructed or maintained and operated, the length of such road as near as may be, and the name of each county in this state through or into which it is

made, or intended to be made; the amount of the capital stock of the company, which shall not be less than ten thousand dollars for every mile of road constructed or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of seven directors of the company, in cases where said road is less than ten miles in length, and the names and places of residence of thirteen directors of the company, in cases where said road is ten miles or more in length, a majority of whom shall be residents of this state, who shall manage its affairs for the first year, and until others are chosen in their places; each subscriber to such articles of association, shall subscribe thereto his place of residence, and the number of shares of stock he agrees to take in said company; on compliance with the provisions of the next section, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the secretary of state to be filed, the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association; every corporation formed under this act, in addition to the general powers set forth in an act entitled "An act concerning corporations," approved February fourteenth, one thousand eight hundred and forty-six, and the several supplements thereto, shall have power:

Capital stock.

Articles of association to be filed in the office of the secretary of state.

I. To cause such examination and surveys for its proposed railroad, to be made as may be necessary to the selection of the most advantageous route, and for such purpose by its officers and servants to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto.

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

III. To purchase, hold and use all such real estate or other property as may be necessary for the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the object of its incorporation.

IV. To lay out its road as hereby provided and to construct the same, and for the purposes of cuttings and embankments to take as much more land as may be necessary for the proper construction and security for the road.

V. To exercise all other powers hereby granted.

2. [Amended by Secs. 42 and 46, *post.*]

3. That a copy of any articles of association filed and recorded in pursuance of this act, or of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of this state, shall be presumptive evidence of the incorporation of such company and of the facts therein stated.

Certified copy to be evidence of incorporation.

4. That when such articles of association and affidavit are filed and recorded in the office of the secretary of state, the directors named in said articles of association may, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

Directors may receive subscriptions until whole capital stock is subscribed.

5. [Amended by Sec. 56, *post.*]

6. That the directors shall appoint one of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws, and shall establish and fix such salaries to them and to the president as to said board of directors shall appear proper.

Directors to appoint president and other officers.

Proceedings in case of forfeiture of stock.

7. That the directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper; if any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon, forfeited for the use of the company; but they shall not declare it so forfeited until they shall have caused a notice, in writing, to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payments at the time and place specified in said notice; and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company; which notice shall be served as aforesaid at least thirty days previous to the day on which such payment is required to be made; *provided*, that if said company shall not declare such stock forfeited then such neglecting stockholder shall be individually liable to said company for the amount unpaid upon the stock so held by him, until the whole amount of the capital stock so held by him shall have been paid to the company. (a)

Proviso.

Stock to be deemed personal estate.

8. That the stock of every company formed under this act shall be deemed personal estate, and be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in.

Capital stock may be increased.

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

Proceedings in case of indebtedness by contractor for labor performed in construction of road.

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

(a) A suit will not lie on a subscription to the stock of a corporation organized under the general railroad law without a previous call made by the directors for the sums so subscribed.

Proof that a notice of a call was duly mailed and addressed to a subscriber makes a *prima facie* case of notice. *Braddock v. Phila., Marlton and Medford R. R. Co.*, 16 Vr. 353.

unless the same is commenced within thirty days after notice is given to the company by such laborer as above provided; *provided*, that the liability of the company under this section shall not exceed its liability to the contractor; *and provided further*, that any payments made to such laborers shall be a full discharge to the company from such contractor for the amount so paid.

Proviso.

11. [Amended by Sec. 83, *post.*]

12. That when any company incorporated under this act or its agents cannot agree with the owner or owners of such required lands for materials, or the use or purchase thereof, or when by the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of such company incorporated under this act in the construction of said road; shall be given in writing, under oath or affirmation of some engineer or proper agent of the company; and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residences, if the same can be ascertained, to one of the justices of the supreme court of this state, who shall cause any company incorporated under this act to give notice thereof to the persons interested, if known and in this state, or, if unknown and out of this state, to make publication thereof as he shall direct, for any term not less than ten days and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time, upon satisfactory evidence to him of the service of publication of such notice aforesaid, he shall appoint under his hand and seal three disinterested, impartial and judicious freeholders, residents in the county in which the land or materials in controversy lie or the owners reside, commissioners to examine and appraise the said land or materials 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, to be expressed therein, not less than ten days; and it shall be the duty of said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question and to make a true report 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 or materials, and to make a just and equitable estimate or appraisal of the value of the same, and an assessment of damages to be paid by the company for such lands or materials and damages aforesaid, which report shall be made in writing under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the land or materials are situate, to remain of record therein and thereupon and on payment or tender of payment of the amount awarded as hereinafter provided, the said company is hereby empowered to enter upon and take possession of the said lands or materials for the purposes aforesaid, and the said report or a copy thereof certified 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 any company incorporated under this act, to have, hold, use, occupy, possess and enjoy the said land or materials, or of the said owner or owners to recover the amount of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be instituted against the company if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall from time to time constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the supreme court shall, upon 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, clerks and other persons performing any of the duties prescribed in this section as he shall think equitable and right, which shall be paid by the company; *provided always*,

Proceedings when company and owner of lands cannot agree.

Appointment of commissioners.

Meeting of commissioners.

Report of, filing.

On payment or tender of amount awarded, company may enter upon lands.

Proviso.

that should any company incorporated under this act, or the owner or owners of any of the land or materials, feel aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the next circuit court in the county wherein the said land or material may be. (a)

Appeals to be made in writing and filed with clerk of circuit court.

Proceedings on appeal.
P. L. 1877, p. 192.

Proviso.

13. That every appeal from the decision of the commissioners appointed under the preceding section 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 of the county wherein the land or materials appraised by the said commissioners shall be, 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 and a view of the premises to be had, and the said issue to be tried at the next term of said court to be holden in the said county 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 said land or materials 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 any company incorporated under this act 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 company shall have offered or the said commissioners shall have awarded, then costs shall be paid by the said applicant or applicants, and either deducted out of said sum found by the said jury or execution awarded therefor as the court shall direct; but such application shall not prevent the company from taking the said land upon filing the report aforesaid; *provided*, that in no case whatever shall said company incorporated under this act enter upon or take possession of any land of any person or persons for the purpose of actually constructing said railroad or of making any erection or improvements whatever or otherwise appropriating said lands to the use of any company incorporated under this act 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 or damages, 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 shall 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 the county wherein the said lands lie, shall be deemed a valid and legal payment; *and further*, that the party or

(a) The general railroad law, in respect to the delegation of the power of eminent domain to corporations organized under it, is constitutional. *National Docks R. R. Co. v. Central R. R. Co.*, 5 *Stew.* 75. Where condemnation proceedings are had under this law, the condemning company cannot tender and pay into court the amount of the award and enter into possession until the owner shall have had reasonable time to take an appeal. Sixteen days, under the circumstances of this case, was held not to be an unreasonable time. *Waite v. Port Reading Railway Co.*, 3 *Dick.* 346. This act does not authorize corporations organized under it to take, by condemnation, more land than a strip one hundred feet wide *inter terminos*. *Central R. R. Co. v. Hudson Terminal Railway Co.*, 17 *Fr.* 289. As to condemnation of right of crossing the road of one railroad company by another railroad company, see *National Docks, &c., Co. v. United Companies*, 24 *Fr.* 217. As to the estate in lands that the statute authorizes to be condemned and taken, see *De Camp v. Hibernia R. R. Co.*, 18 *Fr.* 43. Merely crossing a railroad with another railroad is not a taking or impairment of the franchises of the company whose property is thus burdened. *Lehigh Valley R. R. Co. v. Dooer and Rockaway R. R. Co.*, 14 *Fr.* 529. When parties appear before the judge at the time and place designated for the appointment of commissioners, and are fully heard thereon, the judge, deeming it necessary, may take time for his decision, and an order of appointment subsequently made and signed by him is not thereby invalidated. *Id.* A railroad company may maintain ejectment for lands condemned under the general railroad law. *N. Y., &c., R. R. Co. v. Trimmer*, 24 *Fr.* 1. When lands are condemned, the damages are to be estimated as of the time of the condemnation. *Leeds v. C. & A. R. Co.*, 24 *Fr.*

229. The value of the land taken and the damages need not be expressed in separate sums by the jury on an appeal. *Packard v. Bergen Neck Railway Co.*, 25 *Fr.* 533. When a condemning company has not set out in its petition the plan of construction of its road, it may disclose such plan on the trial before a jury, and in that case the award should be made in view of the use of the land in any lawful mode within such plan, which plan ought, if required, to be made part of the record; but if the company omits to disclose its plan, the award should be made in view of the use of the land in any lawful manner whatever. *Id.* The valuation and condition of other lands in the vicinity may be shown as tending to aid in determining the value of the land sought to be condemned. *Id.* If it appear that a *bona fide* reasonable effort to purchase has not been unsuccessfully made by the petitioning company, the order appointing commissioners will be set aside on *certiorari*. *Chambers v. Cawterel and Swaren R. R. Co.*, 25 *Fr.* 85. *Jersey City v. National Docks Railway Co.*, 26 *Fr.* 194. Upon the death of a commissioner the vacancy can be filled under section 42, on page 1382, *ante*. *United R. R. &c., Co. v. National Docks, &c., Co.*, 25 *Fr.* 180. In condemning land for railroad purposes, the benefits conferred by the laying of the road cannot be set off against the damages sustained by the land owner. *Packard v. Bergen Neck Railway Co.*, 25 *Fr.* 229. The right to enter upon condemned lands, which is conferred by the above section upon a railroad, upon paying the amount awarded by the commissioners, is not stayed by the suing out of a writ of error by the owner of the lands. *Packard v. Bergen Neck Railway Co.*, 3 *Dick.* 281.

parties entitled to receive the amount assessed by the commissioners may, upon tender thereof being made, receive the same without being barred thereby from his or her appeal from the report of the commissioners; and on such tender or payment of the money into court, in case it be refused as aforesaid, or in case the said company incorporated under this act shall appeal from the finding of said commissioners, then the said company, upon payment of the amount so assessed or found as aforesaid into said circuit court, shall be empowered to enter upon and take possession of the said lands and proceed with the work of constructing its road. (a)

14. [Amended by Secs. 59, 68 and 84, *post.*]

15. That any company incorporated under this act, shall have power to have constructed, or to purchase with the funds of the company, all machinery, engines, wagons, carriages or cars for transportation of persons or any species of property on the said railroad, and any such company shall have power and be authorized to demand and receive such sums of money for the transportation of persons and property on said railways and their connections and for any other services connected with the business of transportation on or over said railways or to and from the same as it from time to time shall think reasonable and proper; *provided*, that said company shall not charge more than three cents per mile for carrying each passenger, and tickets for passengers shall be good until used, but no charge shall be required in the aggregate to be less than ten cents, nor shall said company charge more than ten cents per mile per ton for the transportation of any description of property; *provided*, that any company formed under the provisions of this act shall not be entitled to charge or receive any greater sum of money for freight upon goods, wares or merchandise transported between way stations, or between a terminal station and a way station than they charge and receive for freight upon such goods, wares, and merchandise between the terminal stations of such railroad, and the said railroad with its appendages, and the lands over which the same shall pass, and all the work and improvements, and all other property whatsoever belonging to the company shall be and are hereby declared to be vested in the said company, and its successors, for and during the continuance of its charter.

May transport freight and passengers.

Rates of fare and freight.

Proviso.

Proviso.

16. That the president and directors of any company incorporated under this act shall declare and make such dividends as they may deem prudent and proper from time to time, out of the net profits of the said railroad.

Dividends.

17. [Amended by Sec. 55, *post.*]

18. That if any person shall willfully impair, injure, destroy or obstruct the use of the railroad enjoyed under the provisions of this act or of any of their necessary works, wharves, bridges, carriages, or machines, such person or persons so offending, shall forfeit and pay to such company incorporated under this act, the sum of fifty dollars, to be by them recovered in any court having competent jurisdiction, in an action of debt; and *further*, shall be liable for all damages sustained.

Penalty for injury to property.

19. That as soon as any railroad or any part thereof, is in operation, the president of the said company shall file, under oath or affirmation, a statement of the amount of the cost of the said railroad, including equipment, appendages and all expenses, in the office of the comptroller of the state, and annually thereafter on the first Monday of January of each year, he shall, under oath or affirmation, make a statement to the comptroller of the state, of the cost, equipment, appendages and expenses of said road, including the cost of roadbed; and after the said railroad or any part thereof shall be in operation, the said corporation shall pay to the treasurer of this state a tax of one-half of one per centum on the cost, equipments and appendages of said road, including the cost of roadbed, to be paid annually thereafter on the first Monday of January

Statement of cost of road shall be filed with comptroller.

State tax.

(a) As to the effect of the last clause of this section respecting the payment of the amount assessed into the circuit court after appeal without prior tender to the owner, see *Redman v. Phila., Marlon and Medford R. R. Co.*, 6 *Stev.* 165. As to what is equivalent to actual payment, see *Johnson v. Baltimore and N. Y. Railway Co.*, 18 *Stev.* 454. As to the effect of an appeal by a landowner, see *Jersey City, &c., R. R. Co. v. Central R. R. Co.*, 3 *Dick.*

379. When a railroad corporation attempts to acquire land by the exercise of the power of eminent domain, compensation, either actual or constructive, must precede appropriation. Payment to the clerk of the court in the absence of an order or rule is not a payment into court. *National Docks Railway Co. v. United N. J. R. R. Co.*, 7 *Dick.* 386, 552.

of each year, and such other taxes as may be assessed from time to time by a general law, applicable to all railroads over which the legislature shall have power for that purpose, at the time of the passage of such law or laws, and the said corporation shall be regularly assessed and pay tax for the value of its real estate (excepting the roadbed one hundred feet in width), improvements thereon, and personal property as now taxed in the city or cities, township or townships wherein it lies, at the same time and rate, and in the same manner, for the same purposes and by the same person or persons as the other taxes assessed in said city or cities, township or townships.

20. [Amended by Sec. 43, *post.*]

Proceedings
when additional
lands are taken.

21. That whenever the track of a railroad constructed by a company formed under this act shall cross a railroad, a highway, turnpike or plank road, such highway, turnpike or plank road may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway, turnpike or plank road desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road, highway, turnpike or plank road, on such new line as may be deemed requisite by the directors, unless the lands so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in this act for acquiring title to real estate, and duly made by said corporation to the owners and persons interested in such lands, the same, when so taken, shall become a part of such intersecting highway, turnpike or plank road, in such manner and by such tenure as the adjacent parts of the same highway, turnpike or plank road may be held for highway purposes.

Conductors,
brakemen, &c.,
to wear badge.

22. That every conductor, baggagemaster, engineer, brakeman, or other servant of any railroad corporation employed in a passenger train or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, and the initial letters of the style of the corporation by which he is employed; no conductor or collector without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office, and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

May connect
with other rail-
roads.

23. That companies whose roads shall be constructed under the provisions of this act shall have the right to connect their roads with any railroads within this or any other state upon such terms as may be agreed upon by those who have the management of said roads, and in case of a failure of an agreement on the part of those having the management of said roads within this state, then and in that case either of said parties may apply to the supreme court within the jurisdiction in which said connection is proposed to be made, whose duty it shall be to appoint three disinterested citizens as herein provided for the condemnation of land, who shall determine and fix said terms, which, when approved by said court, shall be conclusive, and thereupon said companies shall be required to carry said terms into effect; and all companies whose railroads are or shall hereafter be crossed, intersected, or joined, shall receive from each other and forward to their destination all goods, merchandise, and other property intended for points on their respective roads, with the same dispatch and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandise, and other property received at and forwarded from the same point for individuals and other corporations. (a)

Proceedings
when agreement
cannot be made
for carrying the
mails of the
United States.

24. That any such corporation shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case such corporations shall not agree as to the rate of transportation therefor, and as to time, rate of speed, manner and condition of carrying the same, it shall be lawful for the governor of this state to appoint three commissioners, who, or a majority of them, after fifteen

(a) See *Att'y-Gen. v. D. & B. B. E. R. Co.*, 12 *C. E. Gr.* 645. *Long Branch Commissioners v. West End R. R. Co.*, 2 *Dick.* 568.

days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid, but such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car; and in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof for the service, to be fixed as aforesaid.

25. That if any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling-house, as the conductor shall elect on stopping the train; *provided*, that no passenger shall be put off on any bridge or in any dangerous place.

Proceedings in case of refusal to pay fare.

Proviso.

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

Notice to be made of the time of starting and running cars.

27. That a check shall be affixed to every parcel of baggage when taken for transportation, by the agent or servant of such corporation, if there is a handle, loop or fixture, so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; *and further*, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train, and on producing said check, if his baggage shall not be delivered to him, he may himself be a witness in any suit brought by him to prove the contents and value of said baggage.

Checks for baggage.

28. That in forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars; and if they or any of them shall be so placed, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor of the train shall be deemed guilty of a misdemeanor and be punished accordingly.

Lumber or freight cars not to be placed in rear of passenger cars.

29. That a bell shall be placed on each locomotive engine and rung at the distance of at least eighty rods from the place where the railroad shall cross any traveled public road or street, and be kept ringing until it shall have crossed such road or street; or a steam whistle shall be attached to each locomotive engine and be sounded at least eighty rods from the place where the railroad shall cross any such road or street, except in cities, and be sounded at intervals until it shall have crossed such road or street, under a penalty of twenty dollars for every neglect of the provision of this section, to be paid by the corporation owning the railroad, to be sued for by any informer within ten days after such penalty was incurred, one-half thereof to go to the informer and the other half to go to the county; and said corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

Bell on locomotive to be rung at street and road crossings.

30. That every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each traveled public road or street, where the same is crossed by the railroad on

Signboards to be erected.

(a) See *National Docks, &c., Co. v. United Cos.*, 24 Fr. 228.

the same level; said boards shall be elevated so as not to obstruct the travel and to be easily seen by travelers; and on each side of such boards shall be painted in capital letters, of at least the size of nine inches each, the words "look out for the locomotive;" but this section shall not apply to streets in cities or villages, unless the corporation shall be required to put up such boards by the officers having charge of such streets.

Penalty for intoxication while in charge of engine, &c.

31. That if any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

Fences to be kept up and maintained, and cattle-guards at road crossings.

32. That every corporation formed under this act shall erect and maintain fences on the sides of their road, of the height and strength of a division fence required by law, with openings or gates or bars therein, and farm crossings of the road for the use of proprietors of lands adjoining such railroad; and also construct and maintain cattle-guards at all road crossings suitable and sufficient to prevent cattle and animals from getting on to the railroad; until such fences and cattle-guards shall be duly made, the corporation and its agents shall be liable for all damages which shall be done by their agent or engines to cattle, horses or other animals thereon; and after such fences and guards shall be duly made and maintained, the corporation shall not be liable for any such damages, unless negligently or willfully done; and if any person shall ride, lead or drive any horse or other animal upon such road, and within such fences and guards other than at farm crossings, without the consent of the corporation, he shall, for every such offense, forfeit a sum not exceeding ten dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved; it shall not be lawful for any person other than those connected with or employed upon the railroad, to walk along the track or tracks of any railroad, except where the same shall be laid along public roads or streets.

Company not liable for injury to passengers riding on platform.

33. That in case any passenger on any railroad shall be injured while on the platform of a car, or on any baggage, wood or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars then on the train, such company shall not be liable for the injury; *provided*, said company at the time furnished seats inside its passenger cars sufficient for the proper accommodation of its passengers.

Proviso.

Time for commencement and completion of road.

34. That the said company shall commence the proposed road within six months from the date of their organization, and if the said proposed road be not more than fifty miles in length, the said company shall open and complete at least one track of said road within two years from the date of commencement, as aforesaid; and if the said road shall exceed fifty miles in length, the said company shall have an additional six months to complete their road for each twenty miles more than the fifty miles aforesaid; *provided*, the road shall be opened for public use in all cases when fifty miles of the track are laid; *provided further*, that any company organized under this act and failing to comply with the provisions of this section, shall thereby forfeit the franchises given it by this act; *provided further*, that if any company now or hereafter organized under said entitled act has been or shall be restrained, prevented or enjoined by the order of any court or judge thereof or by any proceedings whatever at law or in equity from prosecuting the work on its road or from opening or completing its said road the time during which any such company has been or shall be so restrained, prevented or enjoined shall not be taken or computed as any part of the time allowed and limited in said section for the opening and completion of said road or of any part or section of such road. (a)

Proviso.

P. L. 1877, p. 50.

Penalty for violation of certain provisions of this act.

35. That any company, association, person or persons, violating or neglecting to comply with any of the provisions of the first or second sections of this act, shall be liable to a penalty of two hundred and fifty

(a) The commencement of a railroad, within the meaning of the thirty-fourth section, is the actual commencement of the

work of constructing the road. *Point Breeze Ferry Co. v. Bergen Neck R. R. Co.*, 24 Vr. 108.

dollars for each and every offense, to be sued for and recovered in the name of the state of New Jersey, one-half of which fines, when recovered, shall be paid to the informer, and the other half into the county treasury, where the action shall be tried or the conviction had.

36. [Amended by Secs. 57 and 61, *post.*]

37. That the governor, the chancellor, vice chancellor, the justices of the supreme court and the judges of the court of errors of this state, secretary of state, state treasurer, comptroller of the treasury, clerk in chancery, clerk of the supreme court, adjutant-general, quartermaster-general, state librarian, state prison keeper and superintendent of public schools of New Jersey, while traveling for the purpose of discharging the duties of their offices, and the members and officers of both houses of the legislature of this state shall pass and repass free of charge on the railroad of any company incorporated under this act.

Who may ride free.

38. That no franchise heretofore granted to construct a railroad, or to build or establish bridges or ferries, or operate any line of travel, and take tolls or fares therefor, shall hereafter continue to be or be construed to remain exclusive, and that no like franchise hereafter granted shall be or be construed to be exclusive, unless in such grant heretofore made or hereafter to be made it be so expressly provided, and the provisions of the second section of the act entitled "An act to prevent accidents on railroads," approved March thirtieth, one thousand eight hundred and sixty-nine, shall not be considered to extend to or to affect in any way or manner corporations which may be formed under this act; all corporations organized under this act shall be subject to all general laws, now or hereafter to be passed, regulating railroads and their operations.

Franchise heretofore or hereafter to be granted not to be exclusive.

39. That this act shall be deemed a public act and shall take effect immediately, and the legislature may alter, amend or repeal the same, but such repeal or alteration shall not affect any corporations heretofore organized, unless the act making such repeal or alterations shall so expressly declare.

Legislature may alter, amend or repeal act.

Supplement.

Approved April 4, 1873. P. L. 1873, p. 136.

40. SEC. 1. That railroad corporations, formed under the provisions of the act to which this is a supplement, may establish and operate ferries, where the terminus or termini of the railroads of said corporations may be on the shores of any rivers or navigable waters of this state, for the transportation of persons and property on or across the same, subject to the rates of fare for passengers and tolls for freight as provided in said act on railroads, and may buy or build all vessels and boats, and do all things necessary or convenient to carry on such ferry or ferries, or the said corporations may make contracts or engagements with other ferry companies for the transportation of the passengers and freight of such corporation.

Railroad companies may establish and operate ferries.

Supplement.

Approved March 9, 1877. P. L. 1877, p. 173.

41. SEC. 1. That whenever the location of the route of any railroad incorporated under this act shall have been made, it shall be lawful to relocate any part of said railroad which is not built, in the same manner and under the same conditions as though the part to be relocated had never been located; *provided, however*, that if such change shall be made in any part of the route located, it shall be incumbent upon the company making such change to first secure the consent of any stockholder or subscriber who holds stock, on the condition of such location, before such change of location shall be made; *and provided further*, that no railroad constructed under this act shall change the location in any city except to comply with an ordinance of the common council of said city already passed; *and provided, further*, that no change of location shall be made where the right of any company to cross the land of any person or persons is the subject of litigation; *provided*, that any such relocation shall be made within twelve months from the time of original location.

Route of railroad relocated.

Proviso

Supplement.

Approved February 19, 1878.

P. L. 1878, p. 20.

42. SEC. 1. [This section, amending Sec. 2, *ante*, is again amended and supplied by Sec. 46, *post*.]

43. SEC. 2. That the twentieth section of said act, which is as follows [see Sec. 20, *ante*], shall be and the same hereby is amended so that the said section shall read as follows :

Corporation may borrow money to build, construct and repair road, &c., and issue bonds therefor.

[That any corporation, incorporated under this act, shall have power to borrow such sum or sums of money, from time to time, not to exceed in the whole its paid-up capital stock, as shall be necessary to build, construct or repair their road, and furnish all necessary engines and other equipments for the uses and objects of said company, and to secure the repayment thereof by the execution, negotiation and sale of any bond or bonds, and secured by mortgage on said lands, privileges, franchises and appurtenances of and belonging to the said company ; *provided*, that said company shall not plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of any bond or mortgage executed under the provisions of this section ; *and provided, further*, that said bonds shall constitute a first lien on the railroad, its cars, real estate and franchises, and the proceeds of said bonds shall be used for the purpose of aiding in the construction of said railroad ; *and provided, further*, that if any person or persons shall issue such bonds to any greater amount than the amount, at the time of such issue, shall have been actually paid up on the capital stock of such railroad, he, she or they shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not more than three years, or by both, at the discretion of the court.]

Repealer.

44. SEC. 3. That all acts and parts of acts inconsistent with this act be and they are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 14, 1878.

P. L. 1878, p. 84.

Railroad company in possession of bridge may apply to riparian commissioners for adjudication respecting bridge structure when under indictment for obstructing navigation.

45. SEC. 1. That when any railroad shall be constructed or shall be hereafter constructed under or by virtue of any law of this state, and crosses or shall cross any stream where the tide ebbs and flows, and, in consequence of the narrowness of the stream or shallowness of the water, or for any other cause, it is unnecessary or impracticable to put in a pivot-draw with two openings, or any draw, and any indictment has been or shall be found against the company owning or in possession of the railroad in which such bridge is, for obstructing the navigation of such stream by means of such bridge, or by or for want of a draw, or for want of a sufficient draw or draws in such bridge, it shall and may be lawful for such company to apply, in writing, to the board of riparian commissioners, setting forth the particular facts of the case, the width and depth of the stream, the location or contemplated location of the bridge, and pray the adjudication of the said board of commissioners in the premises, and particularly as to the character of the bridge built or to be built ; whereupon it shall be the duty of the said board of commissioners to institute an inquiry, and, by personal inspection, the examination of witnesses, and in such other manner as they may deem proper, to ascertain what kind and character of bridge is necessary and proper, and particularly whether any draw is required, and if so, what kind of a draw and the character and dimensions thereof, and how the same shall be kept and maintained, and examine and consider as well the extent and importance of the navigation above said bridge as the safety, security and accommodation of the public traveling upon such railroad, and, after such inquiry and consideration, shall make an adjudication in the premises, which shall be signed by a majority of said board and be filed within ten days after the date thereof with the clerk of the court of common pleas in said county, and shall thereupon be binding upon the said company ; and a compliance with and

Mode of procedure.

conformity to the requirements of such adjudication by the said company shall be a full performance of its duties and obligations in respect of such bridge; and if the adjudication of said board of commissioners, in any such case, shall be to the effect that the bridge to which such indictment doth or shall relate, at the time of the finding of such indictment, was a proper and sufficient bridge for the place where it is or shall be located, then the court before which such indictment is or may be shall not take or have any further proceedings therein, or by virtue thereof, except to discharge the defendant or defendants named therein from said indictment; but if the aforesaid adjudication of the said board of commissioners shall be to the effect that said bridge, at the time of the finding of such indictment, was not a proper and sufficient bridge for the place where it is or shall be located, then the court shall give judgment upon the said indictment against the defendants named therein, or some of them, that it, he or they pay the costs of the prosecution and such fine, if any, as the court may deem proper, not exceeding two hundred dollars; *provided*, that if, after such adjudication by the said board of commissioners, as last aforesaid, the owner or possessor of such bridge shall, within the time for that purpose in the adjudication of the said board of commissioners designated, comply with and conform to the requirements of the said adjudication, then the owners and possessors of such bridge shall be exempt from any criminal liability for or on account of such bridge.

Fine that may be imposed.

Proviso.

An act to amend an act entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' approved April second, one thousand eight hundred and seventy-three," approved February nineteenth, one thousand eight hundred and seventy-eight.

Approved March 4, 1879. P. L. 1879, p. 78.

46. SEC. 1. That section two of the act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three [see Sec. 2, *ante*], as amended by the act entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' approved April second, one thousand eight hundred and seventy-three," approved February nineteenth, one thousand eight hundred and seventy-eight, and which amended section is as follows [see Sec. 42, *ante*], shall be and hereby is amended so that the said section shall read as follows:

[That such articles of association shall not be filed and recorded in the office of the secretary of state until at least two thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto and paid, in good faith and in cash, to the directors named in said articles of association, nor until the said directors shall have deposited the said money so subscribed and paid to them with the treasurer of the state of New Jersey, who shall be the custodian of the same, and shall hold the same, subject to be repaid to the directors of the said company, or to the treasurer thereof, in sums of two thousand dollars for each mile of said railroad, upon the construction of which it shall be proved, to his satisfaction, that the said company have expended at least the sum of two thousand dollars, nor until there is indorsed on such articles of association, or annexed thereto, an affidavit, made by at least five of the directors named in said articles, that the amount of stock required by this section has been, in good faith, subscribed and paid in cash as aforesaid, and that it is intended, in good faith, to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association as aforesaid; *provided*, that the articles of association heretofore filed in the office of the secretary of state, pursuant to the terms of the act to which this act is amendatory, by any corporation which shall not, at the date of the passage of this act, have fully completed at least three miles of their proposed railroad, as located and filed in the office of the secretary of state, shall be absolutely null and void, and of no effect

Articles of association not to be filed until \$2,000 in stock for every mile proposed to be made is subscribed and paid in cash and deposited with state treasurer.

Proviso.

RAILROADS AND CANALS.

whatsoever, and the corporate powers vested in such corporation by the filing of such articles shall become extinct, and such corporation shall become, ipso facto, dissolved, unless such corporation shall, within twenty days after the passage of this act, fully comply with the terms thereof; *provided*, that such corporations, heretofore organized under the general laws of this state, as have complied with the provisions of said section two of said act, entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, as the same were before amendment, and the total length of whose road, as shown by the filed survey in the office of the secretary of state, shall be less than three miles, shall have until the first day of July, one thousand eight hundred and seventy-nine, in which to comply with the further provisions of said section two of said act, as amended by this act, and two years from said first day of July is hereby allowed to such corporations for the completion of their said roads, and all the rights and privileges existing and belonging to said corporations at the time of the passage of the said act to which this is an amendment, approved April second, one thousand eight hundred and seventy-three, are hereby restored and confirmed to the said corporations; *provided, nevertheless*, that such corporations, organized under the act to which this is amendatory, as shall have completed, at the date of the passage of this act, more than three miles of their said railroad, as originally located, shall continue to exist for the sole purpose of maintaining and operating the said completed portion of their said railroad and of exercising all the powers and franchises necessary to the maintenance and operation thereof, but for no other purpose whatsoever, without complying with the requirements of this act.] (a)

Proviso.

