

1892

The New Revision of the Railroad Laws of New York

Howard HasBrouck
Cornell Law School

Follow this and additional works at: http://scholarship.law.cornell.edu/historical_theses



Part of the [Law Commons](#)

Recommended Citation

HasBrouck, Howard, "The New Revision of the Railroad Laws of New York" (1892). *Historical Theses and Dissertations Collection*. Paper 275.

This Thesis is brought to you for free and open access by the Historical Cornell Law School at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Historical Theses and Dissertations Collection by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

T H E S I S.

- o -

The New Revision
of
the Railroad Laws of New York.

by

Howard HasBrouck.

Cornell University.

Ithaca, N. Y.

1892.

ANALYSIS.

I. The situation of corporate bodies organized under the repealed statutes and the application of the new laws to existing corporations.

II. The method of incorporating a steam surface railroad company and the variations therefrom for other railroad corporations.

III. The general powers and liabilities of railroad companies common to other corporations and those peculiar to the former.

IV. The requirements to be complied with after incorporation to preserve corporate life.

V. The ^caquisition of lands and other property for the construction and operation of a railroad.

VI. Regulations upon the internal affairs of the corporation and the operation of the railroad.

VII. The Board of Railroad Commissioners.

VIII. The Condemnation Law.

I. The situation of corporate bodies organized under the repealed statute and the application of the new laws to existing corporations.

The question which immediately presents itself after an examination of the work accomplished by the Statutory Revision Commission is, how does this vast mass of law affect corporations whose existence antedates the enactment of these new statutes, and at first thought the inquiry is a most serious one. The authority by which corporate bodies have come into being, the regulations which have governed their actions and controlled their movements and the methods of procedure which have accompanied the ~~exploration~~ of their corporate lives and the disposition of their property are completely abolished, and in place thereof are laws apparently applying only to corporations to be formed in the future, and frequently imposing greater burdens and liabilities than formerly existed or removing previous ~~p~~privileges and ~~and~~immunities. Ample provision however has been made in all the recent statutes for the stupendous interests involved and indeed, it could not be otherwise without violating the constitutional pro-

vision in regard to impairing the obligations of contracts.

The entire plan of the revision in dealing with ~~the~~ existing corporations is clearly set forth in Sec. 35 and 36 of the General Corporation Law. Sec. 35 provides that "The repeal of a law or any part of it shall not ~~a~~ffect or ⁱⁿimpe any act done or right accruing, accru~~d~~^e or acquired, or liability or penalty, for^efiture or punishment incurred prior to May 1st, 1891, under or by virtue of any law so repealed but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such law had not been repealed"

The manifest criticism to which this provision is subject is that it furnishes no means of ascertaining what shall be considered a right accruing or accru^d_d, but the pertinency of the observation fails when the absolute^{on} possibility is considered of formulating any thing like a general classification, which would include all the manifold instances that might arise under this general head. The courts are necessarily the only determining bodies in such cases. The question as to what constitutes a liability or penalty is one which is liable to make much less trouble. This section also prescribes that all legal proceedings pending April 30th 1891, may be continued to final effect in the same manner

as under the laws then existing unless otherwise specially provided by law.

But it may be asked, how is a corporation to regulate its proceedings without the laws which have previously guided it? In the form in which the work of the Revision Commission was enacted in 1890, it was rather uncertain how the new laws were to be construed in regard to this subject, but Sec. 36 of the present General Corporation Law has consolidated the previous sections in regard to construction and greatly simplified this important matter. It prescribes that the provisions of the general, the stock, the railroad, the transportation and the business corporation laws "in so far as they are substantially the same as those of laws existing on April 30th, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed..... and not as new enactments", and that nothing contain in the Revision shall in any manner amend or repeal the provisions of the Criminal or Penal Codes. It also adds that references in statutes not repealed to others which have been included in these laws shall be regarded as applying to the provisions so incorporated. These provisions are supplemented by an amendment of the present year relating to conflicting corporate laws, which declares that when the

sections of any corporate statute conflict with either the General or the Stock Corporation Law, the former shall prevail but that when relating to ~~the~~ same subject matter and they are not inconsistent, all the provisions must be construed together. The situation of a previously formed corporation may then briefly be said to be this--- their ~~accrued~~ or accruing rights are preserved, as are also all liabilities, penalties or forfeitures previously incurred; in so far as the laws repealed are substantially re-enacted, they still apply and govern as formerly; the new subject matter of the statute controls only as not inconsistent with this doctrine of vesting or vested rights.