Proviso.

Repealer.

47. SEC. 2. That all acts and parts of acts inconsistent with this act be and they are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 12, 1879.

P. L. 1879, p. 166.

Number of persons requisite to form a company for constructing and operating an underground railway.

48. SEC. 1. That any number of persons not less than seven, may form a company for the purpose of locating, constructing, maintaining and operating a railroad, to be located in whole or in part beneath the surface of the earth, and to be used for the transportation of minerals and of material, implements and machinery used or to be used in the sinking or working of mines, or for the purpose of purchasing, operating and maintaining any railroad already located and constructed for such purpose in whole or in part beneath the surface of the earth, and the articles of association to be made and signed by said persons shall state the proposed location, as near as may be, of said proposed railroad, with the length of the same approximately, and how much of the same, as near as may be, will be on or above the surface of the earth, and how much, as near as may be, beneath the surface thereof; and if it be the purpose of said company to purchase, operate and maintain a railroad already built, said articles of association shall mention and briefly describe the same, and said articles of association shall, in other respects, conform to the requirements of the first section of the act to which this is a supplement; and the company so formed shall have all the powers and may exercise all the franchises conferred upon and which may be exercised by corporations formed under the provisions of the act to which this is a supplement, and shall, in like manner, be subject to all the restrictions, limitations and regulations by the laws of this state imposed upon and applicable to such corporations. (b)

Rates of freight to be charged.

49. SEC. 2. That it shall and may be lawful for any corporation or private person owning or operating a railroad, located in whole or in part beneath the surface of the earth and used for transportation of minerals

(a) See *Danforth v. Philadelphia and Cape May Short Line Railway Co.*, 3 Stew. 12.
(b) A corporation formed under this supplement acquires, on condemning a right of way for an underground railway, not the fee-simple of lands but an easement merely. *Hibernia R. R. Co. v. De Camp*, 18 Vr. 618, affirming *S. C.*, 18 Vr. 48. Such a corporation cannot condemn the mere privilege of maintaining a railroad only until the landowner shall choose to make an

inconsistent use of the site of the roadbed. *Id.* Such a corporation cannot, by eminent domain, compel an owner of the fee-simple of land to yield to it a right to construct and operate a railroad on the happening of a future contingent event. *Id.* The rights which such a corporation is authorized to acquire by condemnation are present rights, and whatever may be necessary to make present rights perpetual. *Id.*

and materials, implements and machinery used or to be used in the sinking or working of mines, to charge for the transportation of freight upon so much of the same as shall be beneath the surface of the earth at and after the rate of twenty cents per ton per mile, and when the distance of transportation beneath the surface of the earth shall be less than one mile, a fraction of a mile shall be considered as a whole mile for the purpose of fixing the amount to be charged for transportation.

50. SEC. 3. That when any corporation, formed under the provisions of this act, shall take legal proceedings to acquire the right of way for its proposed railroad beneath the surface of the earth, such right of way shall not include the right to permanently use or occupy the surface of the earth immediately above such railroad and where the same is not broken, but shall be confined to a mere right to tunnel and excavate the earth for its tracks; but such corporation shall, nevertheless, have the right to acquire by such proceedings so much and such parts of the surface as may be necessary or proper for the operation of its said railroad.

Right of way not to include permanent use of surface above road.

51. SEC. 4. That whenever it shall happen that any railroad in this state shall have been built upon, under or through any lands without acquiring the right to maintain the same from the owner or owners of the fee-simple of said lands, or any part thereof, it shall be lawful for the corporation owning and operating said railroad to take and prosecute all such legal proceedings to acquire the right to maintain and operate its said railroad that it would have the right to take and prosecute if such railroad had not as yet been built upon, under or through the said lands.

Right to maintain and operate railroad, how acquired.

Supplement.

Approved March 13, 1879.

P. L. 1879, p. 175.

52. SEC. 1. That it shall and may be lawful for corporations organized under the act to which this is a supplement, and the acts supplementary thereto, to issue, sell and dispose of tickets for passage upon the railroads of such corporations at less than the rates limited in the act to which this is a supplement; which tickets shall be good and shall entitle the holder or holders thereof to passage only for a limited number of days after the date of the issue thereof, which limit shall be clearly and duly stated and set out upon the ticket.

Railroad companies may sell tickets at less than limited rates.

53. SEC. 2. That all acts or parts of acts inconsistent with this act are hereby repealed, and this act shall take effect immediately.

Repealer.

Supplement.

Approved February 25, 1880.

P. L. 1880, p. 51.

54. SEC. 1. That in all cases of writs of certiorari brought to remove the appointment of or proceedings by commissioners appointed to examine and appraise the lands or materials, and to assess the damages for such land and materials required for the construction of any railroad in this state, such certiorari shall not operate as a stay of any proceedings that have been or may be taken by such commissioners so appointed; and the railroad company or companies upon whose application such commissioners shall have been appointed shall not be stayed, hindered, interfered with nor delayed in the building and construction of their said railroad or railroads by reason of said certiorari; and in case any proceedings removed by certiorari as aforesaid shall be set aside or vacated by the court, it shall be lawful for new commissioners to examine and appraise said lands and materials and assess said damages in the manner now required by law, and no entry of said railroad company or companies upon any lands under proceedings reversed shall be held to be a trespass.

Writs of certiorari to remove appointment or proceedings of commissioners appointed to assess damages, &c., not to operate as a stay, &c.

Amendatory act.

Approved March 11, 1880.

P. L. 1880, p. 231.

55. SEC. 1. That section seventeen of the "Act to authorize the formation of railroad corporations and to regulate the same," approved April second, one thousand eight hundred and seventy-three, which reads as

follows [see Sec. 17, *ante*], be and the same hereby is amended so as to read as follows :

Companies incorporated may purchase, have and hold real estate, and erect depots, warehouses, workshops, &c.

[That any company incorporated under this act may purchase, have and hold real estate at or near the commencement and termination of the said road or at any other point on the line of the said road where the directors may think proper to establish a depot, not exceeding ten acres at each place, and may also erect and build thereon houses, warehouses, workshops and such other buildings and improvements as they may deem expedient for the safety of their property and for other necessary uses appertaining to their business, and receive the rents and emoluments thereof, and may build and maintain over such streams as the road may cross, such piers and bridges as they may deem expedient; and that all lands, tenements, hereditaments and real estate acquired by any such company not used by it for the immediate use and occupancy of its rails, tracks, depot and freight buildings shall be subject to the same tax as the property of individuals, and said tax shall be assessed, levied and collected by the authorities where the same may be, in the same manner as other taxes are levied, assessed and collected, any law, custom or usage to the contrary notwithstanding; and that it shall be lawful for any corporation incorporated under this act or under any of the laws of this state, at any time during the continuance of its charter, to lease its road or any part thereof to any other corporation or corporations of this or any other state, or to unite and consolidate as well as merge its stock, property and franchises and road with those of any other company or companies of this or any other state, or to do both; and such other company and companies are hereby authorized to take such lease or to unite, consolidate, as well as merge its stock, property, franchises and road with said company, or to do both, and, after such lease or consolidation, the company or companies so acquiring said stock, property, franchises and road may use and operate such road and their own roads, or all or any of them, and transport freights and passengers over the same and take compensation therefor, according to the provisions and restrictions contained in this act, notwithstanding any special privilege heretofore granted or hereafter to be granted to another corporation for the transportation of freights and passengers between any points on the lines of said roads or any other points within or without this state; *provided, however*, that nothing in this act shall authorize any railroad companies incorporated under a special act of the legislature to charge for transportation of freight or passengers over the roads constructed under said special act more than they may be authorized to charge by the provisions of their respective acts of incorporation.] (*a*)

Authorized to lease road or to unite, consolidate and merge stock, &c., with any other company.

Proviso.

Supplement.

P. L. 1881, p. 248.

Approved March 25, 1881.

56. SEC. 1. That the fifth section of the act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, shall be and hereby is amended so that the said section shall read as follows :

Number of directors.

[That there shall be a board of thirteen directors of every corporation formed under this act to manage its affairs, except in cases where the road or proposed road is less than ten miles in length, in which case there may be seven directors instead of thirteen, to manage its affairs; said directors shall be chosen annually by a majority of the votes of the stockholders at such elections, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places; in the election of directors each stockholder shall be entitled to one vote for each share of stock held by him; vacancies in the board of directors shall be filled in such manner as shall be presented by the by-laws of the corporation; the inspectors of the first

Election of directors.

Vacancies, how filled.

(*a*) The above act does not authorize a lease by the directors against a minority of dissenting stockholders, so far as the latter's rights are affected thereby. It is merely a legislative authorization, a concession on the part of the legislature of the

power to do that which could not be done without such authority. *Mills v. Central R. R. Co.*, 14 *Stew.* 4. See, also, *Elkins v. Camden and Atlantic R. R. Co.*, 9 *Stew.* 11. *Stockton v. Central R. R. Co.*, 5 *Dick.* 66.

election of directors shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen; at every election of directors the books and papers of such company shall be exhibited to the meeting, provided a majority of the stockholders present shall require it.]

57. SEC. 2. That the thirty-sixth section of said act shall be and hereby is amended so that the said section shall read as follows:

[That it shall be lawful for any company incorporated under this act, in addition to the powers hereinbefore given, to build viaducts over any navigable or other rivers, streams or bay of water which such railroad may cross, putting in such viaduct a pivot-draw with two openings, each of no less width than the widest opening of any viaduct or bridge now built over any such river, stream or bay of water, at right angles to the main channel, located at a point convenient for navigation; and such company shall, at all times, when such river, stream or bay is navigable, for the safety of persons navigating the same, cause to be kept a red light at each outer side of said draws, and a white light at each inner side of said draws, which shall be lighted every evening, at or before sunset, and be kept lighted till daylight, and shall also keep, or cause to be kept, a suitable person or suitable persons at each of said bridges, to open the draws for the free passage of all vessels with standing masts or pipes; and for each and every neglect to keep such light and to open the draws when necessary, the said company shall forfeit and pay the sum of one hundred dollars, to be recovered with costs, in any court having jurisdiction thereof, by any persons who shall sue for the same within six months after the time of such neglect; *provided*, that corporations formed under this act shall not take any land under water belonging to this state until the consent of the riparian commissioners shall first be had and obtained (unless the said land is at least twenty-five feet under the bed of the water), who are hereby authorized to convey the same on receiving such compensation as they may fix; *provided further*, that no corporation organized under this act shall be authorized to take, use or occupy, by condemnation, any lands belonging to the state of New Jersey, or any franchise, lands or located route of any bridge, railroad, canal, turnpike or other corporation chartered for the purpose of facilitating transportation, except for the purpose of crossing said lands or route of said corporation, and except the lands of such other corporations not necessary for the purposes of their franchises; *and provided further*, that a railroad may be located or constructed under this act on the surveyed route or location of any other railroad, with the consent of such corporation, and not otherwise; *and provided further*, that no railroad, under this act, shall cross another railroad at a less angle than twenty degrees; *provided, however*, that this supplement shall apply only to railroads already built and now in operation and which shall desire to change a crossing now existing.] [See Sec. 61, *post*.]

Companies authorized to build viaducts over rivers, streams, &c.

Supplement.

Approved March 31, 1882.

P. L. 1882, p. 232.

58. SEC. 1. That in case the capital stock of any railroad company formed under the act to which this is a supplement, or otherwise, shall be found more than sufficient for constructing and operating its road, the board of directors of such company, upon first obtaining the consent in writing of at least two-thirds in amount of all the stockholders of such company, may, by resolution, to be entered on the minutes, reduce the capital stock of such company, in accordance with such consent, to such amount as will be sufficient for the purpose of constructing, maintaining and operating its railroad; a copy of which resolution, certified by the secretary of such company, under the common seal thereof, shall, within thirty days after the passage thereof, be filed in the office of the secretary of state of this state.

Directors may reduce capital stock upon consent of two-thirds of stockholders.

Resolution to be filed in office of secretary of state.

Supplement.

P. L. 1882, p. 245.

Approved March 31, 1882.

59. SEC. 1. [This section, amending Sec. 14, *ante*, is again amended by Secs. 68 and 84, *post*.]

Supplement.

P. L. 1884, p. 193.

Passed April 16, 1884.

Upon abandonment of part of route, treasurer of state to refund or repay moneys deposited with him.

60. SEC. 1. That whenever any railroad corporation heretofore or hereafter organized under and pursuant to the provisions of the act to which this is a supplement, and of the acts amendatory thereof and supplementary thereto, may deem it expedient to abandon a part of their proposed line, by reason of having made a connection with another railroad or consolidated with the same, and shall file or cause to be filed in the office of the secretary of state, in writing and under its corporate seal, and attested by the president and secretary of said corporation, a formal notice of abandonment by said corporation of any part or portion of the route of the proposed railroad of said corporation, theretofore filed in said office of the secretary of state as required by law, it shall be the duty of the treasurer of the state of New Jersey, upon being notified by said corporation that such part or portion of the route of its said railroad had been so formally abandoned, to repay to the said corporation, out of the moneys by the said corporation theretofore deposited with the said treasurer as required by law, a sum equal to the sum of two thousand dollars for every mile, and a proportionate sum for any distance less than a mile of its route so abandoned as aforesaid; and said corporation shall not thereafter extend, build or construct its said railroad over and upon the part or portion of the route so abandoned, without first filing a new survey and description of the said abandoned portion of its route in the office of the secretary of state, and paying to the treasurer of this state a sum of money equal to two thousand dollars for every mile, and a proportionate amount for any distance less than a mile of the route so refiled, said sums to be repaid to said corporation as now provided by law.

Companies not to build or construct road over line abandoned without filing a new survey, &c.

An act to further amend section thirty-six of the act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, anno domini eighteen hundred and seventy-three.

P. L. 1885, p. 109.

Passed March 19, 1885.

61. SEC. 1. That section thirty-six of the act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, anno domini eighteen hundred and seventy-three, which section was amended by an act entitled "A further supplement to an act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' approved April second, anno domini eighteen hundred and seventy-three," which act was approved March eighth, anno domini eighteen hundred and seventy-seven [see P. L. 1877, p. 98], be and the same is hereby further amended so as to read as follows:

Company may build viaducts over rivers and streams. Provisions and restrictions.

[That it shall be lawful for any company incorporated under this act, in addition to the power hereinbefore given to build viaducts over any navigable or other rivers, streams or bay of water, which said railroad may cross, putting in such viaduct a pivot-draw with two openings, each of no less width than the widest opening in any viaduct or bridge now built over any such river, stream or bay of water, at right angles to the main channel, located at a point convenient for navigation; and such company shall at all times when such river, stream or bay is navigable, for the safety of persons navigating the same, cause to be kept a red light at each outer side of said draws, and a white light on each inner side of said draws, which shall be lighted every evening at or before sunset, and be kept lighted till daylight; and shall also keep or cause to be kept a suitable person or suitable persons at each of said bridges to open the draws for the free passage of all vessels with standing masts or pipes; and for each and every neglect

to keep such light and to open the draws when necessary, the said company shall forfeit and pay the sum of one hundred dollars, to be recovered with costs, in any court having jurisdiction thereof, by any persons who shall sue for the same, within six months after the time of such neglect; *provided*, that corporations formed under this act shall not take any land under water belonging to this state until the consent of the riparian commissioners shall first be had and obtained, who are hereby authorized to convey the same on receiving such compensation as they may fix; *provided further*, that no corporation organized under this act shall be authorized to take, use or occupy by condemnation, any lands belonging to the state of New Jersey, or any franchises, lands or located route of any bridge, railroad, canal, turnpike or other corporation chartered for the purpose of facilitating transportation, except for the purpose of crossing said lands or route of said corporation, and except the lands of such other corporations not necessary for the purposes of their franchises; *and provided further*, that a railroad may be located or constructed under this act, on the surveyed routes or location of any other railroad, with the consent of such corporation and not otherwise; *and provided further*, that no railroad under this act shall cross another railroad at a less angle than forty-five degrees, be and the same is hereby amended so that the last proviso herein shall read as follows, to wit: *and provided further*, that no railroad under this act shall cross another railroad at a less angle than twenty degrees.] [See Sec. 57, *ante.*] (a)

Supplement.

Approved March 25, 1885. P. L. 1885, p. 157.

62. SEC. 1. That any corporation organized during the year one thousand eight hundred and eighty-three may change the location previously adopted, including a change of one of the termini named in its articles of association, by action of its board of directors, and upon filing a certificate of said action, under the seal of the said corporation, in the office of the secretary of state, accompanied with a plan showing the substituted terminus and route; any previous route adopted shall be deemed to be abandoned, and the route described in said action and plan so filed shall thereupon and thereafter constitute the route of the railroad of said corporation between the termini as therein fixed; and the said corporation shall be vested with all the powers as to such substituted line as it was vested with in regard to its original route.

Corporations organized in 1883 may change previous location and termini.

63. SEC. 2. That any such corporation taking the action provided in the first section of this act shall also have the right, at the time and as part of said action, to either increase or decrease its capital stock in the due proportion to which its route may be lengthened or shortened as the result of such action; and if, by said action, the length of its railroad shall be increased, it shall be required to deposit with the treasurer of the state two thousand dollars for each additional mile of such increase; but if the length of its railroad shall be decreased, it shall at once have the right to demand and receive from the treasurer of the state, out of the moneys previously deposited by it, a sum equivalent to two thousand dollars for each mile of said decrease; the moneys deposited by it and remaining in the treasury of the state shall be paid back to said corporation, from time to time, for each mile of the railroad so constructed.

May increase or decrease capital stock.

Deposit required.

64. SEC. 3. That any corporation availing itself of the provisions of this act shall have the time within which the construction of its railroad must be commenced extended to six months from the passage of this act, and the time within which it must be completed to two years from the expiration of said six months.

Time for construction of road extended.

(a) See *United Cos. v. National Docks, &c., Co.*, 23 Fr. 95.

Supplement.

P. L. 1885, p. 189.

Approved April 2, 1885.

Company may construct railroad over certain portion of street or highway.

65. SEC. 1. That in addition to the powers granted under the act to which this is a supplement, any railroad company incorporated under the act to which this is a supplement, and any supplements or amendments thereto, shall have power to construct its railroad so as to cross any portion of any street or highway in any municipality, the land for which portion has been taken for a street by condemnation under proceedings had under the charter of such municipality, and which portion of said street or highway has been, or, at the time of the construction of said railroad, shall have been, laid on land which was under tide-water in the year eighteen hundred and sixty-four, when the first riparian act was passed, the right to cross such street or highway to be either on a level with the actual or established grade of such street or highway or at such distance above or below such actual or established grade as, in the judgment of the municipal body or bodies hereinafter referred to, may be best adapted to secure the safety of lives and property or promote the interests of such municipality; *provided*, that the board of aldermen, common council or other similar governing body in such municipality shall, by ordinance, authorize the construction of such railroad across the street or highway in such municipality and make such provision or condition concerning the same as to such board of aldermen, common council or other similar governing body may seem fit, desirable and necessary; and whenever such permission shall be given, the said board of aldermen, common council or other similar governing body shall have power, by like ordinance, to vacate the portion of such street or highway crossed by said railroad as aforesaid and such additional portion of such street or highway adjacent thereto as may lie between the next intersecting lines of public highways on either side of such part of said street so crossed by said railroad as aforesaid, or between the next intersecting line of a public highway on the one side and the end of said street nearest said railroad; *provided*, that any navigable basin or natural water-way subject to the right of public navigation shall be deemed and treated as a public highway for the purpose only of defining the limit of vacation under this act; *and provided further*, that said railroad company shall pay to such municipality the actual amount expended by said city for all improvements of the part of the street so vacated, including the amount paid by such municipality for the land taken by such municipality under proceedings to condemn said land for a public street or highway, or such part of the amount so expended as has not been otherwise repaid to said municipality.

Repealer.

66. SEC. 2. That all acts and parts of acts, whether general or local or special, inconsistent herewith, be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

P. L. 1886, p. 180.

Approved April 5, 1886.

When restrained by court from discharge of duty, time restrained not to be computed as part of time limited for discharge of duty.

67. SEC. 1. That whenever any company incorporated under this act, or otherwise, shall have a duty imposed upon it, or a privilege which it is authorized to exercise, and there is a time limited wherein such duty is to be discharged or such privilege exercised, and the company is restrained by the authority or intervention of any court from the discharge of the duty aforesaid, or from the exercise of the privilege aforesaid, then so much of the time aforesaid during which such restraint exists shall not be computed as any portion of the time limited for the discharge of such duty or exercise of such privilege aforesaid.

An act entitled a supplement to an act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, which supplement was approved March thirty-first, one thousand eight hundred and eighty-two.

Approved April 28, 1887. P. L. 1887, p. 226.

68. SEC. 1. [This section, amending Secs. 14 and 59, *ante*, is again amended by Sec. 84, *post*, and was held to be unconstitutional in N. Y., &c., R. R. Co. v. Township of Montclair, 2 Dick. 591.]

Supplement.

Approved March 23, 1888. P. L. 1888, p. 203.

69. SEC. 1. That it shall be lawful for any corporation incorporated under the act to which this is a supplement, or under any of the laws of this state, whenever a majority of the directors thereof shall so decide, to purchase or rent of and from any company or companies incorporated under any of the laws of this state, any boats, vessels or barges, whether propelled by steam or otherwise, and also any wharves, piers, docks, landings and buildings situate at or near any terminus of its road, capable of being of use in the transportation of freight or passengers; and such other company or companies are hereby authorized and empowered to make such sale or lease, whenever a majority of the directors thereof shall decide.

Railroad corporations may purchase or rent boats, wharves, &c.

70. SEC. 2. That this act shall apply to any company or companies now incorporated, and shall take effect immediately.

Act to apply to what companies.

Supplement.

Approved March 30, 1888. P. L. 1888, p. 346.

71. SEC. 1. That any number of persons, not less than three, may form a company for the purpose of constructing, maintaining and operating tramways constructed of wire, ropes, bands or chains, or equivalent device, for the transportation of freight in suspended buckets, cars or receptacles, and for that purpose may make and sign articles of association in which shall be stated the name of the company, the number of years the same is to continue, the places from and to which the said tramroad or way is to be constructed or maintained and operated, the length of such road or tramway, as near as may be, and the name of each county in this state through or into which it is made or intended to be made, the amount of the capital stock of the company and the number of shares of which said capital stock shall consist, and the names and places of residence of the directors of the company who shall manage its affairs for the first year and until others are chosen in their places; each subscriber to such article of association shall subscribe thereto his place of residence and the number of shares of stock he agrees to take in said company; such articles of association, when properly made and executed, may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose, and upon tendering the said articles of association to the secretary of state to be filed, the persons who have so subscribed such articles and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association; every corporation formed under this act, in addition to the general powers set forth in an act entitled "An act concerning corporations" [Revision], approved April seventh, one thousand eight hundred and seventy-five, and the several supplements thereto, shall have power—

Company for constructing and operating tramways may be formed.

Articles of association.

Where filed.

Recorded.

Powers of corporation.

I. To cause such examination and surveys for its proposed road or tramway to be made as may be necessary to the selection of the most advantageous route, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto;

Cause examinations and surveys to be made.

Take grants of real estate, &c.

II. To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its road or tramway;

Purchase real estate, &c.

III. To purchase, hold and use all such real estate or other property as may be necessary for the construction and maintenance of its road or tramway and the stations and other accommodations necessary to accomplish the object of its incorporation;

Lay out and construct road.

IV. To lay out its road or tramway, as hereby provided, and to construct the same;

Exercise other powers.

V. To exercise all other powers hereby granted, and all the powers conferred upon railroad corporations organized under the act to which this is a further supplement, so far as the same are applicable to the corporations formed under this act.

Certified copy of articles of association evidence of incorporation.

72. SEC. 2. That a copy of any articles of association filed and recorded in pursuance of this act, or any copy of the record thereof, certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of said company and of the facts therein stated.

Directors and officers.

73. SEC. 3. That the board of directors of every corporation formed under this act shall consist of not less than three members; at least two directors shall be residents of this state; the directors shall appoint one of their number president; they may also appoint a treasurer and secretary and such other officers and agents as shall be prescribed by the by-laws, and shall establish and fix such salaries to them and to the president as to the said board of directors shall appear proper.

What acts to apply to such corporations.

74. SEC. 4. That all the provisions of the act to which this is a supplement, and the several amendments and supplements thereto, shall apply to and regulate the formation and operation of corporations formed under the act to which this is a supplement, except that the provisions of the said original act and of said supplements thereto shall not affect and apply to corporations formed under this act, so far as to control the width of the road, the fences and cattle-guards to be erected and maintained; nor shall any deposit with the treasurer of the state be necessary as a guarantee for the completion of any road or tramway to be constructed under this act; nor shall the right to construct any road or tramway under this act be dependent upon any particular amount of subscription of capital stock for every mile of road proposed to be made; nor shall any other provisions of the act to which this is a supplement or the supplements thereto, which are reasonably applicable only to railroads constructed and run upon iron rails laid upon ties, be applicable to any road or tramway constructed under this act.

Supplement.

Approved April 23, 1888.

P. L. 1888, p. 477.

Preamble.

WHEREAS, Certain railroad corporations organized under the act to which this is a supplement have allowed the period of limitation to expire within which their railroads can be constructed, whereby they have at this time no legal right to proceed with the construction of said railroads, or of the unfinished parts thereof; and whereas, the money paid by them respectively into the treasury of the state proportionate to the length of the route by them proposed is still lying therein and cannot be used for any purpose; and whereas, there is no reason why such moneys should be retained by the state; now, therefore,

State treasurer to refund moneys deposited with him in certain cases.

75. SEC. 1. That it shall be the duty of the treasurer of this state to repay to any such corporation such moneys, or so much thereof as represents any distance of railroad not constructed by said corporation within such period of limitation; provided, nevertheless, that before said repayment, said corporation shall file in the office of the secretary of state, a notice in writing of the abandonment by it of said route or distance of railroad not constructed, such notice to be under its corporate seal, attested by its president and secretary.

Proviso.

Supplement.

Approved April 14, 1890.

P. L. 1890, p. 252.

76. SEC. 1. That whenever any tract, lot or parcel of land necessary or proper to be taken in the construction of any railroad by any company organized under the act to which this is a supplement, shall be intersected by the boundary line between two counties, so that a part of said tract, lot or parcel of land shall lie in one of said counties and part in the other, and it shall be or shall have been necessary to appoint commissioners to examine and appraise such land and to assess the damages, it shall be lawful for the justice of the supreme court to whom application is made to appoint as commissioners three disinterested, impartial and judicious freeholders resident in either of the counties in which such lands lie.

Appointment of commissioners to condemn lands lying in two counties.

77. SEC. 2. That the report of such commissioners shall be filed, together with a description of the lands and the appointment and oaths or affirmations of said commissioners, in the office of the clerk of the county in which the owner of such lands resides if he reside in either of such counties, and if such owner does not reside in either of said counties, then said report, description, appointment, oaths or affirmations shall be filed in the office of the clerk of such of said counties as shall be directed by the justice of the supreme court making such appointment, and a certified copy thereof may be filed in any other county wherein said lands may lie.

Report of commissioners, with description of lands, &c., to be filed.

78. SEC. 3. That this act shall apply to appointments heretofore made or which shall be hereafter made, and that it shall take effect immediately.

Repealer.

Supplement.

Passed April 24, 1890.

P. L. 1890, p. 273.

79. SEC. 1. That it shall be lawful for any railroad corporation chartered under the act to which this is a supplement, which shall in the construction of their railroad cross any street or public highway above grade by a bridge, under the authority of the act to which this is a supplement, to erect piers for the support and safety of such bridge, if the same shall by them be deemed advisable, which piers may be located at the outer edge of the wagon-way so as not to encroach thereon, and extend thence into the sidewalk or space left therefor; *provided*, that from their lands on each side of said road or street, so much shall be added to the sidewalk on that side and thrown open to public use for such purpose as shall be occupied by the pier on that side.

Railroad corporations may erect piers in highways for support of bridges.

Proviso.

80. SEC. 2. That in all instances such bridges shall be erected at sufficient elevation so as not to prevent or impede the use of such roads or highways for ordinary travel.

Bridges not to impede travel.

Supplement.

Approved April 23, 1890.

P. L. 1890, p. 278.

81. SEC. 1. That railroad corporations now or hereafter organized under the act to which this is a supplement, may acquire by purchase, and may hold, enjoy, mortgage and sell all the land thus acquired that they may, in the judgment of the directors of such companies, require for terminal purposes; this act shall not enlarge or in any way affect the powers now existing under the laws of this state of such companies to acquire land by condemnation.

Railroad companies may acquire, hold, &c., lands required for terminal purposes.

Supplement.

Approved April 23, 1890.

P. L. 1890, p. 279.

82. SEC. 1. That all railroad corporations now or hereafter organized under the act to which this is a supplement, whose railroads form connecting lines by means of the intervening line or lines of railroad of any other railroad corporation or corporations also organized or to be organized under said act, and which, if having continuous lines, would have the right under the laws of this state to merge and consolidate their capital stock, franchises and other property, may so merge and consolidate, notwithstanding that their lines are not continuous, but are connected by such

Railroad corporations may merge and consolidate.

Proviso. intervening line or lines, and notwithstanding such intervening line or lines are not included in such merger and consolidation; *provided*, that there shall be no such merger or consolidation if any such railroads or any of the corporations owning any of the railroads forming such connecting line or lines claim a contract with the state on the subject of taxation, unless such contract is surrendered by a proper instrument, to be approved by the attorney-general and filed in the office of the secretary of state.

Amendatory act.

P. L. 1891, p. 129.

Approved March 10, 1891.

83. SEC. 1. That section eleven of the "Act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, which section reads as follows, to wit [see Sec. 11, *ante*], be and the same is hereby amended so as to read as follows, to wit:

Width of road prescribed.

[That any railroad constructed under the provisions of this act shall not exceed a hundred feet in width, unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as such company incorporated under this act may deem necessary; and it shall be lawful for the said company, its agents, engineers, superintendents, or others in its employ, to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling, and laying out the route or routes of such railroad, and of locating the same, and to locate all necessary works, buildings, conveniences, appurtenances and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such railroad and the location or locations of other works, buildings, conveniences, appurtenances and appendages thereof shall have been determined upon, and a survey of such route or routes, location or locations deposited in the office of the secretary of state, then it shall be lawful for every corporation formed under this act, upon payment or tender of such compensation as is hereinafter provided, by its officers, agents, engineers, superintendents, workmen and other persons in their employ, to construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, offices and depots as they may deem necessary between the points named in the articles of association, commencing at or within and extending to or into any town, city or village named as the place of the termini of such road, (a) and from time to time, either before or after completion of the main line, construct, maintain and operate branches within the limits of any county through which said road may pass, lay rails, and for that purpose to enter upon, take possession of, hold, have, use, occupy and excavate any lands, and to erect embankments, bridges and all other necessary works, and to do all other things which may be suitable or necessary for the completion, repairs or management of said railroad, and for the conveyance of passengers and freight to and from the terminus thereof by steam or other motive power; *provided, always*, that the payment or tender of the payment of all damages for the occupancy of all lands through, under or upon which the said railroad and its conveniences, appurtenances and appendages may be laid out or located be made before the said company, or any person under their direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said railroad and its conveniences, appurtenances and appendages, and of locating the same, unless the consent of the owner or owners of such lands be had and obtained; *and provided further*, that the survey of the route of any branch shall not be filed in the office of the secretary of state until the officers or directors of the corporation shall have deposited with the treasurer of the state of New Jersey a sum equal to at least two thousand dollars for every mile, and a

Company may enter upon lands, &c., for purpose of surveying, &c.

Survey of route to be filed with secretary of state, then company to make deposit.

Proviso.

Proviso.

(a) Both terminal points of a railroad constructed for the purpose of forming a connection between existing roads, may be in the same town, city or village. *Long Branch Commissioners v. West End R. R. Co.*, 2 *Stew.* 566. A railroad constructed under the general railroad law may lawfully occupy a public highway to the extent of a reasonable necessity. *Id.* A

railroad corporation organized under the general railroad law cannot lawfully enter upon any land in which there are successive estates, for the purpose of constructing its road thereon, without the consent of the owners, until it has first made compensation to the owners of both the present and future estates therein. *Pratt v. Roseland Railway Co.*, 5 *Dick.* 150.

proportionate sum for any distance less than a mile, of such branch which it is proposed to construct, and the said treasurer shall be the custodian of such fund, and shall hold the same subject to be repaid to the directors or the treasurer of such company in sums of two thousand dollars for each mile, and a proportionate sum for any distance less than a mile, of such branch upon the construction of which it shall be proved to his satisfaction that such amount has been expended; *and provided further*, that all such branches shall be commenced within six months from the date of filing the survey thereof as aforesaid, and shall be opened and completed within two years from the date of commencement as aforesaid.]

Proviso.

Supplement.

Approved March 17, 1891. P. L. 1891, p. 169.

84. SEC. 1. That the fourteenth section of the act to which this act is a supplement, as the said fourteenth section is amended by the supplement thereto approved April twenty-eighth, one thousand eight hundred and eighty-seven [see Secs. 14, 59 and 68, *ante*], be and the same is hereby amended so as to read as follows :

[That it shall be the duty of any company incorporated under this act or any company owning, leasing or controlling any right of way for a railroad within this state, which has been graded in whole or in part, but upon which right of way the track or tracks have not been completely laid, to construct and keep in repair good and sufficient bridges and passages over, under and across the said railroad or right of way where any public or other road, street or avenue now or hereafter laid shall cross the same, so that public travel on the said road shall not be impeded thereby; *and it is further provided*, that such bridges and passages shall be of such width and character as shall be suitable to the locality in which the same are situated; and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagon-ways over, under and across the said railroad, and shall also construct and maintain suitable and proper cattle-guards at all road crossings; *provided, always*, that in case any such railroad shall cross any streets or highways in any city it shall be either above or below the grade thereof, at such distance as shall not interfere with the free and uninterrupted use of such streets or highways; *provided, further*, that the common council of any city may grant permission to said company to cross such streets or highways at grade if they shall deem it to be the best interest of said city; *and further provided*, that in the event that such company shall not, within a reasonable time after notification from the common council of the city or committee of the township in which such bridges and passages are to be so constructed or repaired, proceed to construct or repair the same as required by this act, the said common council or committee may, in the name of such city or township, institute proceedings in the court of chancery against such company to compel the specific performance of the duties imposed upon such company by this section of this act, and in case a decree shall be made against such company in said proceedings, commanding it to specifically perform said duties within a reasonable time to be therein fixed, and such company shall neglect or refuse to specifically perform such duties within said period of time, the chancellor, upon proof of such neglect or refusal, may, in his discretion, issue the state writ of injunction to restrain said company from the exercise of any franchise or the transaction of any business in this state until said company shall have obeyed the command of said decree, and shall have paid the costs of said proceedings including a reasonable allowance to the counsel for such city or township, to be fixed by the chancellor; *and further provided*, that said council or committee, in the event of the failure of such company to construct or repair such bridges or passages within a reasonable time after notification as aforesaid, may, if they shall deem it advisable so to do, proceed themselves to construct or repair such bridges or passages, and when the cost thereof shall have been ascertained the same may be collected of and from said company by said com-

Railroads to construct and keep in repair bridges and passages over, under and across public roads or streets.

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Repealer. **85. SEC. 2.** That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Supplement.

P. L. 1893, p. 184.

Railroad corporations authorized to use motive power best adapted to their railways, &c.

Approved March 10, 1893.

86. SEC. 1. That it shall and may be lawful for any railroad corporation in this state authorized to use steam as a motive power, or authorized to use steam or other motive power, to use, on any part of its railway, any motive power which shall in its judgment be best adapted to the economical operation of its railway; and to erect, construct, maintain and use such machinery, engines, devices and appliances and such poles, wires, conduits, or other methods for conducting and distributing power as may be required; and for this purpose said railway corporations are hereby re-invested with all the powers originally conferred upon them and each of them by the acts under which they were created for the condemnation of lands; *provided*, that steam power shall not be used on any part of the road originally chartered as a horse car railroad.

Proviso.

Repealer.

87. SEC. 2. That this act shall take effect immediately and that acts and parts of acts, inconsistent with this act, to the extent of such inconsistency, be and the same are hereby repealed.

A further supplement to the act entitled "An act to authorize the formation of railroad corporations and to regulate the same" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four. (1)

P. L. 1880, p. 55.

Time, when extended for completion of road.

Approved February 26, 1880.

88. SEC. 1. That in all cases where the time allowed by law for the completion of the railroad (including tunnel work) of any railroad company incorporated under the laws of this state, whose route does not exceed four miles in length, will prove insufficient for the completion of the road, or has expired or is about to expire, said time is hereby extended for the period of four years from and after the passage of this act.

Railroads may cross each other at a certain angle.

89. SEC. 2. That it shall be lawful for any railroad now organized under the act to which this is a supplement, to cross with their road any other railroad, at any point not more than two miles from the terminus of either road at any angle not less than fifteen degrees; *provided*, that if the road crossed has more than one track, no change shall be made in the angle of crossing unless the said crossing shall be above grade; *and provided*, such crossing above grade shall span the entire roadway of such road crossed, not exceeding one hundred feet.

Priority of right over location at crossing.

90. SEC. 3. That in cases where any railroad company has failed to construct their railroad upon any part of the location filed by them, within the time allowed by law, and, since the expiration of said time, any other railroad company has filed a location crossing the same, said company last filing their location shall have priority of right over said location at said crossing.

(a) See *Township of Raritan v. Port Reading R. R. Co.*, 4 Dick. 11. *N. Y. and Greenwood Lake R. R. Co. v. State*, 21 Vr. 303. *Montclair v. N. Y. and Greenwood Lake R. R. Co.*, 18 Stew. 436; reversed by 2 Dick. 591.

(1) This act is evidently intended to be a supplement to the act approved April 2d, 1873.

91. SEC. 4. 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.

II. General canal law.

An act to authorize the formation of canal companies and to regulate the same.

Approved March 9, 1877. P. L. 1877, p. 127.

92. SEC. 1. That any person or persons, not less than seven, may form a company for the purpose of constructing, maintaining and operating a canal for the purpose of transportation of goods, merchandise or passengers upon water; *provided, however,* that said canal shall not exceed three miles in length, and for that purpose may make and sign articles of association, in which shall be stated the name of the company, the number of years the same is to continue, the places or points from and to which the said canal is to be constructed, and the name of the county or counties in this state through or in or into which it is made or intended to be made, the amount of capital stock of the company, which shall not be less than ten thousand dollars for every mile, or fraction thereof, of said canal constructed or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of seven directors of the company, a majority of whom shall be residents of this state, who shall manage its affairs for the first year and until others are chosen in their places; each subscriber to said capital stock shall subscribe his name, place of residence and the number of shares of stock he agrees to take in said company; on compliance with the provisions of the next section and section five of this act, such articles of association may be filed in the office of the secretary of state, who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and upon tendering the said articles to the secretary of state to be filed, the persons who have subscribed such articles of association shall be a corporation by the name specified in such articles of association; every corporation formed under this act in addition to the general powers set forth in an act entitled "An act concerning corporations," approved April seventh, eighteen hundred and seventy-five, shall have power:

I. To cause such examination and surveys for its proposed canal to be made as may be necessary to the selection of the most advantageous route, and for such purposes by its officers and servants to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto; May make surveys.

II. To purchase, hold and use all such real estate and other property as may be necessary in the construction, operation and maintenance of said canal, necessary for the full and free enjoyment of said canal; May purchase and hold real estate.

III. To construct said canal, as hereby provided, and to take such land as may be necessary therefor within the limits hereinafter provided; Construct canal.

IV. To use and let to others to use said canal and to charge tolls; Charge tolls.

V. To do any other act necessary for the full and free use and enjoyment by any such canal company of the franchises hereby granted. Other necessary acts.

93. SEC. 2. That such articles of association shall not be filed and recorded in the office of the secretary of state until at least five thousand dollars of stock for every mile or fraction thereof of said canal proposed to be made is subscribed thereto, and ten per centum paid thereon in good faith and in cash, to the directors named in said articles of association, nor until there is indorsed thereon, or annexed thereto, an affidavit made by at least five of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed, and ten per centum paid in cash thereon, as aforesaid. Certificate not to be filed with secretary of state until certain amount of stock is subscribed.

94. SEC. 3. That a copy of any articles of association filed and recorded in pursuance of this act, or of the records thereof, with a copy of the affidavit aforesaid, indorsed thereon or annexed thereto, and certified to be a Certified copy to be presumptive evidence.

copy by the secretary of state, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

Subscriptions to balance of capital stock may be received after articles of association are filed.

95. SEC. 4. That when such articles of association and affidavit, and such other prerequisites as may be hereinafter mentioned are filed and recorded in the office of the secretary of state, the directors named in said articles of association may, in case the whole of the capital stock is not before subscribed, continue to receive subscriptions until the whole capital stock is subscribed; at the time of subscribing every subscriber shall pay to the directors ten per centum on the amount subscribed by him in money, and no subscription shall be received or taken without such payment.

Election of directors.

96. SEC. 5. That there shall be a board of seven directors of every corporation formed under this act to manage its affairs; said directors shall be chosen annually by a majority of the votes of the stockholders, voting at such election in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places; in the election of directors each stockholder shall be entitled to one vote for each share of stock held by him or her; vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation; the inspectors of the first election of directors shall be appointed by the board of directors named in the articles of association; no person shall be a director unless he shall be a stockholder owning stock absolutely in his own right; and qualified to vote for directors at the election at which he shall be chosen; at every election of directors the books and papers of such company shall be exhibited to the meeting; *provided*, a majority of the stockholders present shall require it.

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Officers.

97. SEC. 6. That the directors shall appoint one of their number president; they may also appoint a secretary and treasurer, and such other officers and agents as shall be prescribed by the by-laws, and shall establish and fix such salaries to them, and to the president, and secretary, and treasurer, as to the said board of directors shall appear proper.

Subscriptions to capital may be paid in installments.

98. SEC. 7. That the directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed in such manner and in such installments as they may deem proper; if any stockholder shall neglect to pay any installment as required by resolution of the board of directors, the said board shall be authorized to declare his stock and all previous payments thereon forfeited for the use of the company; but they shall not declare it so forfeited until they shall have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that he is required to make such payments at the time and place specified in said notice, and that if he fail to make the same his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid at least thirty days previous to the day on which such payment is required to be made; *provided*, that if said company shall not declare such stock forfeited, then such neglecting stockholder shall be individually liable to said company for the amount unpaid upon the stock so held by him until the whole amount of the capital stock so held by him shall be paid to the company.

Proviso.

Stock transferable.

99. SEC. 8. That the stock of every company formed under this act shall be deemed personal estate, and be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in.

Capital stock may be increased.

100. SEC. 9. That in case the capital stock of any company formed under this act, is found to be insufficient for constructing and operating its canal, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time to any amount required for the purpose of constructing, maintaining and operating its canal; such increase may be sanctioned by a vote in person or by proxy of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders called by the directors of the company for that

purpose, by a notice in writing to each stockholder to be served on him personally or by depositing the same properly folded and directed to him at the post-office nearest his usual place of residence, in the post-office at least twenty days prior to such meeting; such notice must state the time and place of the meeting and its object, and the amount to which it is proposed to increase the capital stock; the proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company as aforesaid.

101. SEC. 10. That any canal constructed under the provisions of this act shall not exceed one hundred feet in width; and it shall be lawful for said company, its agents, engineers, superintendents or others in its employ, to enter at all times upon all lands or waters for the purpose of exploring, surveying, leveling and laying out the route or routes of said canal and of locating the same, doing no unnecessary injury to private or other property, and within such limitations as have been hereinbefore provided; and when the route or routes of such canal shall have been determined upon, and survey of such route or routes, location or locations deposited in the office of the secretary of state, then it shall be lawful for every corporation formed under this act, upon payment or tender of such compensation as is hereinafter provided, by its officers, agents, engineers, superintendent, workmen and other persons in their employ, to construct, maintain and operate a canal between the points named in the articles of association, commencing at or within and extending within, to or into any town or village named as the place of the termini of such canal, and for that purpose to enter upon, take possession of, have, hold, use, occupy, possess and enjoy, and to excavate and dig out any lands and dredge out any waters, and to erect embankments, bridges and all other necessary works, and to do all other things which may be suitable or necessary for the completion, repairs or management of said canal; and the construction, completion, repairs and management of said works, buildings and structures hereinbefore mentioned, and for the conveyance of freight and passengers to and from the terminus of said canal, and on the land of said company adjacent to said canal by steam or other motive power; and for the construction, completion and repairs of such other works as may be hereinafter mentioned; and it shall be lawful for said company, its officers, agents, engineers, superintendents, workmen and other persons in their employ at any time to enter upon and take possession of, have, hold, use and occupy all and singular such waters and streams as may be useful for said canal, subject to such compensation as is hereinafter directed; *provided, however*, that no property now used by canals already constructed and in operation in this state shall be taken, nor shall any canal be cut into or in any way interfered with, unless the consent of the companies by whom said canals are maintained and operated shall be first had and obtained; *and provided also*, that the payment or tender of payment of all damages for the occupancy of all lands, whether covered by water or not, through, under or upon which the said canal and its conveniences, appurtenances, appendages, works and structures adjacent to said canal may be laid out or located or constructed, be made before the said company or any person under their direction or employ shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said canal and its conveniences, appurtenances and appendages, and the works and structures on lands of the company adjacent to said canal, and of locating the same unless the consent of the owner or owners of such land be first had and obtained.

May enter upon lands, &c., for the purpose of exploring, surveying, &c.

Providso.

102. SEC. 11. That when the said company, or its agents, cannot agree with the owner or owners of such required lands or materials, for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of said company shall be given in writing, under the oath or affirmation of some engineer,

Proceedings when company and owners cannot agree.

or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this state, who shall cause the said company to give notice thereof to the person interested, if known, and in this state, or if unknown, or out of this state, to make publication thereof as he shall direct, for any time not less than ten days, and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time and place, upon satisfactory evidence to him of the publication or service of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial and judicious freeholders, residents in the county in which the lands or materials in controversy lie, or the owners reside, commissioners to examine and appraise the land or materials, and to award the damages upon such notice to be given to the person interested, as shall be directed by the justice making such appointment, to be expressed therein, not less than ten days; and in case of the refusal or inability to act, of either of the commissioners so appointed, the said justice may appoint another without further notice; 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 an oath, faithfully and impartially to examine the matter in question, and to make a true report according to the best of their skill and understanding) to meet at the time and place appointed, and proceed to view and examine the said land or materials, and to make a just and equitable estimate or appraisal of the value of the same, and assessment of damages as shall be paid by the said company for such lands or materials, and damages aforesaid, which report shall be made in writing, under the hands and seals of the said commissioners, or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county in which the lands or materials are situated, to remain on record therein; which report, or a copy thereof, certified by the clerk of the said county, shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess and enjoy the said lands or materials, or of the said owner or owners to recover the amounts of said valuation, with interest and costs, in an action of debt in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after the demand made of their treasurer, and shall, from time to time, constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the supreme court shall, on application of either party, and on reasonable notice to the other, tax and allow such costs, fees and expenses to the justice of the supreme court, commissioners, clerks and other persons performing any of the duties prescribed in this section, as they shall think equitable and right, which shall be paid by said company.

Proceedings in case company or owners are dissatisfied.

103. SEC. 12. That in case the said company or the owner or owners of the said lands or materials shall be dissatisfied with the report of the commissioners named in the preceding section, and shall apply to the justice of the supreme court at the next term after the filing of the said report, the court shall have the power, upon good cause shown, to set the same aside, and thereupon to direct a proper issue for the trial of the said controversy to be formed between the said parties, and to order a jury to be struck, and a view of the premises or material to be had, and the said issue to be tried at the next circuit court to be holden in the said county, 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 said lands or materials and damages sustained, and if they shall find a greater sum than the commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the company, and execution awarded therefor; but if the said jury shall be applied for by the said owner or owners, and

shall find the same or a less sum than the company shall have offered or the said commissioners awarded, then the said costs to be paid by said applicant or applicants, and either deducted out of the said sum found by the said jury or execution awarded therefor, as the court shall direct; but such application shall not prevent the company from taking the said land or materials upon filing the aforesaid report, the value and damages being first paid, or upon a refusal to receive the same upon a tender thereof, or the owners thereof being under any legal disability, the same being first paid into the court of chancery.

104. SEC. 13. That it shall be the duty of the said company to construct and keep in repair good and sufficient bridges and passages over or under the said canal, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby; and also where the said canal shall intersect any farm lands of any individual, to provide and keep in repair suitable wagonways over or under the said canal, but the canal company may decline to build bridges to connect any farm lands cut by said canal, in which event a justice of the supreme court may appoint commissioners to assess the damages to the owner of said land, as provided in section fourteen of this act.

Bridges to be constructed and kept in repair.

105. SEC. 14. That any company incorporated under this act shall have power to borrow such sum or sums of money, from time to time, not to exceed in the whole its paid-up capital stock, as shall be necessary to build, construct and repair their canal, and the works and structures on the lands adjacent to said canal, and to secure the payment thereof by the execution, negotiation, and sale of any bond or bonds, and secured by mortgage on said lands, privileges, franchises and appurtenances of and belonging to the said company, *provided*, that said bonds shall constitute a lien on the canal, its real estate and franchises, and the proceeds of said bonds shall be used for the purposes above specified.

May borrow money and issue bonds.

Proviso.

106. SEC. 15. That it shall be lawful for the said canal company, at any time during the period named in its articles of association for the continuance of the same, to make contracts and engagements with any other corporation, or with individuals, for transporting or conveying any kind of goods, produce, merchandise, freight or passengers, and to enforce the fulfillment of such contract.

May make contracts and agreements with other corporations.

107. SEC. 16. That any company incorporated under this act shall have power to have constructed or to purchase, with the funds of the company, all boats, machinery and other property necessary for the business to be carried on upon, and upon the lands adjacent to the said canal, and any such company shall be authorized to demand and receive such sums of money for the transportation of persons and property on its said lands and canal, and for any other services connected with its business of transportation, as it shall from time to time think reasonable and proper; and the said canal, with the appendages and appurtenances to said canal, and the lands over and on which the same shall be constructed, and all works, and structures, and improvements, and all other property whatsoever belonging to the company, shall be and are hereby declared to be vested in the said company and its successors [and] assigns, for and during the continuance of the time limited by its articles of association for the continuance of said company, and any extension of said time which may hereafter be granted.

May purchase and construct boats, &c., and necessary machinery.

108. SEC. 17. That the president and directors of any company incorporated under this act shall declare and make such dividends as they may deem prudent and proper from time to time out of the net profits of the said canal and its appendages and appurtenances, and the works, structures and improvements adjacent to said canal and on the property of the said company.

Dividends.

109. SEC. 18. That as soon as any canal or any part thereof is in operation, the president of said company shall file, under oath or affirmation, a statement of the cost of the said canal, including equipments and all expenses, in the office of the comptroller of the state, and annually there-

Statement of the costs and expenses to be made.

State tax. after, on the first Tuesday in January of each year, he shall, under oath or affirmation, make a statement to the comptroller of the state of the cost, equipment, appendages and expenses of said canal, and after the said canal, or any part thereof, shall be in operation, the said corporation shall pay to the treasurer of this state a tax of one-half of one per centum on the cost, equipments and appendages of said canal.

Roads may cross over or under canal.

110. SEC. 19. That whenever the route of said canal shall cross a highway, turnpike or plank road, such highway, turnpike or plank road may be, by said company, carried over or under the canal, as may be found most expedient.

Canal not authorized in city.

111. SEC. 20. That the provisions of this bill shall not be construed as authorizing the construction of any canal within the limits of any incorporated city.

R. S. 592, 594, 601,
1085.

P. L. 1852, p. 82,
317, 532.

" 1853, p. 398,
445.

" 1855, p. 118,
352.

" 1856, p. 276,
352.

" 1858, p. 206,
215, 461.

" 1860, p. 609.

" 1862, p. 289.

" 1864, p. 735.

" 1865, p. 466,
818, 901.

" 1866, p. 256.

" 1867, p. 983,
989.

" 1868, p. 550.

" 1869, p. 806.

" 1870, p. 55, 64.

" 1871, p. 115,
124.

" 1872, p. 60.

" 1873, p. 67,
108, 121, 155.

Employees who willfully break orders, punishable for a misdemeanor.

P. L. 1865, p. 818.

Oil cars not to pass passenger train in tunnels or on bridges.

P. L. 1871, p. 124.

Parlor and sleeping cars authorized and regulated.

P. L. 1867, p. 983.

III. Railroads and canals.

An act respecting railroads and canals.

1. PROVISIONS FOR REGULATING THE USE OF RAILROADS, TO SECURE THE SAFETY AND COMFORT OF PASSENGERS, PROTECT THE PUBLIC AND PROPERTY.

Revision—Approved March 27, 1874.

112. SEC. 1. That any engineer, officer, agent, or employe of any railroad company, who in this state, shall willfully or negligently disregard and disobey any rule, regulation, or published order of any said company or companies, in regard to the running of trains, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be punished by a 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; but nothing in this act contained shall be construed to repeal any acts or parts of acts punishing either of the persons aforesaid in any other manner than that pointed out in this act.

113. SEC. 2. [Repealed by Sec. 206, *post.*]

114. SEC. 3. That no cars that shall be or have been engaged in the transportation of petroleum or crude oils, in bulk, shall pass any passenger train of any railway company, in any tunnel, or upon any bridge of more than one hundred feet in length, in this state, nor shall they enter into or upon such tunnel or bridge during the times a passenger train shall or may be within or upon such tunnel or bridge; and any corporation violating this provision of this act shall be subject to a fine of one thousand dollars, to be recovered by any inhabitant of this state who may sue for the same; one-quarter of said fine to go to the person suing for the same and three-quarters thereof to the free-school fund of this state.

115. SEC. 4. That it shall be lawful for any railroad company to place in any of their passenger trains a car or cars furnished in a superior manner, and with extra accommodations, either day cars or sleeping cars, for the use of families, excursion parties or other persons who may desire such extra accommodations, and to charge therefor such rates of fare as they may deem expedient and just; *provided*, that the number of such extra cars shall not exceed the proportion of one-fourth of the passenger cars regularly run by such railroad company; *and provided*, that a sufficient number of ordinary first-class passenger cars on every train shall be run at the ordinary rates of fare to accommodate all persons who shall prefer to travel therein.

116. SEC. 5. That whenever any person not especially authorized by license, signed by the president or superintendent, shall get upon the trains of any railroad company of this state, with the intent and purpose to sell books, pamphlets, papers, fruit, provisions or any other articles, it shall and may be lawful for any conductor or any other person employed on said train or trains or any ticket agent or other person employed at or about the depots to eject such person or persons from the said trains and depots, using no unnecessary violence, and to take possession of such books, pamphlets, papers, fruit, provisions and other articles, and the baskets, boxes or vessels containing the same, and to give them to the overseer of the poor of the township or city wherein such person shall be at the time of such ejection, for the use of the poor thereof.

Unlicensed vendors may be ejected, and goods to be confiscated.
P. L. 1867, p. 989.

117. SEC. 6. That every incorporated company that hath been or hereafter may be authorized to construct any railroad in this state, shall cause to be placed on some part of every locomotive engine used by any such company a bell of a weight not less than thirty pounds, or steam whistle which can be heard distinctly at a distance of at least three hundred yards, and shall cause such bell to be rung or such steam whistle to be blown at the distance of at least three hundred yards from the place where any such railroad crosses a turnpike road or highway upon the same level with the said railroad; and such bell shall be kept ringing or such steam whistle shall continue to be blown until the engine has crossed such turnpike or highway, or has stopped. (a)

Bell or whistle required at crossings.
P. L. 1852, p. 532.
R. S. 594.

118. SEC. 7. That every such company shall cause a board with this inscription, "look out for the locomotive," to be erected and maintained wherever the road of such company may be crossed, as aforesaid, by any turnpike road or public highway, so as to be easily seen by travelers.

Signboard required at crossings.

119. SEC. 8. That if any such company shall refuse or neglect to comply with either of the foregoing provisions, they shall forfeit for every such refusal or neglect the sum of one hundred dollars, to be sued for by the clerk of any township in which such refusal or neglect shall occur, for the use of the said township, and to be recovered with costs in an action of debt in any court having cognizance thereof; *provided*, that all complaints of any refusal or neglect to comply with said provisions shall have been made within ten days thereafter; *and provided further*, that nothing herein contained shall be construed to take away from any individual or individuals any right he, she or they may have to recover damages for any injury which may be incurred by any refusal or neglect to comply with the requirements of this act. (b)

Penalty for neglect.

Proviso.

120. SEC. 9. That if any person shall willfully obliterate, destroy or injure any such board, so as aforesaid erected, he, she or they so offending shall forfeit for every such offense the sum of twenty dollars, to be recovered with costs by any such railroad company, in an action of debt before any court having cognizance thereof, for the use of said company.

Penalty for injuring signs.

121. SEC. 10. That it shall and may be lawful for any such company to cause a fence or other inclosure to be made around their depots, where the public safety requires it, so as to prevent persons other than travelers from coming near the locomotives and train of cars, and to exclude from such inclosures all persons except travelers and the agents of the said companies.

Companies may fence in their stations.
R. S. 594.

122. SEC. 11. That if any railroad company shall have or erect alongside of their track or roadway, in any incorporated city where the same may adjoin any public road or street, a fence, wall, or embankment, four feet high, sufficiently close and strong to prevent children and horses from going through the same, and shall construct and provide on each side of such track, where it may cross any public road or street now established or which hereafter may be established, a gate of like height and sufficiency, and cause the same to be closed at least half a minute before any locomotive may cross such street or road, and to be kept closed until such

Passage of railroads through cities.
P. L. 1864, p. 735.

(a) If there is a bell on an engine of the statutory weight, and it is rung in the manner required, then, so far as respects the giving of audible signals before reaching a public highway crossing, the company has performed its duty, whether the signal so

given is heard or heeded or not by a person crossing the track on the highway. *N. Y., &c., E. R. Co. v. Leaman*, 25 Vr. 202.
(b) Form of proceedings to recover these penalties. *Crawford v. New Jersey E. R. Co.*, 4 Dutch. 479, and *infra*, Sec. 12.

locomotive and its train shall have passed by ; or when the track or roadway, as aforesaid; shall be laid through any excavation four feet deep; then and from thenceforth it shall be lawful for such company to run locomotives and trains in said city over the parts of their road so inclosed or excavated and over the parts that do not adjoin or cross any public street or highway, at any rate of speed they may deem proper, and such speed shall not thereafter be restrained by any city ordinance to regulate the same ; but if such fence, wall or embankment, or any part thereof, shall not be maintained in manner aforesaid, or said gates, or any of them, shall not be closed as aforesaid, at the passage of any trains or locomotives, then the said company and their agents shall be liable to the provisions of any law or ordinance, and any penalty thereby inflicted, for the passage of any train or locomotive over that part of their road adjoining or crossing any public street or road along which such fence, wall or embankment shall not be maintained, or said gates shall not be so closed at the passage of said trains or locomotives; *provided*, that nothing herein contained shall affect the liability of any railroad company to any person injured, for any damage to person or property caused by the negligence or want of care of said company or their agents in the running of their trains.

Proceedings in penal actions for not giving signals regulated.
P. L. 1867, p. 984.

123. SEC. 12. That whenever any railroad company has neglected or refused to cause the bell to be rung or the steam whistle to be sounded on any locomotive engine before crossing any public highway, as now required by law, and a penal action shall have been instituted against said company in consequence thereof by the clerk of any township, it shall be lawful for the said clerk to prove upon the trial of said action any such neglect or refusal that may have occurred on the part of said company, at any time within ten days prior to the commencement of said action, without having specially mentioned and described the time of said neglect or refusal in the state of demand filed in said action ; and that for any such neglect or refusal proved on said trial, it shall be lawful for the justice to render judgment for the penalty of one hundred dollars, for the use of said township ; *provided, however*, that but one action shall be maintained by said clerk against said company for said neglects or refusals within ten days next preceding the commencement of said action ; *and provided also*, that nothing herein contained shall be construed to take away from any individual or individuals any right he, she, or they may have to recover damages for any injury which may be incurred by any refusal or neglect to comply with the requirements of this act.

Communication of fire from engines prohibited.
P. L. 1865, p. 901,
§ 1.

124. SEC. 13. That it shall be the duty of every railroad company in this state, and of every company or person operating or using any railroad in this state, with a locomotive engine or locomotive engines, to take and use all practicable means to prevent the communication of fire from any locomotive engine used or employed by them on any railroad in this state, in passing along or being upon any such railroad, to any property of whatever description of any owner or occupant of any land adjacent or near to such railroad. (a)

Company responsible may insure against loss.
Ib., § 2.

125. SEC. 14. That when any injury is done to any building, grain, hay, crops, or other property of any person or corporation, by fire communicated by a locomotive engine of any person or railroad corporation, in violation of the foregoing section of this act, said person or corporation shall be held responsible in damages to the person or corporation so injured ; and it shall be lawful for any railroad corporation to make an agreement for insurance of any such property on which an insurance may be practicable, and such corporation shall have an insurable interest therein accordingly, and may effect insurance thereon in its own behalf.