II. The method of incorporating a steam surface railroad company and the variations therefrom for other railroad corporations:

The systemization by the Revision Commission of the different laws relating to the various classes of corporations has led to the formation of certain chapters, two of which, the General and the Stock Corporation Law contain the general provision applicable to all stock corporations of every character, while the remainder are each devoted to one of the separate divisions into which corporate bodies have been classified. In addition there is also the Condemnation Law relating to the acquisition^u of real property for all public uses. To a complete study therefore, of the status of the present corporate law as applied to railroads, it will be necessary to examine the general, the Stock and the Railroad Corporation Laws and the method of condemning realty as prescribed in the new chapter of the Code of Civil Procedure. In treating the subject it is proposed to follow out through its various stages the natural life history of the corporation ---its birth^{and} the conditions predece^d~~ed~~^{dant} thereto, the re-
gulations^{upon} of its behavior during its existence and the

procedure attend^{ed}~~ed~~ upon its decease.

By an amendment to the general Corporation Law adopted during the past legislative session (1892), it is required that the incorporators shall be natural persons of full age, two thirds of whom must be citizens of the United States and at least a majority residents of this state. This section however, does not apply to the re^{inc}~~inc~~orporation or consolidation of existing corporations, nor to reorganization upon the sale of the property and franchises of an existing corporate body. The evident purpose of this amendment is to prevent the formation of one corporation by another and to prohibit persons from other states or foreign countries organizing under our laws for the transaction of business wholly without the limits of this state. This restriction is a movement in an entirely new direction but it would seem to be strongly backed by a sound public policy.

A most important change has been made in reducing the minimum number of incorporators from twenty five to fifteen, in the case of steam surface and elevated railroads, and in increasing it from thirteen as applied to street surface rail ways, and in prescribing that this number shall be requisite uniformly in all cases. The alteration is a typical example of the general policy of the Revision Committee

to encourage the formation of corporation and to accomplish this by simplifying all the necessary proceedings. The contents of the certificate to be filed which is now required to be acknowledged also, have been somewhat enlarged. There must be specified in it, the kind of road to be built, the amount of the common and of the preferred stock, if these classes exist, and the privileges of the latter over the former, the location of the principal office of the corporation, the directors who are to manage its affairs, of whom there must be not less than nine in place of thirteen as provided by the General Railroad Act, and seven as declared in the Street Surface railway Act and their post-office addresses in place of their residences. It must also give the names and description of the streets, avenues and highways through which the road is to be operated in the case of a Street surface railway. If the railroad is to be constructed in a city or county and is not a street surface railway, the certificate shall also contain the conditions and requirements imposed by the commissioners appointed by the Supreme Court, and the provisions relating to the release and forfeiture of the franchises required by the corporation, if it fails to complete its road within the prescribed time or to comply with any other conditions. There are also the addi-

tional requirements in this instance that the annexed affidavit of the directors shall show that the full amount of the capital stock has been in good faith subscribed ^{and} ~~in~~ that the certificate of the railroad commissioners showing the organization of the company shall be attached to the original certificate of incorporation. A rather curious decision was reached in Buffalo etc., R. R. V Hatch, 20 N. Y. 157, in regard to the affidavit of the directors attached to the certificate in which it was held that it need not state to whom the 10% was paid or that it was paid in good faith, but that the ^{al} ~~al~~ ~~ig~~ ~~ation~~ of the proper amount having been received in cash necessarily implied a compliance with the other two conditions, although the statute then as now seem to require such recitals. It has also been decided, Lake Ontario R. R. V Mason, 18 N. Y. 451, that this percentage requirement does not mean 10% upon each perscription but simply that propor ~~propor~~ ~~tion~~ of the aggregate amount. In case of a narrow guage railroad, the affidavit need state that only \$300.00 and \$50.00 had been respect^{ively} ~~fully~~ ^{sub} ~~prescribed~~ and paid in cash in good faith to the directors instead of \$1000.00 and \$100.00. This incidentally brings up the interesting question of what now constitutes a narrow guage, for the law which formerly defined it is repealed, (Laws of 1871 chap. 560) and there is