Locomotives to be supplied with screens.
P. L. 1873, p. 155,
§ 1.

126. SEC. 15. That it shall be the duty of every railroad company in this state, and of every company or person operating or using any railroad in this state with a locomotive engine or locomotive engines, to provide such engine or engines with a screen or screens, or cover or covers, on the

(a) Negligence by a railroad company in suffering combustible matter to accumulate on its right of way, so as to make it dangerous to adjoining property to run its locomotives through

it, will make the company liable for injuries from fires originating in such combustible matter from coals dropped or thrown from its locomotives. *D., L. & W. R. R. Co. v. Salmon*, 10 Vr. 289.

smoke-stack or smoke-pipe of such engine or engines, so as to prevent as much as practicable the escape of fire, either from wood, soft coal, or hard coal, from the smoke-stack or smoke-stacks, smoke-pipe or smoke-pipes of said engine or engines. (a)

127. SEC. 16. That in every action now or hereafter brought for the recovery of damages for an injury done to the property of any person or corporation, by fire communicated by a locomotive engine of any person or railroad corporation, in violation of the preceding sections of this act, proof that the injury was so done shall be prima facie evidence of such violation, subject nevertheless to be rebutted by evidence of the taking and using all practicable means to prevent such communication of fire as by said section required. (b)

Proof in action
for recovery of
damages.
Ib., § 2.

128. SEC. 17. That if any company or person shall refuse or neglect to comply with either of the foregoing provisions of this act for preventing the communication of fire from locomotives, they shall forfeit for every such refusal or neglect, the sum of one hundred dollars to any person who may sue for the same, to be recovered with costs in an action of debt in any court having cognizance thereof, one-half of the sum recovered to go to the person suing, and one-half to the state for the public school fund.

Penalty for
refusal to comply
with provisions
of act.
Ib., § 3.

129. SEC. 18. That if any person travel or attempt to travel in any carriage of any railroad company, or of any other railroad company or party using any railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and willfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and willfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offense forfeit to the company running the train whereof such carriage shall be part, a sum not exceeding five dollars, which fine shall be imposed with costs by any justice of the peace before whom such person shall be brought on complaint made on oath or affirmation, and after summary hearing of the facts and circumstances, or on admission of the party.

Penalty on passen-
gers practicing
frauds on the
company.

130. SEC. 19. That if any person be discovered in committing or attempting to commit any such offense as in the preceding enactment mentioned, all officers and servants, railway police and other persons on behalf of the company, or such other company or party as aforesaid, and all constables and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice of the peace or until he be otherwise discharged by due course of law.

When discovered
may be arrested.

131. SEC. 20. That no person shall be entitled to carry or to require any company to carry upon any railway any aquafortis, oil of vitriol, gunpowder, nitro-glycerine, lucifer matches or any other goods which may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left at the time of so sending, he shall forfeit to the company twenty dollars for every such offense and be besides liable to all damage that may occur therefrom, and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Carriage of explo-
sive articles, no
duty; how such
carriage regulated.

132. SEC. 21. That any railroad corporation on which steam is used as a motive power may apply to the governor of the state of New Jersey, to commission such persons as any such railroad corporation may designate, to act as policemen for such corporation. [See Sec. 353, *post*.]

Railroads may
employ police-
men.
P. L. 1865, p. 466.

133. SEC. 22. That the governor, upon such application, may appoint such persons, or so many of them, as he may deem proper to be such policemen, and shall issue to such person or persons so appointed a com-

Governor to
appoint.
P. L. 1865, p. 466.

(a) If a railroad company use upon its engine a spark-arrester of an approved pattern in general use, and which, upon a careful inspection by a skilled mechanic, appeared to be in good condition, such company will not be responsible for damage done

by a fire occasioned by sparks escaping through such spark-arrester. *Hoff v. West Jersey R. R. Co.*, 16 *Vr.* 201.

(b) See *Wiley v. West Jersey R. R. Co.*, 15 *Vr.* 247.

RAILROADS AND CANALS.

mission to act as such policemen; a copy of such commission shall be filed in the office of the secretary of state.

Powers of police.

134. SEC. 23. That every person so appointed shall, in the counties through which such railroad may run, possess all the powers of policemen and of constables in criminal cases, of the several cities, wards of cities, and townships in such counties.

Shield to be worn.

135. SEC. 24. That such railroad policemen, when on duty, shall severally wear a metallic shield or device with the words "railway police," and the name of the corporation for which appointed inscribed thereon; and such shield or device shall be worn in plain view, except when such policemen shall be employed as detectives.

Compensation.

136. SEC. 25. That the compensation of such policemen shall be paid by the companies for which the policemen are respectively employed and commissioned, and shall be such as shall be agreed upon by any such company and such policemen.

Vacation of commission.

137. SEC. 26. That whenever any such company shall no longer require the service of such policemen so appointed as aforesaid, such company shall file a notice to that effect in the office of the secretary of state of this state, and thereupon the power of such policemen shall cease and be determined.

2. FREIGHT, FARES, TOLLS AND DUTIES THEREON.

Responsibility as common carriers may be limited by notice.
P. L. 1853, p. 396.

138. SEC. 27. That any railroad company of this state may, by giving notice to any person or persons offering goods, merchandise or baggage for transportation on the railroad, or in the boats or vessels of such company, limit their responsibility as carriers thereof to one hundred dollars for every one hundred pounds weight of such goods, merchandise or baggage, and at that rate for a greater or less quantity, unless such person or persons so offering such goods, merchandise or baggage for transportation shall pay to said company, by way of insurance, for any additional amount of responsibility to be assumed, such rate or rates as may be charged by said company therefor, not to exceed the legal rates for transporting one hundred pounds of goods or merchandise on such railroad, or in such boats or vessels, for every two hundred dollars of additional responsibility assumed on each one hundred pounds of such goods, merchandise or baggage, and at that rate for a greater or less quantity; and a general notice of the limitation of such company's responsibility, placed in a conspicuous place, at or in the receiving office of such company, where goods, merchandise or baggage are usually received by them for transportation, and inserted in the bills of lading, or receipts given for such goods or merchandise, and in the tickets delivered to passengers, shall be deemed sufficient notice under this section.

Extra rates.

Freight to be delivered at terminus or junction, if required.
P. L. 1862, p. 239.

139. SEC. 28. That it shall be the duty of every railroad company in this state, whenever required by the owner or owners of any freight, to deliver the same at the terminus of their road; and the owner or owners of such freight may require any railroad company conveying such freight to deliver the same at the junction of their road, or any railroad over which they pass, with any other railroad, or within a reasonable distance from said junction, not exceeding one-quarter of a mile; and if any railroad company shall refuse or neglect to comply with either of these foregoing provisions they shall forfeit for every such refusal or neglect the sum of one hundred dollars to any person who may sue for the same, to be recovered with costs, in an action of debt, in any court having cognizance thereof.

Rates of freight for carrying bullion.
P. L. 1852, p. 317.

140. SEC. 29. It shall be lawful to charge on gold, either in coin or bullion, transported on such railroads and routes, at the rate of four cents for every ten miles for every one thousand dollars, and one cent per mile for every one thousand dollars of silver in coin or bullion; and a transit duty shall be paid to the state, at the rate of two cents for every ten miles, on every twenty thousand dollars of gold, and at the rate of two cents for every ten miles for every eight thousand dollars of silver, and in the same proportion for any less sum.

141. SEC. 30. That it shall be lawful to charge for carrying, on such railroads and routes, twelve and a half cents for every small package, whatever may be its weight or the distance it is carried; and a transit duty shall be paid to the state of twenty cents for each and every twenty dollars received for such transportation. (a)

Rates on small packages.

142. SEC. 31. That the term small packages in the foregoing section, shall not be held to include bundles and packages where more than five bundles or packages are delivered to one person at one time, and where such bundles and packages so delivered can be, in the aggregate, readily weighed, either as light or bulky goods, or as ordinary freight. [See Sec. 181, *post.*]

Small packages defined.

143. SEC. 32. That every railroad company which shall avail itself of the provisions of this act, shall pay any transit duties, required to be paid, quarterly, to the treasurer of this state.

But transit duties to be paid.

144. SEC. 33. That it shall be lawful to charge for the transportation of light and bulky goods on any railroad in this state, and on the routes continuous therewith, to the termination thereof, the same charge for every eighty cubic feet, as is limited by law for the transportation of one ton by weight, and at a proportionate rate for a greater or less number of cubic feet, and the transit duty to the state shall be paid on such goods, where the charge for transportation is made in accordance with this section, as if eighty cubic feet were one ton in weight.

In charges for transportation, eighty cubic feet to be a ton. P. L. 1853, p. 396.

145. SEC. 34. That it shall be lawful for all railroad companies in this state to charge ten cents for each passenger for the whole distance carried, whenever the present legal rates shall not amount to said sum.

Charge for passengers. P. L. 1856, p. 276. " 1858, p. 201.

146. SEC. 35. That it shall be lawful for all said companies to charge five cents for the whole distance carried for each hundred pounds of merchandise or other property, other than hereinafter mentioned, whenever the present legal charges shall not amount to said sum.

Freight charge for short distance.

147. SEC. 36. That it shall be lawful for all such companies to charge three cents for the whole distance carried for each hundred pounds of stone, coal, lime, sand, shells, ashes, iron ore, pig iron and firewood, whenever the present legal rates shall not amount to said sum.

Charge for heavy freight.

148. SEC. 37. That hereafter it shall not be lawful for any railroad or canal company doing business in this state to charge or receive any greater rate of compensation for freight upon goods, wares or merchandise transported between way stations, or between a terminal station and a way station, than they charge and receive for freight upon such goods, wares and merchandise between the terminal stations of such railroad or canal.

Freight on goods transported between way stations. P. L. 1873, p. 87.

149. SEC. 38. That any incorporated company or companies in this state which is or are, or shall be authorized by law to take toll, or to charge for the transportation of passengers, goods, wares, or merchandise, which shall, directly or indirectly, through or by any agent, director, or other officer whatever, take or demand of any passenger or person, under any pretense whatever, more than the charge, toll rates, or fare allowed by law, shall forfeit and pay the sum of one hundred dollars for each and every such offense, to be recovered in an action of debt, by any person who may sue for the same, the one-half to the prosecutor, and the other half to the use of the state, before any court of competent jurisdiction, together with the costs of prosecution.

Penalty for taking unlawful tolls. R. S. 601.

150. SEC. 39. That all penal suits now pending in any of the courts of this state, whether pending under the act passed March twelfth, one thousand eight hundred and thirty-nine, or under the act amendatory thereof, approved March seventeenth, one thousand eight hundred and seventy, shall, each and all of them, be determined under the law as it stood at the time said penal suits or actions were commenced, and all penalties and forfeitures under either the said act passed March twelfth, one thousand eight hundred and thirty-nine, or under the said act amendatory thereof, shall be recoverable as fully, to all intents and purposes, as though no subsequent amendment or repeal of either of said acts by any law or laws of this state had been made or enacted.

Pending suits not to be affected. P. L. 1870, p. 64. " 1871, p. 115. " 1872, p. 60.

(a) See *McGregor v. Erie Railway Co.*, 6 Vr. 115, 120.

Charges to express companies not limited.
P. L. 1867, p. 983.

151. SEC. 40. That it shall be lawful for any railroad company in this state to receive from any express or transportation company, person or firm any amount that such company, person or firm shall agree to pay as compensation for carrying express goods or other property, any limit to the rate of compensation in the charters of such railroad companies or otherwise, to the contrary notwithstanding.

Express matter may be carried at double rates.

152. SEC. 41. That it shall be lawful for any railroad company in this state to charge for the transportation of property known as express matter, and of property the handling or transportation of which is attended with extraordinary expense or risk, such as living animals, in less quantities than carloads, valuable furniture not boxed, powder, looking-glass plates, pianos, and the like, any rate not exceeding twice the rate such railroad companies are allowed to charge for the transportation of ordinary goods by their respective charters or other laws of this state; the term express matter in this section is to be understood as applying only to packages weighing less than one hundred pounds each, or the value of which exceeds one dollar per pound, or to property forwarded in passenger or special trains.

Proviso as to other goods than as mentioned.

153. SEC. 42. That nothing in this act shall be so construed as to exonerate any railroad company from carrying goods, other than hereinbefore mentioned, that shall be offered to their agents for transportation on the terms prescribed by their respective charters or by the laws of this state.

3. UNCLAIMED FREIGHT.

Perishable goods may be sold when they cannot be delivered, and how.
P. L. 1855, p. 352.

154. SEC. 43. That in all cases where the consignee of perishable goods, wares, and merchandise transported by any canal or railroad company in this state, and still in possession of such company, cannot be found, or shall neglect or refuse to receive the same, or to pay the costs and expenses of the transportation thereof, application may be made in writing by said company or their agents to two justices of the peace of this state, and said justices upon proofs made to their satisfaction that said goods, wares and merchandise have been transported by said company, and are perishable, that the consignee thereof cannot be found, or neglects or refuses to receive the same, or to pay the costs and expenses of the transportation thereof, shall issue an order under their hands and seals, commanding a constable to sell said goods, wares and merchandise by public vendue, at the time and place therein named, due notice whereof shall be given by advertisement signed by said constable, at such places and for such time as said justices shall direct.

Regulations as to fees and proceeds of sale.
Ib., § 1.

155. SEC. 44. That the fees of said justices and constable, and the costs and expenses of said transportation shall first be paid out of the proceeds of said sale, and the balance (if any) shall be paid over to the clerk of the county, who shall pay the same to the person entitled thereto (if claimed by such person or persons within two years), upon the order of a judge of the court of common pleas of said county, made upon due proof of said claims, and if the same is not claimed in two years, shall pay the same into the school fund of this state.

Goods remaining unclaimed six months may be sold, and how.
P. L. 1858, p. 461.

156. SEC. 45. That it shall be lawful for any railroad and transportation company, chartered by this state, to sell at public auction all articles of freight or baggage, transported by such company to any station on their respective roads, which may have remained at such station for six months or over, and not called for by owner or owners, or consignee or consignees, or when the owner or consignee cannot be found, or is unknown; and may in like manner sell all articles of a perishable nature in two days, if such articles would depreciate in value by being longer kept; *provided*, that before such sale shall be made, public notice shall be given by six insertions in the newspapers and by notices set up in at least three of the most public places in the neighborhood, where the sale is to take place, naming the articles to be sold, the time and place of sale, in at least five of the most public places, at least five days before the time of sale; and in

case of sale of perishable articles, such notice shall be at least one full day; *provided*, that such sale shall not take place before ten o'clock in the morning, or after four o'clock in the afternoon, nor elsewhere than in a public place.

157. SEC. 46. That the proceeds of said sale shall go first to defray the costs and expenses of said sale, and then to the account of freight and charges of the railroad company on said freight and baggage, and the balance, if there be any, shall be paid over to the legal owner or owners.

Distribution of proceeds of sale. P. L. 1858, p. 461.

158. SEC. 47. That when any freight may have been carried over any railroad, and delivered by the company at any point specified by the shippers, other than the depot of the company, the said company shall not be responsible for the safety and security thereof. (a)

No responsibility for delivery except at depot.

159. SEC. 48. That it shall be lawful for any express company chartered by this state, to sell at public auction any unclaimed freight, articles or goods not perishable, which may have been in their possession for six months or over, and when the owner or owners, consignee or consignees, are unknown, cannot be found, or refuse to receive such freight, articles or goods; and may in like manner sell all articles of a perishable nature in five days, if such articles would depreciate in value by being longer kept; *provided*, that before such sale shall be made, public notice shall be given by six insertions in the newspapers, and by notices set up in at least three of the most public places of the neighborhood, at which such freight, articles or goods were directed to be left, and where the sale is to take place, naming the articles to be sold, the name of the person to whom directed, if known, and the time and place of sale, at least five days before the time of sale; and in case of sale of perishable articles, such notice shall be sufficient, if so set up at least three full days, and also advertise one insertion in a newspaper printed in the immediate neighborhood.

Express companies may sell unclaimed goods. P. L. 1860, p. 609.

160. SEC. 49. That every sale made, as provided in the foregoing section, shall be made in some public place, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, and if the residence of the person to whom the article is directed be known, the company shall serve a copy of the notice of sale on such person before the sale; and it shall be the duty of every express company making a sale, as aforesaid, to keep a book in which shall be recorded a list of all articles sold by them, the price for which, and the name of the person to whom each article is sold, and the expenses of advertisement and sale, the name of the person or firm to whom it was directed, and the name of the owner and person by whom it was delivered to said company, if known, and shall once in each year file a true transcript from said books in the office of the clerk of the county where such property is sold.

Regulation of such sales.

161. SEC. 50. That the proceeds of said sale shall go first to defray the costs and expenses of said sale, and then to the account of freight and charges of the express company on said freight, articles or goods, and the balance, if there be any, shall be paid over to the legal owner or owners; and if no person or persons shall, within one year after the sale, claim the net proceeds thereof, then said company shall pay the same over to the overseer of the poor of the city, township or borough where such sale is made.

Distribution of proceeds.

4. REPORTS REQUIRED.

162. SEC. 51. That every railroad company in this state shall, on the first Tuesday of January, in each and every year, make to the legislature a report, under oath or affirmation of the president of said company, containing an account of their capital stock actually paid in, and the amount of funded and other debts of said company; also of the costs of said road and equipments; also of the operations of the said company during the year preceding, up to the first day of January aforesaid; also the expenditures for working the said roads, including repairs, maintenance of way,

Annual reports to be made by railroads. P. L. 1862, p. 82.

(a) As to the degree of care required after goods have been stored in their stations, see *Morris and Essex R. R. Co. vs. Ayres* 5 *Dutch*. 393.

motive power and contingencies; also the income from passengers, freight and other sources; also the amount of dividends, and how paid; also the accidents that have occurred during said year on the road, and the cause of the same, with the names of the persons injured, and the nature and extent of their injuries; also the names of the engineers and conductors under whose management such accidents have occurred, and whether such engineers and conductors are still retained in the employ of said companies.

Canal companies to make annual reports.

163. SEC. 52. That every canal company of this state shall, on the first Tuesday of January in each year, make to the legislature a report, under oath or affirmation of the president of said company, containing an account of the capital stock of said company actually paid, and the amount of funded and other debts of said company; also of the cost of the canal and appurtenances; also of the expenditures for repairs, superintendence and management of the same, under their appropriate heads; also of the income during the year from passengers, freight and other sources, and the amount of dividends, and how paid.

Reports transmitted and filed.
P. L. 1853, p. 445.
" 1873, p. 121.

164. SEC. 53. That the reports provided for as aforesaid shall be transmitted to the comptroller of the treasury, who shall file the same in his office, there to remain of record, and that copies of the said reports shall be made out by the said secretary, and transmitted to the legislature on the first Tuesday of February of each year.

Penalty for failure to report, and disposition of fines.
P. L. 1853, p. 445.

165. SEC. 54. That upon the failure of any railroad or canal company of this state to make report to the legislature, in accordance with the provisions of the first and second sections of the act to which this is a supplement, by the first Tuesday of February in each year, they shall respectively forfeit and pay to the state for every such omission the sum of ten thousand dollars, to be sued for and recovered against them in an action of debt, with costs of suit.

Fines recovered to go to school fund.

166. SEC. 55. That all fines recovered from any incorporated companies in this state, under the provisions of this act, shall be added to the school fund of this state, for the benefit of public schools.

5. PROVISIONS RESPECTING RAILROADS SOLD UNDER MORTGAGE.

Sale of roads or canals under mortgage to vest franchises and create new corporation.
P. L. 1853, p. 215.

167. SEC. 56. That whenever any railroad, canal, turnpike or plank road in this state of any corporation, created by or under any law or laws of this state, shall be sold and conveyed under or by virtue of any decree or decrees of the court of chancery of this state, or of the circuit court of the United States in and for the district of New Jersey, sitting in equity, and an execution or executions issued thereon, to satisfy any mortgage debt or debts, judgment or judgments, or other incumbrance or incumbrances thereon, such sale and conveyance, duly made and executed, shall vest in the purchaser or purchasers thereof all the right, title, interest, property, possession, claim and demand, in law and equity, of the parties to the suit or suits, action or actions, in which such decree or decrees was or were made, of, in, and to the said railroad, canal, turnpike, or plank road, with its appurtenances; and also, of, in, and to the corporate rights, liberties, privileges and franchises of the said corporation, but subject to all the conditions, limitations, restrictions and penalties of the said corporation of and concerning the same; and such purchaser or purchasers, and his or their associates, not less than fifteen in number, shall thereupon become a new body politic and corporate, in fact and in law, by the name of the aforesaid corporation, and shall be deemed and considered the stockholders of the capital stock of such new body politic and corporate, in the ratio and according to the amount of the purchase-money by them respectively contributed; and shall be entitled to all the rights, liberties, privileges, and franchises, and be subject to all conditions, limitations, restrictions, and penalties of and concerning the said railroad, canal, turnpike, or plank road, so sold and conveyed, which were contained in the act or acts creating, or under which the aforesaid corporation was created, and the supplements thereto, so far as the same was or

were in force and unrepealed at the time of such sale and conveyance; and it shall and may be lawful for the said new body politic and corporate, at any time within one year after such sale and conveyance, to organize themselves as a corporation by the aforesaid name, by electing a board of directors, and the election or appointment of a president and such other officers as shall or may be authorized or required by the aforesaid act or acts and supplements thereto, and to make and issue certificates of the capital stock of such new corporation to the said purchaser or purchasers and their associates, to the amount of their respective interests therein; and it shall be the duty of such new corporation, within one calendar month after its said organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, and the names of its president and directors, and transmit the said certificate to the secretary of state, at Trenton, to be filed in his office, and there remain of record; *provided*, that no such sale and conveyance, and organization of such new corporation shall in any wise affect or impair any right or rights in law or equity, of any person or persons, body politic or corporate, not a party or parties to the suit or suits, action or actions, in which the aforesaid decree or decrees was or were made, nor of the said party or parties, except so far forth as determined by said decree or decrees; *and provided also*, that when any trustee or trustees shall be made a party or parties to such suit or suits, action or actions, and their cestuis que trust, for any reason or reasons satisfactory to the court in which such suit or suits, action or actions may be, shall not be made a party or parties thereto, the rights and interests of such cestuis que trust shall be concluded by such decree or decrees.

Proviso.

168. SEC. 57. That whenever any railroad, canal or turnpike company, incorporated under the laws of this state, have become insolvent or failed for ninety days after the same becomes due to pay the principal or interest on any mortgage on the property or franchises of such company, it shall be lawful for the chancellor, upon the application of any creditor, mortgagee or stockholder of such company, to appoint a receiver or receivers, or three trustees, who shall have and exercise all the powers and authority that it is lawful for receivers and trustees to exercise under the "Act concerning corporations," and it shall be lawful for such receivers or trustees to sell or lease the canal, railroad or turnpike belonging to such company, together with all the chartered rights, privileges and franchises of such company; and the purchaser or purchasers, lessee or lessees, of such work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of such company, or during the term in such lease specified, in as full and ample a manner as the stockholders of such company could or might have enjoyed the same, subject, however, to all the restrictions, limitations and conditions contained in such charter; and upon filing in the office of the secretary of state, within six months after such sale or lease, a certificate that they accept the charter of the company whose property has been sold or leased, under some corporate name different from that of the said company, such purchasers or lessees shall become a corporation under the name so specified, with all the powers, rights, privileges and franchises of the former company; the lessees or purchasers or corporation formed by them as aforesaid, shall hold and enjoy the same free and clear of all debts, claims and demands of creditors, mortgagees or stockholders, who shall look only to the fund arising from such lease or sale, which money, as collected, shall be paid into the court of chancery; but where such property is subject to a mortgage, the chancellor shall, if the principal is not due, direct a sale or lease to be made subject to the lien of the mortgage. (a)

When receiver may be appointed. P. L. 1870, p. 55.

Receivers may sell or lease canal, railroad or turnpike.

Upon filing certificate with secretary of state, the purchasers become a corporation, &c.

(a) See *Pennsylvania R. R. Co. v. Pemberton and N. Y. R. R. Co.*, 1 *Stew.* 338. *N. Y. and Greenwood Lake Railway Co. v. Stanley's Heirs*, 8 *Stew.* 286.

6. CANAL COMPANIES.

Masters on Delaware and Raritan canal to exhibit manifest; form thereof.
R. S. 1035.

169. SEC. 58. That every master or other person having charge or command of any vessel or boat navigating the Delaware and Raritan canal, shall produce to each and every collector of tolls a manifest in writing, containing a just and particular account of all the goods, wares, merchandise, and other matters on board of such vessel or boat; and it shall and may be lawful for such collectors of tolls, if they shall deem it advisable, to require the said master, or other person having charge or command of any such vessel or boat, to declare to the truth of such manifest, which declaration shall be on oath or solemn affirmation, before such collector so requiring it, in manner and form following, to wit: "I do solemnly, sincerely and truly swear (or affirm), that the manifest subscribed with my name, and now delivered by me to ———, one of the collectors of tolls of the Delaware and Raritan canal company, contains, to the best of my knowledge and belief, a just and true account of all the goods, wares, and merchandise, including packages of every kind and nature whatsoever, which now are or were on board the ——— at the time of her entering the Delaware and Raritan canal; that I am at present, and have been since her entering the said canal, master of the said vessel or boat; that no package whatsoever, or any goods, wares or merchandise, have, to the best of my knowledge and belief, been unladen, landed or taken out, or in any manner whatever removed from on board the said vessel or boat, since her entering the said canal at ——— excepting such as are now particularly specified and declared in the account herewith."

Penalty for false manifest.

170. SEC. 59. That if on examination of the cargo of the said vessel or boat, by the said collector of tolls, it shall turn out that such manifest does not contain a just and true account of the said cargo, the master or other person having the charge or command of such vessel or boat shall forfeit and pay the sum of one hundred dollars to the said Delaware and Raritan canal company, to be recovered in their name in an action of debt, with costs; and it shall be lawful for the collector of tolls to detain such vessel or boat till the said penalty and costs be paid, unless said master, or other person having charge or command of such vessel or boat, shall enter into bond to said company, with one or more sureties, being freeholders in this state, in the penal sum of two hundred dollars, conditioned for the payment of such penalty and costs as may be recovered against him or them by virtue of this act; and immediately upon the delivery of such bond to the collector of tolls, the said vessel or boat shall forthwith be released.

Collector of tolls may administer oaths.

171. SEC. 60. That the several collectors of tolls of the said Delaware and Raritan canal company be, and they are hereby authorized and empowered to administer the oath or affirmation required by this act, to the master or other person having the charge or command of such vessel or boat; and if such master or other person having the charge or command of such vessel or boat, shall falsely, willfully and corruptly swear or affirm, then such person so offending shall be deemed and adjudged to be guilty of willful and corrupt perjury, and on being convicted thereof shall be punished accordingly.

Penalty for interfering with Morris canal.
R. S. 592.

172. SEC. 61. That if any person or persons shall, in any manner, willfully or maliciously destroy, injure, or obstruct the Morris canal, or any of its parts, or any of the works therewith connected, or thereunto appertaining, or shall willfully or maliciously injure, or obstruct the passage of any boat therein, or navigating the same; or if any person or persons shall, against the will or consent of the person who may be by the said company appointed to have charge of, or to attend any lock or inclined plane on the said canal, open any gate of such lock or plane, or shall work or attempt to work such plane, or to pass a boat, raft, or other floating thing through or over such lock or plane; or if any person shall willfully or maliciously let off or discharge water from the said canal, through or by any waste-weir, or waste-gate, or otherwise, or shall shut down or close, either in part or in whole, any feed-gate, or water-weir, or water-gate, which may have

been opened to feed the said canal, or any part thereof, or to discharge water for the safety thereof, the person or persons so offending shall forfeit and pay to the said company the sum of twenty-five dollars, to be recovered by, and in the name of the president and directors of the Morris canal and banking company, in any court having competent jurisdiction; *provided*, that nothing herein contained shall be taken or construed to prevent the said company from proceeding, if they shall elect so to do, under and pursuant to the provisions of the thirteenth section of the act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," against the person or persons so offending, as in the said act is specified, and saving to the said company the right also to prosecute a civil suit, as it is given to them by the said act; but there shall, nevertheless, be no more than one penalty imposed upon any person or persons, in virtue of this act and the last-mentioned act, for the same offense.

173. SEC. 62. [Amended by Sec. 200, *post.*]

7. MISCELLANEOUS PROVISIONS.

174. SEC. 63. That when any railroad corporation which has been created by the laws of any other state or states has by any law or laws passed by the legislature of this state been authorized to hold property and exercise franchises and privileges in this state, it shall be lawful for the directors of such company elected in another state to hold their meetings in this state, and exercise all the powers and franchises of such company within this state, so far as it may be necessary to transact any business of such company.

Foreign railroad companies with franchises in this state, may hold meetings here and transfer stock.
P. L. 1868, p. 550.

175. SEC. 64. That it shall be lawful for such company to have an office in this state for the transfer of stock; and the officers and agents of such company shall be authorized to transact the business of such company in this state.

May have transfer office in state.

176. SEC. 65. *Whereas*, the acts incorporating some of the railroad companies in this state limit the quantity of land that said companies may hold at their stations; *and whereas*, experience has shown that the quantity so limited is insufficient for the economical and advantageous working of their road; now, therefore,

Railroads may own enough land at stations for railroad purposes and depots.
P. L. 1855, p. 118.

It shall be lawful for such railroad companies in this state to purchase and hold so much lands at their stations as may be strictly necessary for most conveniently storing and working upon their engines, cars, fuel and materials to be used on their roads, and for receiving and delivering property transported on their roads to the best advantage, and for tracks, wagon roads, platforms and all other strictly station and railroad purposes; *provided always*, that any land owned as hereinbefore authorized, exceeding the quantity limited in the respective charters or supplements thereto at the stations, shall be subject to the same taxes as other lands in the same township or city may be. (a)

To be subject to taxation.

177. SEC. 66. That in all cases of proceedings to be had under the provisions of any statute or statutes of this state, to appraise the value of any lands required for the construction of any railroad, turnpike, plank road, ferry or other public use, and to award concerning the same, where notice to the owner or owners of such land cannot be served in the manner now prescribed by law, and the execution of the powers conferred by law require it, it shall and may be lawful for the court in which, or the judge before whom such proceeding shall be commenced, to prescribe in what manner such notice shall be served or published; and service or publication thereof, in the manner prescribed, shall be valid and effectual to bind the parties to such proceeding, and their estate.

When judges to prescribe mode of service of notice for taking lands.
P. L. 1852, p. 532.

(a) See *Penna. R. R. Co. v. Angel*, 14 *Stew.* 328.

When persons held to contribute to injury and not to recover damages. P. L. 1869, p. 806.

Authorized to hold necessary land in other states. P. L. 1866, p. 256.

178. SEC. 67. That if any person shall be injured by a locomotive engine, car or cars, whilst walking, standing or playing on any railroad in this state, or by jumping on or off a car whilst in motion, such person shall be deemed to have contributed to the injury sustained, and shall not recover any damages therefor from the company owning or operating the said railroad; *provided, however*, that this section shall not apply to any person or persons crossing a railroad at any lawful public or private crossing. (a)

179. SEC. 68. That it shall be lawful for any railroad, canal or transportation company, incorporated by this state, to lease, purchase, hold and convey any real estate that may be necessary for the purpose of carrying on their business in any of the adjoining states, the laws of such state or states not prohibiting.

8. SUPPLEMENTS.

Supplement.

Approved March 15, 1876.

P. L. 1876, p. 30.

Any railroad company may abandon transportation by water in certain cases without forfeiture of its franchises.

180. SEC. 1. That whenever any railroad, has a route between termini, extending within, through or beyond this state, which, in so doing, traverses by ferry or steamboat, any river or sound, such company shall have the right, whenever lawfully possessed, by lease or otherwise, of the franchise to carry freight or passengers by land from the place of embarkation upon said river or sound to either of its termini, to make use exclusively of such franchise, and abandon, at its discretion, such transportation by said waters, and such abandonment shall constitute no ground for the forfeiture of its franchises, or for the enforcement of any penalty provided by any law heretofore passed and existing, or for any action at law or in equity against said company; *provided*, that this act shall not take effect until such provision be made by said railroad company for the transportation of passengers and freight by railroad cars in one continuous route, not exceeding in length the present route by water as will enable them to reach either of its termini within the time heretofore usually occupied by said transportation by water; *and provided further*, that nothing therein contained shall authorize such company to increase their rates of charges for transportation of passengers or freight between such termini; *provided further*, that if the connections aforesaid as contemplated in this act are not made on or before July fourth, one thousand eight hundred and seventy-seven, then this act shall be null and void; *provided, however*, that this act shall not in any way apply to or affect any canal or canals within this state.

Proviso.

Supplement.

Approved March 30, 1876.

P. L. 1876, p. 68.

Intent and meaning of section 142, *ante*, declared.

181. SEC. 1. That the true intent and meaning of said section which reads as follows: "the term small packages in the foregoing section, shall not be held to include bundles and packages where more than five bundles or packages are delivered to one person at one time, and where such bundles and packages so delivered can be, in the aggregate, readily weighed, either as light or bulky goods, or as ordinary freight" [see Sec. 142, *ante*], is hereby declared to be, and it shall be so construed as to authorize the same amount to be charged for a greater number of packages than five when delivered to one person at one time as is allowed in said section to be charged for five packages when so delivered, and no more; until the lawful charge by weight for such packages so delivered shall exceed the amount authorized by law to be charged for five packages; *provided, however*, that when bundles and small packages are delivered to one person at one time with other ordinary freight, such bundles, small packages and ordinary freight shall be aggregated, weighed, delivered and charged for as ordinary freight, in all cases when the amount of said charge shall exceed the amount authorized by law to be charged for five packages.

Proviso.

(a) See *Diebold v. Penna. R. R. Co.*, 21 Vr. 480.

Supplement.

Approved April 11, 1876.

P. L. 1876, p. 90.

182. SEC. 1. That railroad corporations now or hereafter existing by or under the laws of another state, any part of whose route, whether acquired by lease or otherwise, shall lie within this state, or who shall have been or hereafter shall be authorized to exercise any franchises within this state, shall be deemed corporations of this state, for the purpose of being sued or proceeded against if insolvent, in the same manner and to the same extent as if organized originally therein; and no suit of foreign attachment shall be brought against any such corporation.

When foreign corporations to be deemed corporations of this state for purpose of being sued, &c.

183. SEC. 2. That in case suit shall be brought for the foreclosure of any mortgage of the franchises and railroads of any such corporation in the state of its original creation and domicil, and also of the same mortgage in the court of chancery of this state, said suit in said court of chancery shall, so far as consistent with the protection of parties having acquired liens in this state, be regarded and conducted as auxiliary to the said suit brought in said state where such corporation was originally created and domiciled; and, upon decree obtained in said last-mentioned suit for the foreclosure of such mortgage, and for the sale of the property and franchises thereby conveyed, including such property and franchises in New Jersey, to pay and satisfy the said mortgage and other liens which may be established by such decree by such officers as shall be designated therefor, the said court of chancery in this state shall be empowered so to frame its decree for foreclosure and sale under said mortgage to satisfy the same and such other liens which by its said decree it shall establish, as that sale may be made thereunder, out of this state, and at the same time and place of the sale under the judgment or decree obtained in said other state, and under such regulations as to advertisement thereof as to the chancellor shall seem fit, anything in the laws of this state regulating the sale of land under executions to the contrary notwithstanding.

Proceedings in case of suit for foreclosure of any mortgage of franchises and railroad.

Decree.

184. SEC. 3. That at the time and place appointed for such sale, the person to whom the writ of execution issued upon said decree from the court of chancery of this state shall be directed, who shall be one of the masters of said court specially designated, shall not make sale under his said writ until said franchises and railroads of said corporation shall be sold under the judgment and decree obtained in said state of the original creation and domicil of said corporation; and he shall adjourn his said sale from time to time, if sale under said last-mentioned judgment or decree shall be adjourned and according thereto; and whenever such sale under said last-mentioned judgment or decree shall be made, then said master shall immediately and at the same time and place proceed to expose to public sale and outcry the franchises, railroads and property mentioned in and conveyed by said mortgage, and existing or exercisable within the state of New Jersey, and directed to be sold by said decree; and in such manner as that said sales shall both be made together and for the one price and bid, but it shall be a condition of said sale under said decree of said court of chancery, that the purchaser, in addition to the amount bid by him, shall pay and discharge all such sums of money as shall by its decree aforesaid be established as liens upon said mortgaged property and franchises in this state, or any part thereof, and by said decree ordered to be raised, including the costs taxed and execution fees taxable as in ordinary cases; and in case such condition shall be fulfilled, the said purchaser or purchasers shall be declared and taken to have purchased said franchises, railroads and property in New Jersey; *provided*, that no deed shall be made by said master in chancery under his said sale till after conveyance made to such purchaser by the officers selling under the said judgment in said state of the original creation and organization of such corporation, nor until special order made by the court of chancery confirming said sale, and directing the delivery of said deed; *and provided, further*, that the title vested by said sale shall be subject to all lawful mortgages or other liens as directed or specified by said decree.

Proceedings in case of sale.

Adjournment of sale.

When master shall proceed to expose for public sale.

Condition of sale.

Proviso.

Proceedings for forming a new corporation.

185. SEC. 4. That in case such purchase shall be made by, or for, or with the intent to form a new corporation in said state of the creation or domicile of such corporation the mortgage upon whose franchises and railroads was foreclosed, for the purpose of operating the franchises thereof, such new corporation, whenever formed, and possessed by the laws of the state of its creation of such mortgaged property, premises and franchises, shall, immediately upon filing proof of such formation and organization, according to the provisions of the succeeding sections of this act, become vested with all the property, rights, legal or equitable, and franchises of such original corporation within the state of New Jersey, as conveyed by said decree and sale, subject only to such liens as were not affected by said proceedings of foreclosure, as fully and effectually as if such original corporation had been duly created or organized under the laws of the state of New Jersey, and such property and franchises had been duly sold under a decree of foreclosure made in said court of chancery, and thereupon a new corporation had been formed for the maintenance and operation of said railroad, and the exercise of the franchises and privileges of such original corporation according to the statutes in such cases made and provided.

New corporation to file its petition in court of chancery.

186. SEC. 5. That it shall be the duty of said new corporation, within sixty days after its formation, to file its petition in the court of chancery of this state, in said suit of foreclosure therein, stating the fact of its formation and incorporation, and appending to said petition a copy of its charter, certificate of organization, or other documentary legal evidence thereof, in which petition prayer shall be made that said court of chancery do declare it, the said corporation, to be legally created, and to have acquired the said property, rights legal and equitable, and franchises of said original corporation as aforesaid; and thereupon said court of chancery, being satisfied of the truth of such allegations, shall so decree, whereupon a copy of such petition, proceedings and decree duly certified under the seal of said court, shall be filed in the office of the secretary of state, there to be forever of record, and said record and a copy thereof, duly certified under the great seal of the state, shall be plenary evidence in all cases of the incorporation and rights within this state of such new corporation.

Certified copy of petition, &c., to be filed and recorded in office of secretary of state.

187. SEC. 6. That such corporation, on compliance with the preceding section of this act, shall have and possess all powers belonging to corporations organized under the laws of this state, and all powers conferred by said laws upon the corporation whose franchises and property were sold and bought as aforesaid; it shall receive, have and hold the railroad property and franchises within this state included within and bound by said mortgage or sold and purchased at said sale, subject only to all liens, however created, and to all contracts, limitations, covenants and agreements relative to said mortgaged premises, property and franchises prior to the making of said mortgage, and the filing of said copy of said petition, proceedings and decree in the office of the secretary of state shall operate and be construed in all courts to operate as a covenant and agreement on its part to observe and perform all said contracts, limitations, covenants and agreements; *provided*, that in no event shall such new corporation be deemed or construed to have acquired, by virtue of any such sale or purchase, any different rights, franchises or privileges from those possessed by said original corporation, and conveyed or intended to be conveyed by such mortgage as aforesaid.

Corporation to have and possess all powers belonging to corporations organized under laws of this state.

Proviso.

If receiver appointed, chancellor may order sale of property and franchises.

188. SEC. 7. That if a receiver shall have been appointed in this state, by the court of chancery, on the petition of any creditor or stockholder of any such corporation, created or organized by the laws of any other state but having part of its route and exercising franchises within this state, and upon allegations of its insolvency, of the property and franchises thereof, it shall be lawful for the chancellor to order sale of such property, real and personal, rights legal and equitable, and franchises, at the same time and place, whether in or out of this state, of selling the property and franchises of said corporation under any decree of foreclosure as aforesaid, and in such manner as that a purchase thereof may be made on one and the same bid by such persons as shall become purchasers under the said decree;

imposing on such purchasers such further conditions of the acquisition of the right, title and interest in such property and franchises, which shall be legally transferable by said receiver as shall be equitable and just; and the chancellor shall order the said corporation to join with said receiver in the conveyance of said property, rights and franchises.

189. SEC. 8. That if the property and franchises of said corporation shall have been sold under any such foreclosure as aforesaid, and purchased by, for, or with intent to form a new corporation for the operation of said franchises, it shall be lawful for the chancellor to make decree in said suit wherein such receiver was as aforesaid appointed, upon petition of said corporation, that the said original corporation and its said receiver do make conveyance to said new corporation of all and singular the property and rights, real and personal, legal and equitable, and franchises of said original corporation, upon such terms as to payment of debts, assumption of liability upon former contracts of said original corporation, and in respect to all other matters, or for such consideration whatsoever as to him, the said chancellor, shall seem equitable and just.

When property, &c., sold, chancellor may decree conveyance to new corporation.

190. SEC. 9. That such new corporation when formed, as in this act described, and having complied with the fifth section thereof, shall, in case of the conveyance by said receiver and said original corporation in manner aforesaid, receive, have and enjoy said property, and exert such franchises so conveyed to it within this state (subject, nevertheless, to all prior liens) as fully and effectually as if such purchasing corporation were organized therefor under the laws of this state, upon a purchase under the act to which this is a supplement, or the other acts of this state providing for such organization.

New corporation may have and enjoy property and franchises.

191. SEC. 10. That any railroad corporation organized under the laws of another state, but having a route and exerting franchises within this state, shall be governed by such rules, regulations and arrangements as shall be made and adopted at or under such organization not repugnant to the laws and constitution of this state.

Rules, regulations, &c., of foreign corporation.

192. SEC. 11. That this act shall apply to all suits now pending wherein such corporations are parties defendant, whether for foreclosure or on allegation of insolvency, and shall be retrospective as well as prospective.

Act to apply to suits pending, &c.

Supplement.

Approved April 21, 1876.

P. L. 1876, p. 268.

193. SEC. 1. That whenever any turnpike road or steamboat company in this state shall have been sold, or may hereafter be sold or conveyed, under or by virtue of any decree or execution of any circuit court of this state, to satisfy any mortgage thereon, or the bond named therein or secured thereby, such sale and conveyance shall have the same force and effect, and the purchaser or purchasers thereof, and their associates, shall thereupon become a body politic, and be entitled to all the corporate rights, liberties, privileges and franchises of the said corporation so sold and conveyed, and be subject to all the conditions, limitations, restrictions and penalties of and concerning the said corporation, the same as if said sale and conveyance had been made under or by virtue of a decree of the court of chancery of this state; *provided*, such purchasers shall organize within three months after the passage of this act or within one year after any sale hereafter made by the name of said corporation, and by the election of a president and such other officers as said corporation was required to have by law, and shall within one month after such organization file a certificate thereof under its common seal attested by its president, specifying the date of the organization and the names of its president and directors, in the office of the secretary of state; *and provided further*, that such sale and conveyance and organization shall in no wise affect the rights of any person or corporation not a party to the suit or action in which such decree or execution was made or issued.

Purchasers of turnpike or steamboat company under decree of circuit court to be body politic, &c.

When to organize.

Supplement.

Approved April 21, 1876.

P. L. 1876, p. 307.

Stockholders of railway and canal companies may agree in writing that holders of bonds may vote at meetings, &c.

Voting may be by proxy.

Agreement to be expressed in certificate of organization or supplemental certificate.

Such agreements heretofore made valid.

Mortgage of franchises and chattels not to be filed if lodged for registry.

Award of commissioners for taking and condemning lands to be recorded.

President of corporation to be a director and entitled to vote.

Constitution of board of directors.

194. SEC. 1. That it shall be lawful for the stockholders of any existing corporation, or of any new corporation organized under the act respecting railroads and canals, upon the sale and purchase of any railroad, canal, turnpike or plank road, and of the corporate rights, liberties, privileges and franchises of the corporation owning the same, as provided for by the said act, to agree in writing that the holders of any bonds by such corporation thereafter issued and secured by mortgage of the property and franchises thereof, shall have and exercise the right of voting at all meetings of stockholders of said corporation, either for election or other purposes, in the same manner as if such persons holding such bonds were stockholders in such corporation; such voting to be either in person or by proxy, and such persons to cast as many votes in right of their said bonds as they would be entitled to cast if holders of stock of par value equal to the amount thereof, and the production of their bonds shall be evidence of their right; *provided, however,* that every bondholder availing himself of the agreement provided for in this section, and voting upon his bonds shall be subject to the same liabilities as a stockholder of such corporation to the amount of his bonds.

195. SEC. 2. That such agreement contemplated in the preceding section shall be stated and expressed in the certificate of organization filed by such corporation, or in a supplementary certificate to be by the stockholders thereof at any time made and filed in like manner, as required by said act, as to the original certificate of organization; *provided,* that every certificate containing the statement of any such agreement shall be signed by all the stockholders for the time being of such corporation.

196. SEC. 3. That any such agreement heretofore made and actually carried out in the organization of any such corporation according to the terms of the certificate of organization thereof, filed in pursuance of said act, shall be as valid and effectual as if hereafter made in the manner by this act provided, and notwithstanding that the same shall not have been formally signed as aforesaid.

197. SEC. 4. That nothing in any of the laws of this state shall be held to require the filing of record in the clerk's office of any county of any mortgage given by any such corporation conveying the franchises thereof, and whereby, also, any chattels then or thereafter to be possessed and acquired by such corporation shall purport to be mortgaged; *provided,* that such mortgage shall be duly lodged for registry according to the laws regulating the conveyance of real estate. (a)

198. SEC. 5. That the awards of commissioners for the taking and condemnation of any lands for the use of any such corporation, or for any public use whatever, hereafter filed in pursuance of the laws of this state, shall be duly recorded by the clerks of the counties wherein such lands lie, in books to be provided for that purpose, at the expense of parties filing the same, and upon payment of like fees as for the registry of deeds; and such awards heretofore filed may, at the instance of such parties, be also so recorded, and a convenient index to such books, and the records therein made, shall be made and kept in order to the better use thereof.

199. SEC. 6. That the president of every such corporation organized under the act to which this is a supplement, or under the act entitled, "An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," approved March twenty-fifth, eighteen hundred and seventy-five, or under the act entitled "An act respecting railroads sold under mortgage," approved April ninth, eighteen hundred and seventy-five, shall be a director of such corporation, and entitled to vote as such; and the board of directors of such corporation shall consist of as many persons as shall have constituted such board according to the charter of the corporation originally existing and by virtue of such acts or either of them newly organized, anything in any act to the contrary notwithstanding.

(a) See *Boylan v. Kelly*, 9 *Stew.* 331, reversing 5 *Stew.* 581. *Coe v. N. J. Midland Railway Co.*, 4 *Stew.* 125.

Supplement.

Approved February 4, 1879.

P. L. 1879, p. 16.

200. SEC. 1. That section sixty-two of the act entitled "An act respecting railroads and canals," which reads as follows [see Sec. 173, *ante*], shall be amended so as to read as follows:

[That so much of this act as authorizes the governor to commission persons designated by a railroad corporation to act as policemen for such corporation, and regulate their commissions, powers, duties, badge, compensation and the determination of their offices, is hereby made applicable to the canal corporations of this state, and policemen so commissioned shall be designated "canal police," and is also hereby made applicable to steamboat companies and corporations; and policemen so commissioned shall exercise their authority whilst upon the waters within the concurrent jurisdiction of this state and of other states, and whilst upon the wharves or landings of the said steamboat companies and corporations in this state, and shall be designated "steamboat police."]

Governor may commission policemen for steamboat companies, &c.

Supplement.

Approved March 3, 1880.

P. L. 1880, p. 94.

201. SEC. 1. That whenever the railroads of any railroad corporations existing by or organized under any law of this state shall intersect or cross each other, or shall approach each other within a distance of one mile, and such corporations shall agree to connect their said railroads with each other, it shall be lawful for either corporation to determine upon constructing a branch railroad or railroads so as to effect such connection, and having first filed a map and survey of such branch railroad or railroads in the office of the secretary of state, to acquire, by purchase or by condemnation, in the manner prescribed by its charter, such land as shall be necessary for such branch connecting railroads, and for that purpose all such powers as shall be contained in its charter or conferred otherwise by law, shall be fully possessed by and belong to each of such corporations; *provided*, that all proceedings for such condemnation shall be according to said charters, with all rights of appeal and review thereby given; *provided further*, that in no case shall any connection be made without mutual consent in writing under seal of such corporations.

Railroad corporations may construct branch railroads to connect with each other.
Map and survey to be filed.

Supplement.

Approved March 25, 1881.

P. L. 1881, p. 221.

202. SEC. 1. That whenever any railroad company incorporated by or under the laws of this state, and actually built and in operation, and such railroad company, or any predecessor of such company, shall have failed to acquire a perfect or indefeasible title to lands which it was authorized to acquire for its track or other corporate purpose, or the title originally acquired shall have been defeated or extinguished, it shall be lawful for such company to acquire any such lands or outstanding estate, or interest therein, and perfect its title thereto, in the manner prescribed by the act or acts under which such railroad, or any part thereof, may have been originally constructed, or by the act entitled "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, so far as the same relates to the acquisition of land for railroad purposes; *provided*, that nothing herein contained shall be construed to authorize the taking of a greater quantity of land or lands for any other purpose or use than was authorized by the act or acts under which such railroad was originally constructed.

Railroad companies may perfect title to lands authorized to be acquired.

Proviso.

Supplement.

P. L. 1881, p. 257.

Approved March 25, 1881.

Actions for injuries to persons to be commenced and sued within two years.

203. SEC. 1. That all actions hereafter accruing for injuries to persons caused by the wrongful act, neglect or default of any railroad corporation owning or operating any railroad within this state, shall be commenced and sued within two years next after the cause of such actions shall have accrued, and not after. (a)

Actions for injury to property by fire, to be commenced and sued within one year.

204. SEC. 2. That all acts for any injury hereafter done to any property of any person or corporation, by fire communicated by a locomotive engine of any railroad corporation owning or operating any railroad within this state, shall be commenced and sued within one year after the cause of such actions shall have accrued, and not after. (b)

Supplement.

P. L. 1883, p. 218.

Approved March 28, 1883.

Repealer.

205. SEC. 1. [Amended and supplied by Sec. 207, *post.*]

206. SEC. 2. That the second section of said act, which reads as follows [see Sec. 113, *ante*], be and the same is hereby repealed.

Supplement

P. L. 1885, p. 111.

Passed March 19, 1885.

Unlawful to run passenger train without rope or bell-cord.

207. SEC. 1. That the first section of the act entitled "A supplement to 'An act respecting railroads and canals,' approved March twenty-seventh, one thousand eight hundred and seventy-four," approved March twenty-third, one thousand eight hundred and eighty-three [see Sec. 205, *ante*], be and the same is hereby amended to read as follows:

[That it shall not be lawful hereafter for any corporation operating a railroad in this state, whether as lessee or otherwise, to run any passenger train over any railroad so operated by them without having a rope or strong cord attached at one end to a bell, gong or whistle on the locomotive, and the said rope or strong cord leading from thence through or over every car and through every baggage, express and passenger car in the train and within easy and convenient reach of the employes and passengers on said train, and the other end attached to the rear end of the rear car of said train, and any corporation violating these provisions shall be subject to a fine of five hundred dollars for each offense, to be recovered by any inhabitant of this state who may sue for the same in any court having cognizance of the same, one-fifth of the said fine to go to the person suing for the same, and four-fifths thereof to the state; *provided, nevertheless*, that the provisions of this section shall not in any wise apply to mixed passenger and freight trains, or to freight trains, or to any passenger train whereon any apparatus, device or machine using air, electricity, or both, to convey signals from the train to the engine is used in accordance with the provisions of "An act concerning railroads," approved April second, one thousand eight hundred and eighty-four.] [See Sec. 302, *post.*]

Penalty.

Proviso.

Repealer.

208. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

Supplement.

P. L. 1886, p. 228.

Passed April 16, 1886.

When appeal taken by company, upon filing bond it may enter upon land, &c.

209. SEC. 1. That when an appeal is taken by any railroad company, as provided in section one hundred and one of the act to which this is a supplement [see Sec. 13, *ante*, and Rev., p. 929, § 101], it shall and may be lawful for such railroad company to enter upon and take possession of the land in question, upon filing in the office of the clerk of the circuit court of the county in which such appeal shall be had, a bond to the

(a) A receiver of a railroad may set up as a defense against a suit for injuries sustained from negligence in running the trains by such receiver, the statute that requires such suits to be brought against railroads within two years. *Bartlett v. Keim*,

21 Vr. 260. The above section does not apply to horse railroads. *North Hudson County Railway Co. v. Flanagan*, 28 Vr. 236.

(b) See *Punk v. Raritan River R. E. Co.*, 27 Vr. 397.

owner or owners of said land, with one or more sureties, being freeholders in such county, in double the sum which shall have been awarded by the commissioners, conditioned to prosecute to effect the said appeal, and to pay to the owner or owners of said land such sum as the court and jury shall award, which bond shall be approved by one of the judges of the court of common pleas in said county.

IV. Miscellaneous acts.

An act fixing the transit duty on low-priced articles on railroads.

Approved March 9, 1859.

P. L. 1859, p. 253.

210. SEC. 1. That the transit duty on lime, wood, stone, ashes, manure, lumber, coal, iron ore and similar low-priced articles, shall be two cents per gross ton, in lieu of the transit duty now required by law, to be paid on similar property carried over any railroad in this state; *provided*, that this shall not be construed to impose any such duty where none is now required, or increase any such duty where it is now less than two cents.

Transit duty on
lime, wood, &c.

An act to authorize the treasurer of this state to submit to the supreme court all questions, as to arrearages, due or to become due to the state, from incorporated companies, for taxes and transit duties.

Approved March 15, 1861.

P. L. 1861, p. 452.

WHEREAS, Differences of opinion have arisen, and are liable to arise hereafter, between the treasurer of this state and the several railroad, canal and other companies or incorporations, in respect to the annual amounts due and to grow due from said companies or incorporations to the state, for taxes and transit duties under their respective charters and the supplements thereto; therefore,

Preamble.

211. SEC. 1. That in all cases where any railroad, canal or other company or incorporation, existing under the laws of this state, shall neglect or refuse upon notice to pay to the treasurer the full amount he shall believe to be due to the state, for taxes or transit duties, from said company or incorporation, and the said company or incorporation shall be willing to submit the question upon a case mutually to be agreed upon by and between said company or incorporation and the said treasurer, aided by the attorney-general, to the supreme court, the said treasurer is hereby authorized and required to agree upon the facts in writing, to be signed by him and the president or other presiding officer or officers of said company or incorporation, and submit the same to the judgment of the supreme court; and the said treasurer is authorized and required to receive from the company or incorporation such amount (if anything) as may be found due by the judgment of said court, and to give a full acquittance and discharge therefor and from all further demand for such tax and transit duties as may be in controversy; and the said judgment, when entered against said company or incorporation, shall have the same force and effect as other judgments, and may be collected by execution as in other cases; *provided always*, that either party shall be at liberty to treat such cases stated as a special verdict, and bring a writ of error to the judgment of said court.

State treasurer
may submit to
supreme court
questions as to
arrearages for
taxes and transit
duties.

An act enabling certain corporations to hold real estate in adjoining states.

Approved March 7, 1866.

P. L. 1866, p. 256.

212. SEC. 1. That it shall be lawful for any railroad, canal, or transportation company, incorporated by this state, to lease, purchase, hold and convey any real estate that may be necessary for the purpose of carrying on their business in any of the adjoining states, the laws of such state or states not prohibiting.

Any railroad or
canal company
may hold real
estate in an
adjoining state.

An act to prevent accidents on railroads.

P. L. 1869, p. 806.

Approved March 30, 1869.

No railroad to be constructed upon bridge on Delaware without legislative act.

213. SEC. 1. [Incorporated in revised act. See *ante*, Sec. 178.]

214. SEC. 2. That hereafter no railroad shall be laid upon any bridge across the Delaware river intended for public travel, unless special authority for that purpose be given by legislative act, particularly designating the bridge to be subjected to such use.

An act for the relief of citizens on the line of any railroad that has or may hereafter fail or neglect to operate.

P. L. 1874, p. 12.

Approved February 12, 1874.

Receiver to apply personal effects and moneys toward payment of wages due.

215. SEC. 1. [Amended by Secs. 217 and 219, *post*.]

216. SEC. 2. That whenever the chancellor shall appoint a receiver of any railroad company, said receiver shall apply all unincumbered personal effects and all moneys which may be transferred to him at the time of entering upon his duties as such receiver, toward the payment of wages at that time due the employes of said company, and the chancellor may from time to time make such orders as he may deem proper to equitably carry out the provisions of this section; *provided*, that no such payments shall be made for more than two months' wages. (a)

Supplement.

P. L. 1880, p. 87.

Approved March 3, 1880.

217. SEC. 1. [This section, amending Sec. 215, *ante*, is amended by Sec. 219, *post*.]

A supplement to the act entitled "An act for the relief of citizens on the line of any railroad that has or may hereafter fail or neglect to operate," approved February twelfth, one thousand eight hundred and seventy-four, and re-enacted in sections one hundred and sixty and one hundred and sixty-one of the act entitled "An act respecting railroads and canals" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four.

Approved March 15, 1881.

P. L. 1881, p. 113.

When operation of portion of a road constructed may be suspended.

218. SEC. 1. That it shall be lawful for any railroad company having constructed a portion of its railroad, to suspend the operation of such portion during such time or times as in the judgment of its board of directors may be requisite to complete its railroad or to reconstruct the same, or to alter the grade or grades of its railroad already built, anything in the act to which this is a supplement or in any other law to the contrary notwithstanding. [See Secs. 215 and 216, *ante*.]

A further supplement to an act entitled "A supplement to an act entitled 'An act for the relief of citizens on the line of any railroad that has or may hereafter fail or neglect to operate,' approved February twelfth, one thousand eight hundred and seventy-four," which supplement was approved March third, one thousand eight hundred and eighty.

Approved April 8, 1892.

P. L. 1892, p. 423.

219. SEC. 1. That the first section of an act entitled "An act for the relief of citizens on the line of any railroad that has or may hereafter fail or neglect to operate," approved February twelfth, one thousand eight hundred and seventy-four, which section was amended by the supplement to which this act is a supplement [see Secs. 215 and 217, *ante*], be further amended so that the same shall read as follows:

(a) What may be investigated on petition for a receiver. *In re Long Branch R. E. Co.*, 9 C. E. Gr. 398, 402, 11 C. E. Gr. 539. An incumbrance existing at the time of the passage of this act is superior to wages afterwards accruing. *Williamson v. N. J. Southern R. E. Co.*, 1 *Stew.* 277; reversed, 2 *Stew.* 311. By virtue

of the above act the employes of the railroad company are entitled to a lien on the unincumbered property of the company, and on its incumbered property subject to existing incumbrances, for their wages, not exceeding two months. *Coe v. N. J. Midland Railway Co.*, 4 *Stew.* 123.

[That if any railroad company in this state has or may hereafter fail or neglect to run daily trains on any part of its road for the space of ten days, then the chancellor of this state, upon petition of any citizen of this state and due proof of the facts, shall speedily appoint a receiver, which said receiver, by order of the chancellor, shall be and is hereby empowered and required to take possession of all the real and personal property of said company, and to operate said road, and transact the ordinary business thereof in the transportation of freight and passengers, for such time as the chancellor may direct; and all expenses incurred thereby shall be a first lien on all the earnings thereof prior to any other claim, and the surplus if any, be distributed as the chancellor may direct; *provided*, that this act shall not apply to any railroad company whose road is constructed at any seaside resort, not exceeding four miles in length, and which was built and intended merely or principally for the transportation of summer travelers and tourists; *and provided, further*, that this act shall not apply when two or more such roads which separately are less than four miles in length be merged into one line so making a road of greater length than four miles.] (a)

Upon failure to run trains, chancellor shall, upon petition of citizens, appoint a receiver.

Proviso.

Proviso.

An act to authorize any city of this state to enter into contracts with railroad companies whose roads enter their corporate limits, whereby said companies may relocate, change or elevate their railroads, and when necessary for that purpose, to vacate, change the grade of or alter the lines of any streets or highways therein.

Approved March 19, 1874. P. L. 1874, p. 45.

220. SEC. 1. [Amended by Sec. 221, *post*.]

Supplement.

Approved March 9, 1893. P. L. 1893, p. 157.

221. SEC. 1. That section one of the act to which this is a supplement be [see Sec. 220, *ante*] and the same is hereby amended so that the same shall read as follows:

[That the proper municipal authorities respectively of any city of this state be and they are hereby authorized and empowered to enter into such contracts with any of the railroad companies whose roads now or hereafter may enter or lie within their cities respectively, or whose routes have been or may be located therein, as shall secure greater safety to persons and property therein, or facilitate the construction and maintenance of other than grade crossings of streets, highways, or other railroads therein, whereby the said railroad companies, or any of them, may locate, relocate, change, alter grades of, depress or elevate their railroads within said cities, or either of them, as in the judgment of such municipal authorities respectively may be best adapted to secure the safety of lives and property, or to provide for other than grade crossings of streets or highways or of other railroads therein, or to promote the interests of said cities respectively, and for that purpose shall have power to open, vacate, alter the lines and change the grades of any streets or highways or any part thereof, within said cities or either of them, and to do all such acts as may be necessary and proper to effectually carry out such contracts; and any such contracts made by any railroad company or companies, as aforesaid, with said cities or either of them are hereby fully authorized, ratified and confirmed.] (b)

Municipal authorities of cities authorized to contract with railroad companies respecting street grades, &c.

(a) This act authorizing a chancellor to appoint a receiver if a railroad neglects to run daily trains, confers such power upon the court of chancery, and not upon the chancellor in his personal capacity. *Delaware Bay and Cape May R. R. Co. v. Markley*, 18 Stew. 139.

(b) See *Reed v. Camden*, 24 Vr. 325, 326, 25 Vr. 372. *Hudson v. Bayonne*, 25 Vr. 302. *Dodge v. Penna. R. R. Co.*, 16 Stew. 353.

RAILROADS AND CANALS.

An act to authorize railroad companies to charge and collect an excess of ten cents, where fare is paid in the cars.

P. L. 1874, p. 120.

Railroad companies may charge ten cents extra when fare is paid on the train.

Proviso.

Approved March 27, 1874.

222. SEC. 1. That it shall be lawful for any railroad company owning or operating a railroad in this state, to demand and collect an excess charge of ten cents, over the regular or established rate of fare, from any passenger who pays fare in the car in which he or she may have taken passage; *provided, however,* that it shall be the duty of such company to give to any passenger paying such excess a receipt or other evidence of such payment, and which shall entitle the holder thereof to have such excess charge refunded, upon delivery of the same at any ticket office of the said company, upon the line of their railroad.

An act concerning the sale of railroads, canals, turnpikes, bridges, and plank roads.

P. L. 1875, p. 41.

Purchasers of railroad, &c., sold under decree of court constituted a body politic.

P. L. 1877, p. 146.

Approved March 25, 1875.

223. SEC. 1. That whenever any railroad, canal, turnpike, bridge, plank road of any corporation created by or under any law of this state, shall be or has been sold and conveyed, under and by virtue of any process or decree of any court of this state, or the United States, or of any power or authority duly granted or conferred in and by any mortgage or deed in the nature thereof, the person or persons for or on whose account such railroad, canal, turnpike or plank road may be purchased, shall and are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interests, property, possession claim and demand in law and equity, of, in and to such railroad, canal, turnpike, bridge or plank road with its appurtenances, with all the rights, powers, immunities, privileges and franchises of the said corporation which may have been granted to or conferred thereupon by statute or statutes, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby, but the provisions of this act shall, notwithstanding anything therein contained to the contrary, extend and apply to any case in which a railroad, canal, turnpike, bridge or plank road of any corporation created by or under any law of this state has been sold and conveyed before the passage of this act in the manner hereinbefore described. (a)

New corporation, how organized.

224. SEC. 2. That the person or persons for or on whose account any such railroad, canal, turnpike, bridge or plank road, may have been purchased, shall meet within thirty days after the conveyance made by virtue of said process or decree shall have been delivered, at the county town of any one of the counties, through which the said railroad, canal, turnpike, bridge, or plank road may run, public notice of the time and place of such meeting having been given at least once a week for two weeks, in at least one newspaper published in each of the counties in or through which the said railroad, canal, turnpike, bridge, or plank road may run, and organize said new corporation by electing a president and board of six directors, to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter, on the said day, a like election for a president and six directors shall be held, to serve for one year.

Amount of capital stock, how determined.

225. SEC. 3. That at such meeting so held, the said person or persons shall adopt a corporate name and corporate seal, determine the amount of the capital stock thereof, and shall have power and authority to make and issue certificates therefor, to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each.

(a) See *Boylan v. Kelly*, 9 *Stew.* 335.

226. SEC. 4. That the said corporation may then, or at any time thereafter, create and issue preferred stock to such an amount and at such times as they may deem necessary, and from time to time issue bonds at a rate of interest not exceeding seven per centum, to any amount not exceeding their capital stock.

May issue preferred stock, and interest-bearing bonds.

227. SEC. 5. That it shall be the duty of such new corporation, within one month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the name of its president and directors, and transmit the said certificate to the secretary of state, at Trenton, to be filed in his office, and there remain of record; and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation; *provided*, that nothing contained in this act shall divest or in any manner impair the lien of any prior mortgage or other incumbrance upon the property or franchises conveyed under the sale of said property or franchises, when by the terms of the process or decree under which the sale has been made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other incumbrance.

Certificate of organization to be made, and filed of record in office of secretary of state.

Proviso.

A supplement to an act entitled "An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," approved March twenty-fifth, one thousand eight hundred and seventy-five, and to an act entitled "An act respecting railroads and canals" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four.

Approved March 14, 1879.

P. L. 1879, p. 234.

228. SEC. 1. That the organization of any new corporation contemplated by either of said acts, which shall be or shall have heretofore been made or sought to be made by the meeting together of the purchaser or purchasers and their associates, not less than fifteen in number, of the franchises and property of any railroad, canal, turnpike, bridge or plank road corporation, and the election by them of a president and board of directors, the adoption of a corporate name and corporate seal, the determination of the amount of the capital stock thereof, and the filing of a certificate of such organization in the office of secretary of state, shall be and shall be construed to be effected in law for the formation and constitution of such new corporation, anything in the said first-mentioned act, entitled "An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," to the contrary notwithstanding; and no other persons shall be taken or regarded to be meant or intended by the following words therein, that is to say, "the person or persons for or on whose account such railroad, canal, turnpike or plank road may be purchased," than such purchaser or purchasers and their said associates.

Organization of new corporation, when to be construed as effected in law, &c.

229. SEC. 2. That if there shall be any error or mistake in any statement contained in the certificate of organization of any such new corporation now or hereafter filed in the office of the secretary of state, it shall be lawful for the court of chancery, on petition filed therein for that purpose by such new corporation or any officer thereof, or any person having interest therein, to order the amendment and correction thereof, and said amendment shall thereupon be made by said secretary of state in the original certificate, which shall thereafter be taken and certified to read as so amended.

Certificate of organization, how amended and corrected.

230. SEC. 3. That no error or mistake in the giving of public notice of the time or place of meeting for the organization of any such new corporation shall be held or construed in any wise to impair or affect the validity or existence thereof.

Error in notice of meeting for organization not to impair validity, &c.

A further supplement to the act entitled "An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads," approved March twenty-fifth, one thousand eight hundred and seventy-five.

P. L. 1880, p. 159.

Purchasers shall meet within thirty days after purchase.

Notice of meeting to be published.

Shall organize new corporation.

Shall adopt corporate name, seal and determine amount of stock and issue certificates therefor.

Approved March 10, 1880.

231. SEC. 1. That the persons for or on whose account any railroad, canal, turnpike, bridge or plank road may have been purchased, as provided in the first section of the act to which this is a further supplement, shall meet within thirty days after such purchase shall have been made, at the county town of any one of the counties through which the said railroad, canal, turnpike, bridge or plank road may run, public notice of the time and place of such meeting having been given at least once a week for two weeks in at least one newspaper published in each of the counties in or through which the said railroad, canal, turnpike, bridge or plank road may run, or personal notice, in writing, of such time and place having been given to each of said persons for or on whose account such purchase was made, at least one week prior to the time of such meeting; and when so met shall organize said new corporation by electing a board of directors, to consist of such number as provided in the original charter of the corporation so re-organized, and to continue in office for one year and until their successors shall be chosen, pursuant to the by-laws of such new corporation.

232. SEC. 2. That at such meeting so held the said persons so met shall adopt a corporate name and seal, determine the amount of the capital stock thereof, and may make and issue certificates therefor to the persons for and on whose account such purchase was made, to the amount of their respective interests therein, in shares of fifty or one hundred dollars each, as said board may deem expedient.

Supplement.

P. L. 1887, p. 158.

Purchasers constituted body politic and corporate.

Vested with rights, title, powers, &c.

Purchasers may call meeting.

Notice of meeting to be published.

Approved April 11, 1887.

233. SEC. 1. That whenever any railroad, canal, turnpike, bridge or plank road of any corporation created by or under any law of this state, or by any concurrent, joint or consenting legislation of this state, and any other adjoining state, shall be or has been sold and conveyed, under and by virtue of any process or decree of any court of this state or the United States, or by any other lawful authority, the person or persons for or on whose account such railroad, canal, turnpike, bridge or plank road may be or has been purchased, and the person or persons in whom title in the same is vested by mesne conveyances and assignments by such purchasers or their vendees shall be and are hereby constituted a body politic and corporate, and are and shall be vested with all the right, title, interest, property, possession, claim and demand in law and equity, of, in and to such railroad, canal, turnpike, bridge or plank road with its appurtenances, with all the rights, powers, immunities, privileges and franchises of the said corporation which may have been granted to or conferred thereupon by statute or statutes, in force at the time of such original sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby, but the provisions of this act shall, notwithstanding anything herein contained to the contrary, extend and apply to any case in which such railroad, canal, turnpike, bridge or plank road of any such corporation has been sold and conveyed as aforesaid before the passage of this act.

234. SEC. 2. That the person or persons for or on whose account any such railroad, canal, turnpike, bridge or plank road may have been or shall be purchased, or the persons holding title to the same by mesne conveyances from such purchasers, or a majority of such persons or vendees may call a meeting of such person or persons, or vendees, at such time and place as a majority in interest of them may in writing appoint for that purpose, giving public notice of the time and place of such meeting, at least once a week for two weeks, in at least one newspaper published in

each of the counties in and through which the said railroad, canal, turn-pike, bridge or plank road may run, and at the time and place so appointed, such majority may organize said new corporation by electing a president and board of six directors, to continue in office for one year succeeding such meeting, and annually thereafter, on the same day of the month, a like election for president and six directors shall be held to serve for one year; and at such meeting the said majority shall adopt a corporate name and corporate seal, determine the amount of the capital stock thereof, and shall have power and authority to make and issue certificates therefor to the persons in interest, to the amount of their respective interests therein, in shares of fifty dollars each.

May organize a new corporation, elect officers and determine amount of capital stock, &c.

235. SEC. 3. That the said corporation may then or any time thereafter, create and issue preferred stock to such an amount, and at such times as they may deem necessary, and from time to time issue bonds at a rate of interest not exceeding six per centum per annum, to any amount not exceeding their capital stocks and secure the same by a mortgage of the property, rights, powers, privileges and franchises of the said corporation.

May issue preferred stock and bonds, &c.

236. SEC. 4. That it shall be the duty of such new corporation, within one month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock; and the name and residence of its president and directors, and transmit the said certificate to the secretary of state at Trenton, to be filed in his office and there remain of record, and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation; *provided*, that nothing in this act shall divest or impair the lien or incumbrance of any prior mortgage or other incumbrance upon the property or franchises conveyed under the original sale of said property or franchises, when by the terms of the process or decree under which the sale has been made, or by operation of law the said sale is made subject to the lien of any such prior mortgage or other incumbrance, or divest or impair any prior mortgage or other incumbrance thereon created by the vendees of the purchasers at such sale or those holding under them by mesne conveyances.

Certificate to be filed in the office of secretary of state.

Proviso.

An act respecting railroads sold under mortgage.

Approved April 9, 1875.

P. L. 1875, p. 101.

237. SEC. 1. That whenever any railroad in this state, of any corporation created by or under any law or laws of this state, shall be sold or conveyed under or by virtue of any decree or decrees of the court of chancery of this state, or of the circuit court of the United States, in and for the district of New Jersey, sitting in equity, and execution or executions issued thereon, to satisfy any mortgage debt or debts or other incumbrances thereon, and the purchaser or purchasers thereof shall, in the manner provided by the statute in such cases made and provided, have formed a new body politic and corporate, and shall have made, and filed with the secretary of state at Trenton, a certificate of the organization of such corporation, and whenever the new corporation so formed shall have acquired title to the railroad property and franchises aforesaid, pursuant to any plan or agreement for the re-adjustment of the respective interests therein of the mortgage creditors, other creditors and stockholders of the company theretofore owning such property and franchises, and for the representation of such interests of the creditors and stockholders in the bonds, debts or stock of the new corporation so formed, then and in such case the said new corporation shall be authorized and have the power to issue its bonds and stock in conformity with the provisions of such plan or agreement; and the said new corporation may, at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former company, upon such terms as may be approved by a majority of the agents or trustees entrusted with the carrying out of the plan or agreement of re-organization aforesaid; and for the purposes of such plans and of such settlements, the said new

Proceedings by purchasers of railroad sold under decree for re-adjustment of interests of creditors and stockholders, &c.;

Proviso. corporation may and shall be authorized to establish preferences in respect to the payment of dividends in favor of any portion of its said capital stock, and to divide such stock into classes; *provided nevertheless*, that nothing herein contained shall be held to authorize the issue of capital stock by the said new company to an aggregate amount exceeding the maximum amount of such stock mentioned in the certificate of incorporation filed by such new corporation.

Charter and franchises to inure to benefit of purchasers of mortgaged property.

238. SEC. 2. That the charter and franchises of any railroad company in this state, whose property shall have been mortgaged, and against whom proceedings shall have been or shall be taken to foreclose such mortgage, and to sell the mortgaged property, shall subsist and continue during the pendency of such proceedings, and shall inure to the benefit of the purchaser or purchasers of the mortgaged property, under decree in such proceedings, any provision of law heretofore made to the contrary notwithstanding.

An act concerning railroad corporations.

P. L. 1877, p. 48.

Approved March 6, 1877.

Mode for acquiring title to lands adjoining railroad.

239. SEC. 1. That it shall be lawful for any railroad corporation, owning or operating a railroad within this state, to take and acquire title, in the manner prescribed by the act under which such railroad may have been originally constructed, or by any supplement to said act, to all such lands adjoining their road as constructed on their right of way as located, as, in the judgment of the directors of such company, the exigencies of business may demand for the erection of freight and passenger depots, and all other legitimate purposes of said company; and said corporations are hereby for this purpose again invested with all the powers, privileges and franchises given in their acts of incorporation, and in the various supplements thereto, for taking and acquiring title to lands required for their use; *provided*, that no more than one hundred feet in width for the main track of any road shall be taken for the right of way, except where from the depth of cut or the height of embankment more is necessary to be taken. (a)

Proviso.

Supplement.

P. L. 1878, p. 179.

Approved March 27, 1878.

May take and acquire title to lands necessary to straighten or shorten route of railroad.

240. SEC. 1. That it shall be lawful for any railroad corporation, created by special act, or as lessees thereof, owning or operating a railroad within this state, to take and acquire title in the manner prescribed by the act under which such railroad may have been originally constructed, or under which such power may have been at any time conferred or derived by way of supplement, or otherwise, to all such lands as shall be necessary, in the judgment of the directors of said corporation, to straighten or shorten the route of said railroad, or to connect points thereon by shorter lines or branches, and to all such lands as shall be necessary as aforesaid for the erection of freight and passenger depots and all the legitimate purposes of said company upon such shortened or connecting line; and said corporations are hereby again invested for this purpose with all the powers, privileges and franchises given in said act for acquiring and taking title to lands required for their use; *provided*, that no more than one hundred feet in width for the main track of any road shall be taken for the right of way, except where for the depth of cut or the height of embankment more is necessary to be taken.

Proviso.

Corporation having established route may transfer same to another company.

241. SEC. 2. That if any corporation shall have been already organized and shall have established a route which, when constructed, would straighten or shorten the route of any other railroad corporation aforesaid, or would connect points thereon, forming thereby, in connection therewith, a shorter line therefor, such first herein-mentioned corporation is hereby authorized to transfer such route and any land or right of way by it taken,

(a) This act does not apply to lands which merely adjoin a side track leading from the railway route to a freight house. *Abers v. United N. J. R. Co.*, 14 Vr. 110.

acquired or agreed for to such other railroad corporation, and such last-mentioned railroad corporation is hereby authorized to receive and acquire such route, land or right of way, and to possess the same as the successors and assigns of said first herein-mentioned corporation, subject only to the conditions of any grant thereof; *provided always*, that this section of this act shall not authorize condemnation in any case where such connecting, straightening or shortening route shall have been actually constructed and in operation, that such connecting, shortening, straightening or widening shall not be made within the limits of any incorporated city. Proviso.

Supplement.

Approved March 14, 1883.

P. L. 1883, p. 105.

242. SEC. 1. That it shall be lawful for any railroad corporation, owning or operating any railroad within this state, to take and acquire title, in the manner prescribed by the act under which such railroad may have been originally constructed, or under which such power may have been at any time conferred by supplement to such act, or otherwise, to all such lands as, in the judgment of the board of directors of such corporation, shall be necessary to change the location of any section of such railroad in order to avoid any quicksand, quagmire, sink-hole or other physical obstacle in the way of the safe, convenient and expeditious construction of its road-bed and the maintenance thereof, and the operating of such railroad, and to promote the carrying into effect of all the legitimate purposes of such corporation; and any such railroad corporation as aforesaid is hereby again invested, for the purposes contemplated by this act, with all the powers, privileges and franchises heretofore at any time enjoyed or possessed by it or its lessors, for acquiring and taking title to lands required for the uses and purposes of such railroad; *provided*, that no more than one hundred feet in width for the main track of any road shall be taken for the right of way, except where for depth of cut or the height of embankment more shall be necessary to be taken; and that the section of road so altered in location, as provided for in this act, shall not be more than one mile in length; and in case the road shall have been actually constructed within the limits of any corporate city, it shall not be lawful to alter its location, or any part thereof, under the provisions of this act, within the corporate limits of such city. May acquire title to lands necessary to change location of railroad to avoid quicksands, &c.

Proviso.

243. SEC. 2. That if any such railroad corporation as aforesaid shall have taken and acquired lands as herein provided, and shall have constructed its road on such new line or location, it shall be lawful for it to sell or dispose of the section of road or location abandoned in such manner as its directors may see fit. May sell section of road abandoned.

Supplement.

Approved April 1, 1887.

P. L. 1887, p. 113.

244. SEC. 1. That it shall be lawful for any railroad company owning and operating a railroad wholly within any county of this state, whose charters authorize any such company to purchase, have and hold real estate at the commencement and termini of their road, and the different intermediate depots upon the line of the same, not exceeding one acre at each place, to take and acquire title to real estate at the commencement and termini of their road and the different intermediate depots upon the line of the same, to any amount not exceeding ten acres at each such place, as in the judgment of the directors of such company the exigencies of business may demand, for the erection of freight and passenger depots and all other legitimate purposes of such company; *provided, however*, that all lands to be acquired under the provisions of this act and the buildings to be erected thereon shall be liable and subject to full local taxation. Railroad companies operating road wholly within any county may acquire lands for termini, &c.

Proviso.

An act to provide for the better protection of passengers upon railroads, and to insure the prompt transportation and delivery of freights.

P. L. 1877, p. 107.

Approved March 9, 1877.

Preamble.

WHEREAS, Strikes by locomotive engineers and other railroad employes, and the abandonment by them of their engines and trains at points other than their schedule destination, endangers the safety of passengers and subjects shippers of freight to great inconvenience, delay and loss; therefore,

Penalty for abandoning engine in case of strikes, &c.

245. SEC. 1. That if any locomotive engineer or other railroad employe upon any railroad within this state, engaged in any strike, or with a view to incite others to such strike, or in furtherance of any combination or preconcerted arrangement with any other person to bring about a strike, shall abandon the locomotive engine in his charge, when attached either to a passenger or freight train, at any place other than the schedule or otherwise appointed destination of such train, or shall refuse or neglect to continue to discharge his duty, or to proceed with said train to the place of destination as aforesaid, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars, and may be imprisoned for a term not exceeding six months, at the discretion of the court.

Penalty for lending aid to any strike or strikes.

246. SEC. 2. That if any locomotive engineer or other railroad employe within this state, for the purpose of furthering the object of or lending aid to any strike or strikes organized or attempted to be maintained on any other railroad, either within or without this state, shall refuse or neglect, in the course of his employment, to aid in the movement over and upon the tracks of the company employing him of the cars of such other railroad company, received therefrom in the course of transit, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars, and may be imprisoned for a term not exceeding six months, at the discretion of the court.

Penalty for molesting or obstructing any locomotive engineer.

247. SEC. 3. That if any person, in aid or furtherance of the objects of any strike upon any railroad, shall interfere with, molest or obstruct any locomotive engineer or other railroad employe engaged in the discharge and performance of his duty as such, every person so offending shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars, and may be imprisoned for a term not exceeding six months, at the discretion of the court.

Penalty for obstructing any track, &c.

248. SEC. 4. That if any person or persons, in aid or furtherance of the objects of any strike, shall obstruct any railroad track within this state, or shall injure or destroy the rolling stock or any other property of any railroad company, or shall take possession of or remove any such property, or shall prevent or attempt to prevent the use thereof by such railroad company or its employes, or shall, by offer of recompense, induce any employe of any railroad company within this state to leave the service of such company while in transit, every such person offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars, and may be imprisoned not more than one year, at the discretion of the court.

An act relating to the consolidation of railroads.

P. L. 1878, p. 58.

Approved March 7, 1878

Railroad corporations may consolidate, merge, &c.

249. SEC. 1. That it shall be lawful for railroad corporations chartered by or under the laws of this state, and whose railroads are now constructed and lie wholly within this state, and which have been authorized to hold other railroads under lease or to lease their properties, and which said corporations are now bound by contracts of lease, and also any such corporations whose railroads are now constructed and lying within the state, as are now authorized to consolidate their capital stocks or property or business, to absolutely consolidate and merge their corporate rights,

franchises, powers and privileges into any one of such corporations so authorized as aforesaid, so that, by virtue of this act, such corporations shall be consolidated and merged, and so that all the property, rights, franchises and privileges by law vested in such corporations so merged shall be transferred to and vested in the corporation into which such consolidation and merger shall be made.

250. SEC. 2. That such consolidation and merger shall be made under the following conditions and restrictions, to wit:

Conditions and restrictions under which consolidation and merger may be made.

Joint agreement.

I. The directors or managers of each corporation so authorized as aforesaid shall enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of said corporations and of such merger, prescribing the terms and conditions thereof and the manner of converting the capital stock of the said corporation or corporations so to be merged into the stock or obligations of the corporation into which such merger shall be made, and all other provisions as they shall deem necessary to perfect the said consolidation and merger;

II. Said agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof, called separately, of the time, place and object of which meeting due notice shall be given by publication once a week for two successive weeks before said meeting, in one newspaper published in each of the counties through or into which the railroads of said corporations respectively shall or may be authorized to extend; and at said meeting the said agreement shall be considered, and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if a majority of all the votes cast at each of such meetings shall be in favor of said agreement, consolidation and merger, then that fact shall be certified by the secretary of such corporation, and said certificate, together with a copy of the agreement, shall be filed in the office of the secretary of the state, whereupon the said agreement shall be deemed and taken to be the act of consolidation and merger of said corporation; but, nevertheless, if any stockholder of either of the companies so consolidated and merged who shall not have given assent thereto and who shall be dissatisfied therewith, and shall signify his or her dissent by notice in writing, served on the president, secretary or treasurer of the company into which such consolidation and merger shall have been made, at any time within three months after the vote for the same, he or she shall receive from the company into which the consolidation and merger shall have been made, the fair value of his or her stock at the time when the vote for the agreement of consolidation and merger was so cast as aforesaid, which, if not agreed on, shall be appraised by three disinterested persons resident in this state, to be appointed by the chancellor or supreme court of this state, whose duty it shall be to make such appointment on reasonable notice, on the application of either party, and thereupon and upon the payment of the value so ascertained, such stockholder shall deliver up his or her certificate of stock, if any such has been issued; and the said company into which the consolidation and merger shall have been made may re-issue the same amount of stock to any other person or persons.

Agreement to be submitted to stockholders.

Copy of agreement, when certified, to be filed with secretary of state.

Proceedings when stockholder shall dissent.

251. SEC. 3. That upon the filing of the said certificate and copy of agreement in the office of the secretary of the state, the said merger shall be deemed to have taken place, and the said corporations to be one corporation, possessing all the rights, privileges and franchises theretofore vested in either of them; and all the property, real, personal and mixed, and debts due and rights of action shall be deemed and taken to be transferred to and vested in the corporation into which such merger shall have been made, without further act or deed; and all property, all rights of way and all other interests shall be as effectually the property of such company or corporation into which such merger shall have been made as they were of either of the former corporations, parties to said agreement; *provided*, that all rights of creditors and all liens upon the property of either of said corporations shall continue unimpaired, and the respective corporations shall be deemed to be in existence to preserve the same; and

When merger shall be deemed to have taken place.

Proviso.

all debts, duties and liabilities of either of said corporations shall thenceforth attach to the consolidated corporation and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it; *and provided further*, that in case of any differences or inconsistencies of any nature between the acts regulating said companies respectively, then the said consolidated corporation shall, in all respects, be regulated by the laws then governing and applicable to the corporation into which such merger shall have been made; *and provided further*, that a certified copy of the said certificate and copy of agreements so to be filed in the office of the secretary of state shall be evidence of the lawful holding and action of such meeting and of the consolidation of such corporations and of the said merger.

Proviso.

Proviso.

When capital stock may be increased.

Proviso.

May issue bonds, either registered or coupon.

Proviso.

252. SEC. 4. That whenever any consolidation and merger shall have taken place, under and by virtue of this act, between any two or more corporations so authorized as aforesaid, the corporation into which such merger shall be made shall have power and authority to make such increase in its capital stock and shares as may be expedient in carrying such consolidation and merger into effect; *provided, however*, that such increase shall not be more than twenty per centum greater than the aggregate amount of the capital stock and shares of the corporations so consolidated and merged.

253. SEC. 5. That whenever any consolidation and merger shall have taken place, under and by virtue of this act, between any two or more corporations so authorized as aforesaid, the corporation into which such merger shall be made shall have the power and authority to issue bonds, either registered or coupon, and to create a mortgage or mortgages on a portion, or on all, of its property, real and personal, and also of all its rights, privileges and franchises, to trustees, to secure the payment of the bonds so issued, and to give and exchange the said bonds for the debts and obligations of the respective corporations so consolidated and merged; *provided*, that the bonds so issued shall not exceed in amount the whole of the debt and obligations, and twenty per centum in addition thereto, of the corporations so consolidated and merged, and that said bonds shall not bear a rate of interest of more than seven per centum per annum; the bonds so issued may be given in lieu, exchange and in satisfaction of and for all bonds, mortgages or other debts or claims, or stock, or obligations against the corporations thus consolidated and merged, upon such terms as may be agreed upon by and between the holders of such debts or claims and the corporation into which such consolidation and merger has taken place.

Supplement.

Approved March 14, 1879.

P. L. 1879, p. 212.

Authorized to issue preferred stock or mortgage bonds in exchange for capital stock.

254. SEC. 1. That whenever two or more railroad corporations have effected, or are desirous of effecting, a consolidation and merger, under or by virtue of the act to which this is a supplement, or otherwise, and the bonded debt of said corporations is unequal in amount, or some or one of said corporations have no bonded debt, it shall be lawful for all or either of the said corporations having the lesser bonded debt, or no bonded debt, to receive in the preferred stock of the said consolidated corporation, or in bonds secured by mortgage upon the property and franchises thereof, an amount not exceeding one-half its or their capital stock respectively in lieu thereof, and in exchange for an equal amount of its or their own capital stock theretofore issued; which capital stock, when so received by the said consolidated corporation, shall be retired, canceled and destroyed, the amount of said preferred stock, or of bonds secured as aforesaid, so to be issued in exchange for said capital stock, shall be fixed and determined by a vote of two-thirds of the stockholders in amount of the said consolidated corporation, or of the several corporations desirous of effecting such consolidation.

Consolidated corporation may issue bonds.

255. SEC. 2. That it shall be lawful for such consolidated corporation, and they are hereby authorized, to issue their bonds at par to such an amount as shall be necessary to carry out the purposes of this act, and to

secure the same by their indenture of mortgage upon the property and franchises of such consolidated corporation; and it shall also be lawful for such consolidated corporation to create, by a vote of two-thirds of the stockholders in amount, and to issue for the purpose hereinbefore set out, a preferred stock to an amount not exceeding one-half of the authorized capital of the respective corporations so consolidated; the holders of which said preferred stock shall be entitled to receive, and the said consolidated corporation shall be bound to pay thereon, a certain fixed half-yearly sum or dividend, to be expressed in the certificates of such preferred stock, before any dividends shall be set apart or paid to the holders of the general or common stock.

Dividends.

Supplement.

Approved March 23, 1887.

P. L. 1887, p. 64.

256. SEC. 1. That it shall be lawful for the corporation into or with which one or more railroad corporations have been merged or consolidated, with the consent of the stockholders owning or controlling two-thirds in value of the capital stock of such corporation, to increase its capital stock to such an amount as shall be deemed expedient or necessary by the directors of such company for the uses and purposes of such company.

257. SEC. 2. That this act shall take effect immediately, and all acts or parts of acts inconsistent herewith are hereby repealed.

Railroads consolidated may increase capital stock.

Repealer.

An act to validate certain mortgages heretofore given by railroad corporations and to make such mortgages a lien upon the franchises of such corporations.

Approved March 14, 1878.

P. L. 1878, p. 86.

258. SEC. 1. That all mortgages made and executed by railroad corporations upon their corporate property, real or personal, before the first day of July, in the year of our Lord eighteen hundred and fifty-four, to secure their bonds, issued or to be issued, whose charters did not expressly empower them to make and execute such mortgages, be and the same are hereby validated and confirmed; *provided*, that such mortgages shall have been recorded in the proper office or offices for recording the same.

Certain mortgages validated.

Proviso.

259. SEC. 2. That every mortgage heretofore given or executed by any railroad corporation upon their corporate property, real and personal, to secure the payment of their bonds or other indebtedness, and recorded in the proper office for recording such mortgages, and in which mortgage the corporate rights and franchises of such corporation are not mentioned or included, shall be deemed and taken to be a mortgage lien and incumbrance of and upon the corporate rights and franchises of the corporation which executed the same, from and after the passage of this act, with the same effect, to all intents and purposes, as if the said corporate rights and franchises were mentioned or included in said mortgage; *provided, however*, that such mortgage shall not be deemed or taken to be an incumbrance, as provided in this section, unless the company shall execute and seal with their corporate seal, and file in the office of the secretary of state, a certificate describing such mortgage in general terms and setting forth that the said corporation, with the consent and authority of the stockholders holding a majority in amount of the stock of said corporation, desire and declare that such mortgage shall be deemed and taken to be a mortgage, lien and incumbrance of and upon the corporate rights and franchises of said corporation.

When deemed and taken to be a mortgage lien on corporate rights and franchises.

Proviso.

An act in relation to the number of directors of railroad, canal or turnpike companies which have been or may hereafter be sold under mortgage foreclosure and re-organized, and the consolidation of such companies when partly within and without this state.

Approved March 14, 1878.

P. L. 1878, p. 87.

260. SEC. 1. That the stockholders of any railroad, canal or turnpike company, which has been or may be formed after mortgage sales of said railroads, canal or turnpike, at the annual or other election of directors

Number of directors to be not less than seven nor more than seventeen.

RAILROADS AND CANALS.

held by said stockholders, may elect any number of directors (not less than seven nor more than seventeen), one of whom shall be president, provided that the board of directors of said company shall first have voted and fixed the number of directors to be voted for, unless it shall be at the first meeting of the person or persons for or on whose account any such railroad, canal or turnpike may have been purchased, when the number of directors may be fixed as aforesaid by the persons organizing the new company under the laws of this state.

When railroad, &c., lying partly in this state and partly in another is purchased under sales in the different states, the new company to be one company.

261. SEC. 2. That when any such railroad, canal or turnpike lies partly within and partly without this state, and shall have been purchased under a mortgage sale of the consolidated rights, property, privileges and franchises of either of said companies, and when the said foreclosure and sales shall have been carried on separately in the different states where the railroad, canal or turnpike was, the new company which may be thereafter formed in each state shall be taken and considered to be one company in law and in fact; *provided*, that the person or persons, for or on whose account said purchase was made, shall be the same persons, and shall so certify under the hand of the first president of the consolidated company in its certificate of organization, in which case all of the aforesaid rights, property, privileges and franchises of the consolidated companies lying and being in the several states shall be merged into the new or re-organized company.

An act to define the rights of railroad corporations as to the use of their lands lying opposite and across streets and highways.

P. L. 1879, p. 236.

Companies owning or leasing lands on opposite sides of street may cross the same.

Approved March 14, 1879.

262. SEC. 1. That any railroad corporation chartered by or authorized to exercise its franchises within this state, which now owns or possesses, as lessees or otherwise, lots or parcels of lands lying opposite to each other, across, and each fronting upon any street or public highway, it is and shall be lawful for such corporation to construct their tracks across such street or highway and to use the same for all purposes of transportation; *provided*, that nothing herein contained shall be construed to enable such corporation to interfere with or to change the grade of such street or highway, or to prevent or unnecessarily impede the use thereof for ordinary travel.

Repealer.

263. SEC. 2. That any acts or parts of acts inconsistent herewith are hereby repealed.

An act to authorize railroad companies to change their corporate name.

P. L. 1880, p. 68.

Railroad companies may change their corporate name.

Approved March 2, 1880.

264. SEC. 1. That it shall be lawful for any railroad company organized under the laws of this state to change their corporate name in the following manner: the board of directors, by resolution, shall designate the name which it is proposed to adopt, and authorize the president of said board of directors to give notice to the stockholders, by publication in at least one newspaper published in each county through which said railroad is located, once a week for four weeks, of a meeting to be held for the purpose of considering said change of name, fixing a time and place of holding said meeting, and if, at said meeting, a majority in interest of the stockholders present shall vote in favor of the proposed name, it shall be the duty of the president of said board of directors to file in the office of the secretary of state a statement signed by the president and secretary of said company, containing all the proceedings of said meeting, and from and after the filing of said statement the said name so adopted shall be the corporate name of said company, with the like effect for all purposes as if the same had not been changed; *provided, however*, that said change of name shall in no wise impair or affect any existing contract to which said company is a party.

Statement to be filed in office of secretary of state.

Proviso.

An act concerning canals.

Approved March 10, 1880.

P. L. 1880, p. 140.

265. SEC. 1. That it shall be lawful for any canal company heretofore created and existing, or hereafter created under or by virtue of any law of this state, to extend the time limited in its charter or certificate of organization for the completion of its works for a period not exceeding ten years, upon filing in the office of the secretary of state a certificate, under its common seal, attested by the signature of its presiding officer, declaring its desire that the time so limited for the completion of its works shall be extended for a period not exceeding ten years.

Canal companies may extend time for completion of their work by filing certificate in office of secretary of state.

An act to authorize railroad corporations to surrender their franchises and to dispose of their property.

Approved March 10, 1880.

P. L. 1880, p. 180.

266. SEC. 1. [Amended and supplied by Sec. 269, *post.*]

267. SEC. 2. That the persons who shall be acting as directors of such corporation at the time of such surrender shall, immediately thereafter, as trustees for the stockholders, proceed to sell all the property of said corporation at public or private sale, at and for the highest price and upon the best terms attainable; and after deducting from the proceeds of such sale the necessary expenses thereof and all liabilities of such company, shall distribute the balance thereof among the stockholders in proportion to the amount of stock they may hold.

Directors of railroads which have dissolved to act as trustees to sell property.

268. SEC. 3. That this act shall take effect immediately, and all acts or parts of acts inconsistent with this act are hereby repealed.

Repealer.

Amendatory act.

Approved March 18, 1881.

P. L. 1881, p. 139.

269. SEC. 1. That section numbered one of said act [see Sec. 266, *ante*] be and the same is hereby amended so that the same shall read as follows, viz. :

[That whenever the holders of a majority of the capital stock of any railroad corporation which has no bonded indebtedness, and which does not receive for the operation of its road moneys sufficient to meet and satisfy its expenses, or which has not commenced or fully completed the construction of its railroad, shall deem it best to surrender the corporate rights, powers, privileges and franchises of and to dissolve such corporation, it shall be lawful for such corporation to make such surrender by filing in the office of the secretary of state of this state a certificate under the corporate seal of said corporation and attested by the president and secretary thereof, setting forth that the holders of a majority of the capital stock had deemed it best to surrender the corporate rights, powers, privileges and franchises of said corporation, and upon filing such certificate as aforesaid, the said corporation shall, ipso facto, be dissolved, and it shall be the duty of the treasurer of this state, upon the production of a copy of such certificate, duly certified under the seal of the secretary of state, to refund and pay to such corporation, or the treasurer thereof, any moneys required by law to be deposited and deposited by said corporation with the treasurer of this state before or at the time of the filing of the articles of association of said corporation; *provided*, that such payment shall not be made until an affidavit shall have been filed with the treasurer of this state, made and signed by the president, secretary and treasurer of said corporation, setting forth that all the indebtedness of the said corporation has been fully paid and discharged.]

Majority of holders of stock may surrender corporate rights and dissolve corporation.

Certificate to be filed in office of secretary of state.

Treasurer of state to refund and pay money deposited with him.

Proviso.

An act to regulate the rate of passenger fares on railroads doing business under special charters granted by the legislature of this state.

Approved March 11, 1880.

P. L. 1880, p. 203.

270. SEC. 1. That it shall not be lawful for any railroad company doing business in this state under a special charter to charge more than three and a half cents per mile for carrying each passenger, and any ticket,

Rates for passenger fares limited.

except excursion tickets or tickets sold at reduced rates, shall be good until used; but no charge shall be required in the aggregate to be less than ten cents; *provided*, that nothing in this act shall be construed to affect an act entitled "An act to authorize railroad companies to charge and collect an excess of ten cents where fare is paid in the cars." [See Sec. 222, *ante*.]

Repealer.

271. SEC. 2. That so much of all acts in relation to passenger fares on railroads, whether public or private, heretofore granted by the legislature of this state, that come in conflict with the provisions of this act, are hereby repealed, and that this act shall be deemed and taken as a public act and shall take effect immediately.

An act to authorize an increase in the number of the directors or managers of railroad companies.

P. L. 1881, p. 18.

Directors may select stockholders to act as vice presidents.

Approved February 8, 1881.

272. SEC. 1. That the directors or managers of any railroad company incorporated under or by the laws of this state, be and they are hereby authorized and empowered to add to their number by selecting from the body of stockholders, from time to time, an additional member or members, who shall be and act as a vice president or additional vice presidents of such company, and who shall have such powers and perform such duties and receive such compensation as the board of directors or managers, by its by-laws, rules, regulations, or by resolution, may establish and direct; *provided, however*, that the number of directors or managers of any such company shall not thereby be increased beyond twenty.

Repealer.

273. SEC. 2. That this act shall take effect immediately, and all acts or parts of acts inconsistent with this act are hereby repealed.

An act to authorize railroad corporations to construct, acquire, maintain and operate lines of telegraph for commercial and public uses.

P. L. 1881, p. 31.

Railroad corporations empowered to operate lines of telegraph over and upon their lands, &c.

Approved February 17, 1881.

274. SEC. 1. That it shall be lawful for every railroad corporation of this state, organized by virtue of any special act of incorporation, or otherwise, and for every railroad corporation organized under the laws of another state, but leasing or operating a railroad or canal in this state, and such corporations are hereby authorized and empowered to erect, establish and maintain a line or lines of telegraph for public use, over, along and upon the lands and rights of way of such railroad corporations, and over, along and upon the lands and rights of way of such railroad and canal corporations of which such railroad corporation may be the lessee or operator, and over, along and upon the lands and rights of way of any other railroad corporation, with the consent, and not otherwise, of such other railroad corporation, and to erect, establish and maintain extensions of such telegraph line or lines in any direction from such primary or main line, for such distance as may be necessary to reach business centers, over, along and upon the public roads and highways of this state, or otherwise; *provided*, that the use of public streets in any incorporated city of this state, for the erection of such extensions of said telegraph line, shall be subject to such reasonable regulations as may be imposed by the corporate authorities of said cities.

Proviso.

Offices to be established and maintained for transmission of messages.

275. SEC. 2. That it shall be the duty of every railroad corporation availing itself of this act to establish, maintain and keep open, for the reception and transmission of messages by its telegraph lines, at least one office in every twenty-five miles traversed by its said lines of telegraph; and it shall be the duty of said railroad corporation to receive and transmit all messages tendered for transmission, upon being paid such charges as by law the said corporation may charge for such service.

Rates that may be charged.

276. SEC. 3. That any railroad corporation availing itself of this act shall be and hereby is authorized to charge, receive and to collect, before transmission, for each message of not more than ten words twenty-five

cents, and for each additional word one cent; *provided, however*, that said messages are intended to be transmitted only over the telegraph lines of the company to whom such messages are tendered.

277. SEC. 4. That it shall be lawful for any railroad corporation availing itself of this act, and it is hereby authorized and empowered to enter into, make and perfect such business arrangements with any other railroad or telegraph corporation of this or of any state, as shall be mutually agreed upon by said corporations, for the reception and transmission of messages over the telegraph lines of said railroad and telegraph corporations; and for all messages to be transmitted over the telegraph lines of other corporations, every railroad corporation availing itself of this act, to whom such messages shall be tendered, may charge, receive and collect reasonable and customary rates for such transmission.

Railroad corporations may make arrangements with other railroad or telegraph companies, &c.

278. SEC. 5. That this act shall take effect immediately, and all acts and parts of acts inconsistent herewith are hereby repealed.

Repealer.

An act concerning railroad corporations.

Passed March 23, 1881.

P. L. 1881, p. 185.

279. SEC. 1. That it shall be lawful for every railroad corporation whose charter would expire during the year one thousand eight hundred and eighty-one, by force of its act of incorporation, and which has expended moneys in making surveys or in constructing its road, to extend its road to any point of connection with any other railroad within five miles of either of its present termini, and for such purpose is hereby again invested and endowed with all the rights, powers, privileges and franchises conferred upon such railroad corporation in and by its act of incorporation or any supplement thereto.

Certain railroad corporations authorized to extend their road to a point of connection with any other railroad.

An act to authorize railroad companies incorporated under the laws of this and adjoining states to merge and consolidate their corporate franchises and other property.

Approved March 25, 1881.

P. L. 1881, p. 222.

280. SEC. 1. [Amended and supplied by Sec. 289, *post.*]

281. SEC. 2. That said consolidation shall be made under the conditions, provisions, restrictions and with the powers hereafter in this act mentioned and contained, that is to say:

Consolidation to be made under certain conditions and powers.

I. The directors of the several corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of the company, for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share and the manner of converting the capital stock of each of the said companies into the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or railroads;

To enter into joint agreement for consolidation, prescribing terms and conditions, &c.

II. Said agreement shall be submitted to the stockholders of each of said companies or corporations at a meeting thereof, called separately, for the purpose of taking the same into consideration; due notice of the time and place of holding such meeting, and the object thereof, and delivered to such persons respectively, or sent to them by mail, when their post-office address is known to the company; and, also, by a general notice published in some newspaper in the city, town or county where such company has its principal office or place of business; and at said meeting of stockholders the agreement of the said directors shall be considered, and a vote, by ballot, taken by each company separately, for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and said ballots shall

Agreement to be submitted to stockholders of each corporation.

When adopted by two-thirds vote of stockholders, agreement or copy to be filed in office of secretary of state.

Consolidated companies to be one corporation, &c.

Franchises, rights, &c., of corporations deemed transferred to and belonging to new corporation.

Proviso.

New company may establish offices, one of which shall be in this state.

How suits may be brought.

Taxation of property of consolidated company.

Any stockholder refusing to convert stock into that of consolidated company, may petition court to appoint persons to estimate damages.

be cast in person or by proxy, and if two-thirds of all the votes of all the stockholders voting separately shall be for adoption of said agreement, then that fact shall be certified thereon by the secretary of the respective companies, under the seal thereof; and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and shall, from thence, be deemed and taken to be the agreement and act of consolidation of the said companies, and a copy of said agreement and act of consolidation, duly certified by the secretary of state, under the seal thereof, shall be evidence of the existence of said new corporation.

282. SEC. 3. That upon the making and perfecting the agreement and act of consolidation, as provided in the preceding section, and filing the same, or a copy, with the secretary of state as aforesaid, the several corporations parties thereto shall be deemed and taken to be one corporation, by the name provided in said agreement and act, possessing within this state all rights, privileges and franchises, and subject to all the restrictions, disabilities and duties of each of such corporations so consolidated. (a)

283. SEC. 4. That upon the consummation of said act of consolidation as aforesaid, all and singular, the rights, privileges and franchises of each of said corporations, parties to the same, and all property, real, personal and mixed, and all debts, due on whatever account, as well as of stock subscriptions and other things in action belonging to each of such corporations, shall be taken and deemed to be transferred to and vested in such new corporation without further act or deed; and all property, all rights of way, and all and every other interests shall be as effectually the property of the new corporation as they were of the former corporations, parties by said agreement; and the title to real estate, either by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not be deemed to revert or be in any way impaired by reason of this act; *provided, however,* that all rights of creditors and all liens upon the property of either of said corporations shall be preserved unimpaired, and the respective corporations may be deemed to continue in existence to preserve the same; and all debts, liabilities and duties of either of said companies shall thenceforth attach to said new corporation, and be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

284. SEC. 5. That such new company shall, as soon as convenient after such consolidation, establish such offices as may be desirable, one of which shall be at some point in this state on the line of its road, and may change the same at pleasure, giving public notice thereof in some newspaper published on the line of said road.

285. SEC. 6. That suits may be brought and maintained against such new company in any of the courts of this state in the same manner as against other railroad companies therein.

286. SEC. 7. That that portion of the road of such consolidated company in this state, and all its real estate and other property, shall be subject to like taxation, and assessed in the same manner and with like effect as property of other railroad companies within this state, but this act shall not be construed to affect the liability of any railroad corporation to pay the taxes now imposed on it by law.

287. SEC. 8. That any stockholder of any company hereby authorized to consolidate with any other, who shall refuse to convert his stock into the stock of the consolidated company, may, at any time within thirty days after the adoption of the said agreement of consolidation by the stockholders, as in this act provided, apply, by petition, to the court of common pleas of the county in which the chief office of said company may be kept, or to a judge of said court in vacation, if no such court sits within said period, on reasonable notice to said company, to appoint three disinterested persons to estimate the damage, if any, done to such stockholder by said proposed consolidation, and whose award, or that of a majority of

(a) See *Terhune v. Potts*, 18 Vr. 218. This act does not authorize a lease by one company to another. *Mills v. Central R. R. Co.*, 14 Stew. 1.

them, when confirmed by the said court, shall be final and conclusive, and the persons so appointed shall also appraise said stock of such stockholder at the full market value thereof, without regard to any depreciation or appreciation in consequence of the said consolidation, and the said company may, at its election, either pay to the said stockholder the amount of damages so found and awarded, if any, or the value of the stock so ascertained and determined, and upon the payment of the value of the stock as aforesaid, the said stockholder shall transfer the stock so held by him to said company, to be disposed of by the directors of said company, or be retained for the benefit of the remaining stockholders; and in case the value of said stock as aforesaid is not so paid within thirty days from the filing of the said award and confirmation by said court and notice to said company, the damages so found and confirmed shall be a judgment against said company, and collected as other judgments in said court are, by law, recoverable. (a)

Award, how made, and to be final and conclusive.

Value of stock not paid within certain time, how collected.

Consolidated company authorized to issue bonds, &c.

Proviso.

288. SEC. 9. That in all cases of merger or consolidation of two or more railroad companies, under and by virtue of the provisions of this act, the said consolidated company shall have power and authority to issue bonds, with coupons or interest certificates thereto attached, to an amount sufficient to cover all the indebtedness of the companies so merged and consolidated, and to aid in the completion and equipment of said railroad, to secure the payment of which it shall be lawful for them to create a mortgage, covering their corporate franchises, rights, privileges and property, real and personal; *provided*, that the bonds shall not bear a greater rate of interest than six per centum per annum; the bonds so issued may be given in lieu, exchange and satisfaction of and for all bonds or other debts against the companies thus merged and consolidated, upon such terms as may be agreed upon by and between the holders of said debts or claims.

Amendatory act.

Approved April 17, 1885. P. L. 1885, p. 255.

289. SEC. 1. That section one of the act entitled "An act to authorize railroad companies incorporated under the laws of this and adjoining states to merge and consolidate their corporate franchises and other property," approved March twenty-fifth, one thousand eight hundred and eighty-one, be and the same is hereby amended so as to read as follows:

[That it shall be lawful for any railroad company or corporation organized under the laws of this state to merge and consolidate their capital stock, franchises and property with those of any railroad company or companies of this state whenever the said railroads, so to be consolidated, shall or may form connecting or continuous line or lines of railroad; *provided*, that no railroad company claiming a contract with the state on the subject of taxation shall avail itself of the provisions of this act unless said contract is surrendered.] (b)

Railroad companies may merge and consolidate when they may form continuous lines.

Proviso.

An act concerning railroads.

Approved March 25, 1881. P. L. 1881, p. 235.

290. SEC. 1. That it shall be lawful for any railroad company incorporated under the laws of any other state, when it has consolidated or merged its stock, property or franchises with any railroad company incorporated under the laws of this state, under the provisions of any law or statute relating thereto, to borrow any amount of money to aid in finishing, extending and equipping their railroad; to issue coupon bonds therefor, of the denomination of one thousand dollars each, and secure the payment of the same by a mortgage covering the whole or any part of the property and franchises so merged and consolidated; and said mortgage shall be a valid lien, when properly executed and recorded, upon the property therein

Consolidated company may borrow money and issue bonds for equipment of road, &c.

(a) See *Terhune v. Midland E. R. Co.*, 9 *Stew.* 318.

(b) The above act does not authorize a *lease* by one company to another. *Mills v. Central E. R. Co.*, 14 *Stew.* 4.

described; *provided, however*, said bonds shall bear no greater rate of interest than six per centum per annum.

When to take effect.
Repealer.

291. SEC. 2. That this act shall take effect immediately.

292. SEC. 3. That all acts and parts of acts inconsistent herewith shall be void.

An act providing for public safety on railroads.

P. L. 1881, p. 260.

Approved March 25, 1881.

Unlawful for railroads to use passenger cars with screens, bars, &c., across windows.

Penalty.

293. SEC. 1. That it shall not be lawful to use, in the transportation of passengers of any railroad in this state, any passenger car or coach having screens, bars or gratings across the windows, and that any person or corporation owning, controlling or operating any railroad over which any passenger car or coach shall pass in violation of the provisions of this act, shall be subject to a fine of two hundred dollars for each offense, to be recovered by any inhabitant of this state who may sue for the same in any court having cognizance of the same, one-quarter of said fine to go to the person suing for the same and three-quarters thereof to the state.

An act to provide for the recording of surveys of the route or routes of railroads within this state.

P. L. 1881, p. 284.

Approved March 25, 1881.

When surveys of railroad companies to be recorded by secretary of state.

Certified copy of record to be evidence.

Proviso.

294. SEC. 1. That in all cases where, under the provisions of any law of this state, any survey of the route or routes of any railroad authorized by any law of this state, or the location or locations of other works, buildings, conveniences, appurtenances and appendages thereof, have heretofore been deposited, or shall hereafter be deposited, in the office of the secretary of state, it shall be the duty of the secretary of state, upon being thereunto requested by the corporation operating such railroad, and with the assent of the board of directors of the corporation itself, whose road may be leased or operated by any other railroad, to record such survey at length, in a proper book to be by him provided at the expense of the state for that purpose, upon payment of the fees provided by law for the recording of deeds; and the record aforesaid, or the transcript of such record, duly certified to be a true copy, under the seal of the secretary of state, shall be received in evidence in any court of this state, and shall be effectual proof of the survey and location of the route or routes, works, buildings, conveniences, appurtenances and appendages of such railroad as delineated or expressed therein; *provided*, nothing in this act shall be construed to apply to any case touching which litigation is now pending.

An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling stock, and providing for the record thereof.

P. L. 1883, p. 87.

Approved March 8, 1883.

Act not to apply to contracts heretofore made.

295. SEC. 1. [Amended by Sec. 297, *post*.]

296. SEC. 2. That this act shall not be held to apply to or invalidate any contract heretofore made of the character described in the first section, but the same shall be and remain valid if recorded within ninety days from the date hereof, and this act shall take effect immediately.

An act to amend an act entitled "An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling stock, and providing for the record thereof," approved the eighth day of March, one thousand eight hundred and eighty-three, and to provide that certain contracts shall not be affected by the act entitled "An act requiring contracts for the conditional sale of personal property to be recorded," approved the ninth day of May, one thousand eight hundred and eighty-nine.

P. L. 1895, p. 158.

Approved March 5, 1895.

297. SEC. 1. That section one of the act approved the eighth day of March, one thousand eight hundred and eighty-three [see Sec. 295, *ante*], be amended so as to read as follows:

[That whenever any railroad or street railway equipment and rolling stock shall hereafter be sold, leased or loaned, on the condition that the title to the same, notwithstanding the possession and use of the [same] by the vendee, lessee or bailee shall remain in the vendor, lessor or bailor until the terms of the contract, as to the payment of the installments, amounts of rentals payable, or the performance of other obligations thereunder, shall have been fully complied with, such condition shall not be valid as to any subsequent judgment creditor or any subsequent purchaser for a valuable consideration without notice, unless :

Conditional sale, lease or loan of railroad or street railway equipment and rolling stock not valid against subsequent judgment creditors and purchasers, except on certain conditions.

First. The same shall be evidenced by writing, duly acknowledged before some person authorized by law to take acknowledgments of deeds ;

Second. Such writing shall be recorded in the office of the secretary of state whenever the vendee, lessee or bailee is a corporation operating its line in more than a single county, and in cases where the vendee, lessee or bailee is a corporation operating its line in a single county, then in the same book as mortgages of goods and chattels are recorded in the office of the recorder of deeds of such county ;

Third. Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.]

298. SEC. 2. That the provisions of the act of the general assembly entitled "An act requiring contracts for the conditional sale of personal property to be recorded," approved the ninth day of May, one thousand eight hundred and eighty-nine, shall not be construed to apply to railroad and street railway equipment and rolling stock which shall be the subject of contracts of the kind specified in the first section of the said act as hereby amended.

Provisions of conditional sales act not to apply.

299. SEC. 3. That this act shall not be held to apply to any contract heretofore made of the character described in the first section hereof, and this act shall take effect immediately.

Act not to be retroactive.

An act to extend the time for the completion of railroads.

Approved March 23, 1883.

P. L. 1883, p. 212.

300. SEC. 1. That all railroad companies incorporated by any special act of the legislature of this state, part of whose railroad has been built and is in operation, the time of the completion of which has expired since the year one thousand eight hundred and seventy-four, be and they are hereby authorized and empowered to complete their respective railroads, or any part thereof, within four years from the passage of this act, and to alter or amend the location of such uncompleted portions by filing the surveys of the same in the office of the secretary of state, subject to all the powers and restrictions contained in their several acts of incorporation and the supplements thereto.

Certain railroad companies authorized to complete their railroad within four years from passage of act.

301. SEC. 2. That any and all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Repealer.

An act concerning railroads.

Approved April 2, 1884.

P. L. 1884, p. 123.

WHEREAS, Great improvements in the manner and means of transmitting signals from the cars of a train to the locomotive drawing the same have lately been perfected, whereby the use of a bell-cord for that purpose is superseded by air and electrical apparatus attached to each car, and so arranged as to be easily and conveniently within the reach and control of employes and passengers upon the train, and by experiment found to be certain and instantaneous in operation, thereby avoiding the dangers and difficulties that necessarily attend the use of the bell-cord, which, in accidents especially, is liable to become detached from the bell or to be broken or burned ; and *whereas*, public policy demands that railroad corporations should be encouraged to adopt all reasonable and approved precautions to insure the safety of passengers ; now, therefore,

Preamble.

Railroad corporation adopting air or electrical apparatus for transmitting signals upon its train not liable to fine for not using bell-cord.

302. SEC. 1. That whenever any railroad corporation owning or operating a railroad within this state shall adopt and habitually use upon its passenger trains, or mixed passenger and freight trains, any apparatus, device or machine, using either air or electricity, or both, in the operation thereof, whereby signals may be surely, quickly and conveniently given to the enginemen upon the locomotive drawing the train, by employes or passengers in any car of the train, and which apparatus, device or machine shall have been approved by the general manager or superintendent of such railroad, then and in such case, such railroad corporation shall not be liable or subject to the fine or penalty, or any part thereof, for not using a bell-cord upon its trains, which may now be recovered by law from railroad corporations failing to comply with the requirements of the first section of the act entitled "A supplement to an act respecting railroads and canals, approved March twenty-seventh, one thousand eight hundred and seventy-four," approved March twenty-three, one thousand eight hundred and eighty-three. [See Sec. 207, *ante*.]

Repealer.

303. SEC. 2. That all acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect immediately.

An act relating to straightened or improved lines of railroad.

P. L. 1884, p. 199.

Passed April 17, 1884.

When original road may be retained after improved or straightened line has been substituted.

304. SEC. 1. That it shall be lawful for the president and directors of any railroad company to retain the possession and use, either in whole or in part, of any portion of the original railroad for which an improved or straightened line has been substituted, if in their opinion the abandonment of the said portion would be inconvenient or injurious to the interests of the public and of the railroad company; *provided*, that said portion of said original railroad for which an improved or straightened line has been so substituted, and the use and possession of which, either in whole or part, the president and directors of said railroad have determined to retain, shall be liable to be taxed in the same manner and at the same rate of taxation as the real estate of individuals is taxed for municipal, county and state purposes in the same taxing district.

Proviso.

An act concerning railroad companies.

P. L. 1884, p. 315.

Approved May 9, 1884.

Lawful to run trains composed of parlor, sleeping or hotel cars.

305. SEC. 1. That it shall be lawful for railroad companies operating railroads in this state to run upon such railroads trains composed partly or wholly of cars furnished in a superior manner and with extra accommodations for the comfort of passengers, and commonly known and designated as parlor, sleeping and hotel cars, and to charge and to collect from those using the same such extra fare as said companies shall deem expedient and just; *provided*, that said companies shall also run upon said railroads trains of ordinary first-class passenger cars, in sufficient number to accommodate, fully, all persons who shall prefer to travel therein.

May collect extra fare.

Proviso.

Repealer.

306. SEC. 2. That all acts or parts of acts inconsistent with this act are hereby repealed, and this act shall take effect immediately.

An act to prevent frauds upon travelers.

P. L. 1885, p. 59.

Passed March 9, 1885.

Preamble.

WHEREAS, Numerous frauds have been practiced upon unsuspecting travelers by means of the sale, by unauthorized persons, of railway and other tickets, and also upon railroads and other corporations by the fraudulent use of tickets, in violation of the contract of their purchase; now, therefore, with the view of preventing and punishing such frauds,

Certificate of authority to be given to agent to sell tickets.

307. SEC. 1. That it shall be the duty of owner or owners of any railroad, steamboat or other conveyance for the transportation of passengers, to provide each agent who may be authorized to sell tickets or other certificates entitling the holder to travel upon any railroad, steamboat or

other public conveyance with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal (if such there be) of the owner of such railroad, steamboat or other public conveyance, and also by the signatures of the owner or officer whose name is signed upon the tickets or coupons which such agent may sell.

308. SEC. 2. That it shall not be lawful for any person not possessed of such authority so evidenced to sell, barter or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes or other evidences of the holders' title to travel on any railroad, steamboat or other public conveyance, whether the same be situated, operated or owned within or without the limits of this state; *provided*, such tickets shall have printed thereon a notice of the penalties imposed by this act and of the provisions made for their redemption.

Unlawful to sell without such authority so evidenced.

Proviso.

309. SEC. 3. That any person or persons violating the provisions of the second section of this act shall be deemed guilty of a misdemeanor, and shall be liable to be punished by a fine not exceeding five hundred dollars and by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such person or persons shall be convicted.

Penalty.

310. SEC. 4. That it shall be the duty of every agent who shall be authorized to sell tickets or parts of tickets, or other evidences of the holders' title to travel, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him, the certificate of his authority thus to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers.

Agent to exhibit authority to sell.

311. SEC. 5. That it shall be the duty of the owner or owners of railroad, steamboat and other public conveyances to provide for the redemptions, at the terminal station named thereon, of the whole or such parts or coupons of any ticket or tickets that they may have sold, as the purchaser, for any reason, has not used and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person of the unused portion of any ticket, otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this act and shall be punished as hereinbefore provided; *provided*, that this act shall not prohibit any person who has purchased a ticket from any agent authorized by this act, with a bona fide intention of traveling upon the same the whole distance between the points named in the said ticket, from selling the unused part of the same to the company that sold the same, and it shall be the duty of the said company to pay for such unused portion of ticket the difference between the actual fare to point used and the amount paid for such ticket.

Redemption of tickets.

Proviso.

An act respecting the leasing of railroads.

Approved May 2, 1885.

P. L. 1885, p. 324.

312. SEC. 1. That no company incorporated under the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," approved April second, eighteen hundred and seventy-three, or under any other law or charter enacted or granted by the legislature of this state, shall have power to lease its road or franchises, or any part thereof, to any foreign corporation or to any resident of any other state, or to unite, consolidate or merge its stock, property, franchises or road, or any part thereof, with those of any foreign corporation or resident of any other state, until the consent of the legislature of this state shall have been first obtained thereto. (a)

Company not empowered to lease road or consolidate with foreign corporation without consent of legislature.

313. SEC. 2. That if any corporation aforesaid shall desire to execute such lease or effect such union, consolidation or merger as is mentioned in the first section of this act, it shall submit a draft of the proposed lease or of the detailed scheme of union, consolidation or merger, as the case may

When company desires to lease road or effect consolidation, draft of lease, &c., to be submitted to legislature.

(a) This act is constitutional. *Stockton v. Central R. R. Co.*, 5 Dick. 53.

Agreement surrendering right of exemption from taxation to be filed.

be, to the legislature of this state, for its consideration, and no such lease, union, consolidation or merger shall be of any effect whatever until the same shall have been approved by an act of the legislature passed for that purpose, nor until the corporation or corporations, person or persons, parties to such proposed lease, union, consolidation or merger, shall first, and as a condition precedent to the same, file in the office of the secretary of state an agreement, to be approved by the governor and attorney-general, surrendering to the state all rights of exemption from taxation and all privileges and advantages arising from any alleged contract establishing any special mode of taxation in respect to such parties, and agreeing further, that such lease, union, consolidation or merger shall not in any wise affect or impair the right of the state to take the property of such parties thereto under any existing law of the state, and that any law affecting such parties shall be subject to alteration or repeal by the legislature.

Repealer.

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

An act to facilitate the foreclosure of mortgages made by consolidated railroad companies of railroads lying partly within and partly without this state.

P. L. 1886, p. 108.

Sale under mortgage of consolidated railroad where line lies partly in this state.

Approved March 22, 1886.

315. SEC. 1. That whenever a railroad corporation, created by the consolidation of a railroad corporation or corporations of this state with a railroad corporation or corporations of another state or states, whose line of railroad lies partly in this state and partly in another state or states, has heretofore executed a mortgage upon its entire line of road, and a sale of the entire line of road under such mortgage has heretofore been adjudged and decreed by a court of competent jurisdiction of or in the state or states in which the greater part of such line of railroad may be situated, and such sale has been heretofore made in said state or states, then, upon the confirmation and approval of such judgment or decree, and of the sale made thereunder by the court of chancery of this state, or the circuit court of the United States in and for the district of New Jersey, such sale shall operate to pass title to the purchaser of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree, under which such sale is had, had been made by a court of competent jurisdiction of or in this state; and such judgment or decree and sale may be so confirmed and approved in any action now pending, or which may be brought within thirty days after the passage of this act, in the said court of chancery or the said circuit court of the United States, for the foreclosure of such mortgage, or in aid of any action for that purpose heretofore brought in such other state, upon due provision being made by judgment or decree of said court for and in respect of any liens upon that part of the line of road or other property sold, situate in this state, according to their respective priorities; *provided*, that application for such confirmation, approval and order shall be made within sixty days after the passage of this act.

Operates to pass title to the line lying in this state.

Proviso.

Corporation purchasing to have rights and franchises of corporation executing the mortgage.

316. SEC. 2. That a corporation created under the laws of the state in which the greater part of the line of such railroad may be situated, for the purpose of taking title to and operating the entire line of railroad, with its franchises and appurtenances sold upon the foreclosure of such mortgage, shall, upon the judgment, decree and sale being duly confirmed and approved, as herein provided, hold, possess and operate that part of the line of such railroad lying in this state, and have all the rights and franchises theretofore possessed by the corporation executing the mortgage under which such judgment or decree and the sale were made, and such as now are or may hereafter be conferred upon railroad corporations organized under the laws of this state, and shall be subject to the duties and liabilities to which such corporation was, by the law of this state, subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this state.

317. SEC. 3. That an exemplified copy of the charter, certificate of incorporation or articles of association under and by virtue of which such new corporation is created, and of the judgment or decree under which such entire line of railroad was sold, and a certified copy of such judgment or decree of confirmation and approval of the court of or in this state shall be filed in the office of the secretary of state for this state.

Copies of charter, articles, decree, &c., to be filed in office of secretary of state.

318. SEC. 4. That this act shall not apply to any corporation unless such corporation shall first, and as a condition precedent to the exercise of any power granted by this act or any other act of the legislature of this state, file in the office of the secretary of state an agreement, to be approved by the governor and the attorney-general, waiving all rights of exemption from taxation and from privileges and advantages arising from any law or contract (if any there be) establishing any special mode of taxation of any such corporation, and the further agreement to be bound by any general law of this state now in existence, or that may hereafter be passed, taxing such corporations as are now authorized to be taxed by the legislature of this state under any general law; and further agreeing that the exercise of any power granted by this act shall not in any way affect the rights of the state (if any there exist) to take the property of such corporation under any existing law of the state, and agreeing further that all laws affecting such corporations shall be subject to alteration or repeal by the legislature.

Act not to apply unless corporations first agree to waive rights of exemption from taxation, &c.

An act authorizing corporations leasing their railroads and franchises to issue bonds secured by mortgage in certain cases.

Approved April 12, 1886.

P. L. 1886, p. 222.

319. SEC. 1. That any railroad corporation which shall be authorized to lease its railroad and franchises pursuant to the provisions of an act entitled "An act respecting the leasing of railroads," approved May second, one thousand eight hundred and eighty-five, shall, in addition to its present power to borrow money and issue bonds and secure the payment thereof by mortgage, have power and authority to borrow money and issue bonds payable not more than one hundred years from the date thereof, to an amount sufficient to cover all its indebtedness, and to aid in the completion and equipment of its railroad, and that, to secure the payment of such bonds, it shall be lawful for such company to create a mortgage or mortgages covering its corporate franchises, rights, privileges and property, real and personal, and that bonds so issued may be given in lieu, exchange and satisfaction of and for all bonds or other debts against such company, upon such terms as may be agreed upon by the holders of said debts or claims; *providing*, that the bonds so issued shall not bear a greater rate of interest than five per centum per annum, or than four per centum per annum if guaranteed as to payment of principal and interest falling due on said bonds by the railroad corporation accepting such lease, made in pursuance of and in compliance with the provisions of said act, approved May second, one thousand eight hundred and eighty-five.

Railroads authorized to lease may borrow money and issue bonds secured by mortgages, &c.

Proviso.

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

Repealer.

An act to authorize certain railroad companies of this state to borrow money and secure the repayment thereof by mortgage upon their property and franchises.

Approved March 22, 1887.

P. L. 1887, p. 41.

321. SEC. 1. That any railroad company of this state, the amount of whose mortgage indebtedness shall have been definitely fixed by special law, shall have power, notwithstanding any such limitation, to borrow such sum or sums of money, from time to time, as shall be necessary to pay off or retire its existing and maturing mortgage indebtedness, to lay an additional track where its railroad is now composed of a single track and sidings, or to otherwise improve its railroad, and furnish engines and other equipment for the uses and objects of said company, and to secure the repayment thereof by the

Railroad companies whose mortgage indebtedness is fixed by special law may borrow money and issue bonds secured by mortgage, in excess of such limited sum.

RAILROADS AND CANALS.

execution, negotiation and sale of any bond or bonds secured by mortgage on the railroad, lands, privileges, franchises and appurtenances of and belonging to the said company; *provided*, that the whole mortgage indebtedness of any such company shall not at any time exceed the amount of its capital stock; *and provided*, that the bonds issued under any such mortgage shall not bear a greater rate of interest than six per centum per annum; *and provided, further*, that before any such mortgage shall be executed the consent of two-thirds in value of the stockholders of such company shall first be obtained.

Repealer.

322. SEC. 2. That all acts and parts of acts, general or special, inconsistent with this act, be and are hereby repealed, and this act shall take effect immediately.

An act to authorize canal companies in certain cases to surrender their franchise of navigation and be released from public obligation in respect thereto.

P. L. 1888, p. 300.

Approved March 28, 1888.

Canal company may be released from obligation to maintain works for navigation purposes upon filing certificate with secretary of state.

Proviso.

323. SEC. 1. That any canal company organized or incorporated under or by any general or special law of this state, and any lessee of the franchises and works of any such corporation, may and shall be released and discharged from any and every obligation at law or in equity, to maintain and operate the works of such company for navigation purposes, upon such company and lessee, or if the lease be perpetual then upon such lessee filing in the office of the secretary of state a certificate of intention to cease the operation of the said works for navigation purposes, which certificate shall state the date on which such operation shall cease; *provided*, that nothing herein contained shall operate to divest the lien of any mortgage or other lien obligation of such corporation in respect to the portion of the franchise of such corporation so surrendered, nor shall the provisions of this act take effect in such case without the consent of the bondholders secured by such mortgage and of such other lienholders, or in case the consent of any such bondholder secured by mortgage cannot be obtained, until there shall be deposited with the trustee or trustees of the mortgage an amount of money equal to the principal and interest due and to become due on all the bonds of such dissenting bondholders; and in case of such payment to such trustee or trustees the said company or lessee paying the amount of any principal or interest on any such bond to the holder thereof shall, on making satisfactory proof to said trustee or trustees of such payment, be entitled to receive from such trustee or trustees the amount of such payment from time to time as occasion may require; *and provided further*, that this act shall not affect any suit or legal proceedings now pending against any canal company, nor apply to any company which has not heretofore exercised the franchise of navigation conferred by its charter or any supplement or supplements thereto; *and provided further*, that any canal company, or its lessee, desiring to take advantage of the provisions of this act shall file its certificate of intention as herein provided, within five years after the approval of this act.

Proviso.

Proviso.

Obligations and contracts not impaired.

324. SEC. 2. That the obligation of any such lessee to pay the rentals or payments called for by such lease for and during all the term thereof shall in no wise be impaired or affected by such release, and that any and all contracts and obligations to be performed by or with such company or lessee at the time of such release and the title of such company to the real and personal property and rights embraced and covered by the lien of any mortgage or mortgages of such company, existing at the time of such release, shall not be impaired thereby, and subject to the lien and trusts of any such mortgage or other lien then existing as aforesaid, such company and any lessee of its works and franchises may hold, use, lease, sell or otherwise dispose of all or any part of the real and personal estate, waters and rights now or hereafter owned, possessed and used by such company and its lessee, and may exercise and enjoy all and singular the remaining powers, franchises and rights conferred by the charter and supplements thereto, regulating such company or any such lessee at the time of such release.

325. SEC. 3. That if any stockholder or stockholders of such canal company, being such at the time of the filing of the certificate provided for in the first section of this act, shall be dissatisfied therewith, and shall give written notice of his, her or their dissatisfaction to such company or lessee filing such certificate within three months after the cessation of navigation operations hereinbefore provided, such company or lessee as aforesaid shall pay to such dissatisfied stockholder or stockholders the full market value of his, her or their stock, which it bore immediately prior to the filing of the certificate provided for in the first section of this act, to be appraised by three commissioners appointed for that purpose by the chancellor or any justice of the supreme court of this state, on the application either of such stockholder or stockholders, or of such company or lessee, on such notice to the other party as the said chancellor or justice may direct; and if such company shall pay to any dissatisfied stockholder or stockholders the value of his, her or their stock so appraised, such stock shall not be thereby canceled or retired except at the option of such company, but the said stock may be sold or re-issued by such company as its directors may deem expedient.

Dissatisfied stockholders to receive full market value of stock.

326. SEC. 4. That this act shall not apply to any corporation unless such corporation shall first, and as a condition precedent to the exercise by such corporation or its lessee of any power granted by this act, file in the office of the secretary of state an agreement, to be approved by the governor and the attorney-general, waiving all rights of exemption from taxation, and from privileges and advantages arising from any law or contract (if any there be) establishing any special mode of taxation of any such corporation, and further agreeing to be bound by any general law of this state, now in existence, or that may hereafter be passed, taxing such corporations as are now authorized to be taxed by the legislature of the state under any general law; and upon the filing of any such agreement the state agrees to release its right to take or become the owner of the property of any such corporation under any law now existing, and such release shall take effect upon the filing of the aforesaid agreement without any further action by the state in the premises.

Act not to apply until agreement waiving rights of exemption from taxation shall be filed.

An act concerning railroads.

Approved March 29, 1888.

P. L. 1888, p. 308.

327. SEC. 1. That whenever the railroad and franchises of any railroad corporation of this state, or any part or parcel of the same, or of either, shall be sold in pursuance or by virtue of a decree, order or judgment of any court of competent jurisdiction, it shall be lawful for any railroad corporation, owning or operating a railroad in physical connection therewith, to purchase the said railroad and franchises so to be sold, either at the said sale or thereafter, from the purchaser or purchasers thereof at said sale; and when such sale to said purchasing railroad corporation shall be complete, the railroad and franchises so sold and purchased shall vest in and be merged with and become a component part of the railroad and franchises of the railroad corporation so purchasing such railroad and franchises; *provided*, that the railroad corporation so purchasing shall file, or cause to be filed, a correct and accurate map and route of the railroad so purchased in the office of the secretary of state for this state; *and provided further*, that the railroad property and franchises so purchased shall be subject to taxation according to the provisions of the general act taxing railroad and canal companies and the supplements thereto.

Railroad sold by order of court may be purchased by company operating railroad in connection therewith.

Proviso.

Proviso.

An act to provide for the surrender and extinguishing on the part of any railroad or canal corporation of any contract of exemption from taxation in whole or in part which it may have or claim by virtue of its charter or any supplement thereto or under any law of this state, and for the surrender and extinguishment on the part of the state of any contract contained in the charter and supplements of said corporation, or in any law of the state empowering the state to purchase, take or acquire the railroad, canal and other property of such corporation, or any part thereof, upon an appraisal thereof, or in any other manner prescribed by such charter or supplement or law.

P. L. 1890, p. 171.

Railroad and canal corporations may surrender contract of exemption from taxation and extinguish right of state to take or purchase its property.

Assent to be filed in office of secretary of state.

Awards made or to be made by arbitrators a condition to effectuating extinguishment of rights of state.

Governor authorized to execute all acts, &c.

Expenses of arbitration, by whom audited and paid.

Instruments to be recorded in office of secretary of state.

P. L. 1890, p. 345.

Railroad companies may, in certain cases, collect charges from consignors for detention of cars.

Approved April 2, 1890.

328. SEC. 1. That any railroad or canal corporation having or claiming to have any contract with the state by virtue of its charter or any supplement thereto, or any law of this state, whereby its property, or any part thereof, is claimed to be exempted from the taxation imposed by any law of this state, it shall be lawful for such corporation, upon the written assent thereto of the governor, to execute and file in the office of the secretary of state an instrument, to be first approved by the attorney-general, waiving the benefit of and surrendering any such contract and agreeing to submit itself and be subject to the operation of the provisions of all constitutional general laws of the state applicable to all the railroad and canal corporations of this state which can be taxed by the legislative power of the state by acts passed or to be passed; and upon the execution and filing of such instrument so approved as aforesaid, any contract or provision contained in the charter of such corporation or any supplement thereto, or any statute of the state, by which the state has or claims a right to take or purchase the property of such corporation or any part thereof, shall be and the same is hereby wholly extinguished and surrendered.

329. SEC. 2. That whenever any dispute has heretofore arisen, or shall hereafter arise, between any railroad or canal corporation and the state respecting taxes in arrears, or taxes theretofore paid to the state, and an award in respect to such taxes shall have been made, or shall be hereafter made, by arbitrators appointed by the state and such corporation, the performance of such award by the state and such corporation shall be a condition to the effectuating the extinguishment and surrender of the respective rights of the state and the said corporation; and the said corporation shall do all acts and execute all instruments necessary for the performance of such award on its part, and the governor of the state is hereby authorized to do all acts and execute all instruments under the seal of the state, necessary for the performance of such award on the part of the state and the extinguishment and surrender of the rights of the state, and to manifest the same; and the governor and the comptroller shall audit and allow the expenses of such arbitration on the part of the state and the fees of the counsel employed by the state, and such extra compensation to the attorney-general as they may think proper, and also the fees of the arbitrator appointed by the state, and upon such allowance the treasurer shall pay the same on the warrant of the comptroller; all instruments executed and delivered by the said corporation or by the governor, in the performance of such award and for the purposes aforesaid, may be recorded in the office of the secretary of state and shall be public records, and shall be lawful evidence in any court of this state.

An act for the collection of charges for detention of railroad cars and for use of railroad tracks.

Approved May 23, 1890.

330. SEC. 1. That in all cases where the consignee or consignees, owner or owners of any goods, wares or merchandise transported by any railroad to any point in this state are unknown, cannot be found, or refuse to receive and remove from the possession of the company operating such railroad, such goods, wares or merchandise, it shall and may be lawful for such company

to make and collect from the consignors a reasonable charge per day for the detention of any railroad car containing such goods, wares or merchandise, or for the use of railroad track occupied by such car, or for both such detention and use after such railroad car has been held twenty-four hours for unloading at the place of destination; *provided*, notice for forty-eight hours is given to the shipper in cases where the consignee or owner cannot be found upon whom to serve such notice; and to add such charge to the charge for transportation of such goods, wares or merchandise; and such company shall have a lien upon such goods, wares or merchandise for the charges for such detention or use, or both.

Lien on merchandise therefor.

An act providing for and regulating the laying out and opening of certain streets and highways under certain circumstances.

Passed March 11, 1892.

P. L. 1892, p. 117.

331. SEC. 1. That if it shall be alleged and made to appear to the circuit court in and for any county, by petition filed on behalf of any railroad corporation operating a steam railroad therein, and upon proof taken thereafter under direction of said court, or upon reference thereby made, that any city or other municipality proposes to lay out and open, or has heretofore laid out any street or highway, in such manner as that the same shall cross the railroad of such corporation upon the same grade with said railroad and at a point where there is a curve in the route of said railroad having a radius of eight degrees or more, that such crossing has, from whatever cause, not yet been actually constructed, and that such crossing upon the same grade at such point will be prejudicial to the interests of said corporation and of the traveling public, it shall be the duty of said court to cause inquiry and report to be made by three commissioners to be appointed by said court, not residents of said city or municipality, or owning property therein, as to the manner and grade upon which such street or highway should cross said railway; and upon report by said commissioners and consideration of evidence before them taken, to determine and decree the grade and manner above or under the said railway at and in which said street or highway shall cross said railway, and no street or highway shall be built so as to cross said railway in any other manner or at any different grade.

Provisions concerning the establishment of grade of street and manner in which such street shall cross a railroad.

Report.

332. SEC. 2. That the expense of making such crossing shall be borne and shall by the proper officers of said city or municipality be assessed upon property benefited thereby in proportion to the benefit received therefrom, as in ordinary cases of opening streets in said city or municipality, and as part of the expense of grading such street.

Expense of making crossings, how paid.

333. SEC. 3. That such commissioners, before entering upon their duties, shall make and file with said court their affidavit that they will well, faithfully and justly execute the duties devolved upon them by said appointment.

Oath of commissioners appointed in such matter.

334. SEC. 4. That all acts or parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Repealer.

An act to require the recording of awards of commissioners in all cases where lands are taken by eminent domain by railroad corporations.

Approved March 26, 1892.

P. L. 1892, p. 286.

335. SEC. 1. That hereafter every award of commissioners made for the taking of lands by eminent domain by a railroad corporation, whether such corporation be created by a special charter or formed under the provisions of "An act to authorize the formation of railroad corporations and regulate the same," approved April second, one thousand eight hundred and seventy-three, shall be duly recorded by the clerk or register of the county wherein the lands so taken are situate in the books of records of deeds of such county, and said clerk or register shall receive for recording every such award the same fee as is now allowed by law for the recording of a deed,

Awards of commissioners for taking lands by eminent domain by railroad corporations to be recorded.

RAILROADS AND CANALS.

which fee shall be paid by the railroad corporation against whom such award shall be made.

Record received
in evidence.

336. SEC. 2. That the record of such award and the transcript of such record certified to be a true transcript by the clerk or register in whose office the record is kept, shall be received in evidence in any court of this state, and shall be as good, effectual and available in law as if the original award was then and there produced and proved.

An act concerning railroads.

Approved March 9, 1893.

P. L. 1893, p. 160.

Railroad corpora-
tions may pur-
chase any other
railroad sold by
decree of court.

337. SEC. 1. That whenever the railroad and franchises of any railroad corporation of this state or any part or parcel of the same has heretofore been or shall hereafter be sold in pursuance or by virtue of a decree, order or judgment of any court of competent jurisdiction it shall be lawful for any other railroad corporation of this state which owns, leases or operates a railroad having a physical connection therewith to purchase the said railroad and franchises so sold or to be sold, or any part or parcel of the same, either at the said sale or thereafter, from the purchaser or purchasers thereof, or from his, her or their heirs or assigns; and when such sale to the said purchasing railroad corporation shall be completed, the said railroad and franchises, or the part or parcel thereof so sold and purchased shall vest in and be merged with and become a component part of the railroad and franchises of the said railroad corporation so as aforesaid purchasing the same; *provided*, that the railroad corporation so purchasing shall file or cause to be filed a correct and accurate map and route of the railroad, or the part or parcel thereof so purchased, in the office of the secretary of state of this state.

Proviso.

An act concerning railroad corporations.

Approved March 10, 1893.

P. L. 1893, p. 175.

Railroad corpora-
tions authorized to
construct, &c.,
branch lines.

338. SEC. 1. That all railroad corporations of this state, whether created by a special law or incorporated under a general law, shall have full power and authority to lay out, construct, maintain and operate a branch line or branch lines of railroad extending from the main line of their respective railroads, or from any branch line thereof now existing or hereafter to be constructed, to any mill, factory or other manufacturing establishment or clay bed, whenever in the judgment of the board of directors of such corporation it shall be for the interest of such corporations to construct, maintain and operate such branch line or lines; and said corporations are hereby, for this purpose, again invested with all the powers, privileges and franchises given in their respective acts of incorporation, and in the various supplements thereto, for taking and acquiring title to lands required for their use; *provided, however*, that no such branch line shall be more than two miles in length; *and provided further*, that any railroad corporation which shall hereafter construct any branch line or lines in pursuance of the power and authority hereby conferred shall, before commencing the construction thereof file or cause to be filed a correct and accurate map and route of the same in the office of the secretary of state of this state; and also shall deposit with the treasurer of this state a sum of money amounting to at least two thousand dollars for every mile of road proposed to be constructed, which said sum shall be repaid to said corporation by said treasurer in sums of two thousand dollars for each mile of said road, upon the construction of which it shall be proved to his satisfaction that the said corporation have expended at least the sum of two thousand dollars; *and provided further*, that no railroad corporation shall construct any branch lines within the limits of any city or town of this state until it shall first obtain the consent of the municipal authorities of such city or town thereto.

Proviso.

Proviso.

Proviso.

Branch lines here-
tofore constructed
legalized.

339. SEC. 2. That any railroad corporation of this state which has heretofore constructed any branch line or lines to any clay bed, mine or manufacturing establishment without authority of law, shall have as full power and authority to maintain and operate the same as if such branch line or

lines had been constructed in pursuance of legislative authority conferred upon such corporation for that purpose; *provided, however*, that such corporation shall, within sixty days after the passage of this act, file or cause to be filed a correct and accurate map and route of such branch line or lines in the office of the secretary of state of this state. Proviso.

An act concerning railroad companies which have merged and consolidated their corporate franchises and property.

Approved March 10, 1893. P. L. 1893, p. 191.

340. SEC. 1. That whenever any railroad companies in this state organized under the general law of this state shall have merged their corporate franchises and property by agreement made and entered into between their boards of directors and ratified by their stockholders and filed the same in the office of the secretary of state in accordance with the statutes of this state, that it shall and may be lawful for the new company created by such merger and consolidation, to make a survey and map of its line or lines of railroad and file the same in the office of the secretary of state, whereupon the railroad line or lines so described in said map and survey shall be deemed and taken to be the line or lines of railroad of said company, and to the same extent and in the same manner as if it had been so described in the first location of the lines of railroad of said company, and all other routes, lines or locations shall be deemed and taken to be abandoned. Map of line of railroads merged and consolidated to be filed in office of secretary of state.

341. SEC. 2. That such new company or corporation shall be deemed and taken to have the same rights, powers and privileges as to condemnation of land for railroad purposes or otherwise as might or could have been enjoyed by it had it been newly organized under the laws providing for the organization of railroads in this state. Rights and privileges of new company.

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

An act to regulate the crossing at points not within the limits of cities of this state of steam railroads by steam or electric railroads hereafter to be constructed.

Approved March 22, 1895. P. L. 1895, p. 462.

343. SEC. 1. That whenever the route of any steam or electric railroad hereafter to be constructed shall cross at points outside of the limits of cities the line of any steam railroad in this state, such crossing shall be made in such a way as will inflict the least injury upon the rights of the company owning or operating the railroad intended to be crossed and as will afford proper protection to the public; and no company shall hereafter construct any steam or electric railroad across the line of any steam railroad except within the limits of a city until it shall have first made application to the chancellor of this state to define the mode in which such crossing shall be made, and it shall thereupon be the duty of the chancellor, after causing reasonable notice of such application to be given to the municipal authorities, and also to the corporation owning or operating the railroad intended to be crossed, to define by his decree the mode in which such crossing shall be made, and if in his judgment it is reasonably practicable and public safety so requires to avoid a grade crossing, he may in his discretion by his decree define and regulate the mode and manner of such crossing, and thereupon such crossing shall be made in the mode defined by such decree, and in no other way. Provisions concerning manner of crossing steam railroads by steam or electric railroads hereafter constructed, outside of cities.

344. SEC. 2. That crossings of steam railroads by steam or electric railroads within the limits of cities shall be made subject to the present existing laws in regard to the same. New roads shall be subject to existing laws.

An act authorizing the governing bodies of towns, townships, boroughs and villages in counties of the first class to pass, alter and repeal ordinances for the protection of railroad grade crossings by the companies operating said railroads.

P. L. 1895, p. 765.

Approved April 1, 1895.

Preamble.

WHEREAS, Towns, townships, boroughs and villages in counties of the first class have become and are thickly settled, and railroad crossings of public streets and highways at grade have become dangerous and a menace to public safety, and have been the scene of accidents, resulting in the loss of many human lives; therefore,

Governing body of city, town, &c., may by ordinance require protection at railroad crossings.

345. SEC. 1. That the governing body of said towns, townships, boroughs and villages, by whatever name said body shall be known, shall have and they are hereby given power to pass, alter or repeal ordinances requiring railroad companies whose lines pass through said municipalities to protect any and all railroad grade crossings or places where the tracks of said company or companies cross a public street or highway at grade, which street is in daily use by vehicles, by the erection and maintenance of arms or gates or the placing and maintaining of a flagman or flagmen at such crossings, or of both, for such times or hours as the said governing body shall deem reasonable.

Clerk of municipality shall notify railroad companies of passage of ordinance.

346. SEC. 2. That upon the passage of any such ordinance, it shall be the duty of the clerk of said municipality to notify each and every railroad company whose lines pass through said municipality, and is affected by such ordinance, of the passage thereof, by mailing a copy of the same, certified under his hand, to the main office of the said company; and it shall be the duty of such railroad company or companies to comply with the terms of said ordinance within thirty days after the receipt of said notice, under such penalties for the failure to do so as may be imposed by said governing body; *provided, always,* that it shall be lawful for such company or companies to file with the clerk of said municipality, and with the clerk of the circuit court of the county wherein such grade crossings mentioned in such ordinance lie, within twenty days from such service of notice, a notice of appeal from such ordinance to the said circuit court which court shall thereupon proceed to consider whether arms, gates or flagmen at such crossings or either of them as and in the manner directed in said ordinance are necessary, having regard to the amount of railroad and other travel across the same and the location thereof and whether if so, the directions of said ordinance are reasonable; said appeal shall be heard by said court on due notice to both parties and upon examination of witnesses and view of the said crossings and adjoining premises if the court shall deem it advisable; should said court after such hearing approve the said ordinance as reasonably necessary such ordinance shall be and remain valid; should the same not be approved it shall be void.

Proviso.

Penalties may be imposed.

347. SEC. 3. That the said governing body of said municipality shall have power in and by said ordinance to impose penalties for the violation thereof, not exceeding one hundred dollars for each and every day on or during which said railroad company or companies shall fail to comply with the provisions of said ordinance after notice thereof as above provided.

Proceedings, how reviewed.

348. SEC. 4. That the determination of said township committee, and any ordinance passed in the exercise of the power conferred by this act shall be reviewable by writ of certiorari out of the supreme court of this state.

Repealer.

349. SEC. 5. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

A further supplement to an act entitled "An act to prevent the taking of unlawful toll or fare on canals and railways," passed March twelfth, eighteen hundred and thirty-nine.

Approved April 1, 1872.

P. L. 1872, p. 60.

WHEREAS, The evils recited in the preamble of the act of which this is a supplement, have greatly increased since the passage of said act; therefore,

Preamble.

350. SEC. 1. That any incorporated company or companies in this state which is or are, or shall be authorized by law to take toll, or to charge for the transportation of passengers, goods, wares, or merchandise, which shall, directly or indirectly, through or by any agent, director, or other officer whatever, take or demand of any passenger or person, under any pretense whatever, more than the charge, toll rates, or fare allowed by law, shall forfeit and pay the sum of one hundred dollars for each and every such offense, to be recovered in an action of debt, by any person who may sue for the same, the one-half to the prosecutor, and the other half to the use of the state, before any court of competent jurisdiction, together with the costs of prosecution.

Penalty for taking unlawful toll or fare by incorporated companies.

351. SEC. 2. That all penal suits now pending in any of the courts of this state, whether pending under the said act, passed March twelfth, eighteen hundred and thirty-nine, or under the act amendatory thereof, approved March seventeenth, eighteen hundred and seventy, shall, each and all of them, be determined under the law as it stood at the time said penal suits or actions were commenced, and all penalties and forfeitures under either the said act, passed March twelfth, eighteen hundred and thirty-nine, or under the said act amendatory thereof, shall be recoverable as fully, to all intents and purposes, as though no subsequent amendment or repeal of either of said acts by any law or laws of this state had been made or enacted.

Pending suits not to be affected.

352. SEC. 3. That the act entitled "A supplement to an act to prevent the taking of unlawful toll or fare on canals and railways," passed March twelfth, eighteen hundred and thirty-nine, and which said supplement was approved April sixth, eighteen hundred and seventy-one, and all acts and parts of acts inconsistent with this act, be and the same are hereby repealed.

Repealer.

A further supplement to the act entitled "An act empowering railroad companies to employ a police force," approved March twenty-second, eighteen hundred and sixty-five.

Approved March 19, 1874.

P. L. 1874, p. 45.

353. SEC. 1. That the provisions of the act to which this is a supplement are hereby so extended as to apply in all things to all the railroad corporations of this state, on which transportation is carried on either by horse or other motive power. [See Sec. 132, *ante*.]

Power to employ police force.