apparently nothing in the Revision to replace it. Cable roads which previously might be formed by ten incorporators and managed by a board of directors of five are now placed on the same basis as ordinary rail ways in *the* matter of incorporation.

The original certificate of incorporation together with all amended and ^{amended} ~~supplemental~~ ^{amended} ~~al~~ must now be filed in the office of the Secretary of State and a certified copy thereof, with an attestation by such officer of its proper filing, or a duplicate original, must also be filed, recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located. In the form in which this section was passed in 1880, it allowed only an original duplicate to be filed in the county clerk's office. The result of these changes is to introduce a uniform method of procedure entirely in harmony with the tendency of legislative action during the past twenty years. The absence of any general provision in regard to the subject has led to the specification in every statute enacted during this period, of one or more offices in which to deposit the evidences of incorporation and the two above mentioned have been chosen as naturally the most appropriate and accessible. After the filing of the certificate, no corporate powers can yet be

exercised unless all the taxes and fees required by law to be paid before incorporation have been discharged, and to this ^{is} added, as a stringent clause that the recording of any certificate where in the requisite amount of capital stock has not been subscribed in good faith and 10% the cost paid in cash, shall be absolutely void.

The salutary prohibition which existed in the General Business Law that no certificate of incorporation shall be filed for a proposed corporate body having the same name as an existing domestic corporation, is extended to railroad companies, but it is modified somewhat by adding that a re-incorporated, reorganized or consolidated corporation may take the name of the former possessor of the incorporated franchises to which it has succeeded. If the original or an amended or supplemental certificate contain any informality or any matter not legally authorized to be stated therein, or if the proof or the acknowledgement thereof is defective, the incorporators as well as the directors, who alone formerly had this power which was ^{also} restricted simply to original certificates of incorporation, may file an amended certificate, and upon recording any such amended or supplemental certificate, an entry shall be made upon the margin of the index and record of the original certificate of the date and

place of record of every such amended certificate." In the Matter of N. Y. Cable R. R. 109 N. Y. 32, it was decided that by the terms of the statute this privilege did not extend to corporations formed under the Rapid Transit Act and that the delivery of the certificate by the commissioners was final and conclusively. This holding is now rendered obsolete by the changes introduced. An entirely new departure is made in giving power to the Supreme Court, after notice to the attorney general and to such other persons as it may direct and upon any terms and condition which it may impose, to amend any certificate of incorporation so as to truly set forth the object and purpose of the corporation. When once recorded, the original or ~~amended~~ amended certificate or other paper relating thereto becomes presumptive evidence of the facts therein stated. Having made the original evidence, it is unnecessary to include copies by virtue of section 933 of the Code of Civil Procedure, so that the force of the repealed statute giving the same effect to certified copies of the original certificate of incorporation is retained.

Street railway corporations which since 1884 have been largely subject to the General Street Surface Railroad Act, are now brought within the provisions of Article I. of the

Railroad law in regard to incorporation. The changes which appear relate principally to the contents of the certificate of incorporation, and in addition to those that have already been incidentally mentioned, they are the requirements that the articles of association must be acknowledged, that they state the kind of road to be built, the location of its principle office, the amount of common and preferred stock if the two classes exist and the rights of the latter over the former. The certificate did not previously have to be filed with the clerk of the county which contained its principal place of business but this is now necessary and if the requisite amount of stock has not been subscribed in good faith and 10% thereof paid in cash, such certificate becomes absolutely void. If in case of extension, the company shall file in each of the offices wherein its certificates of incorporation are recorded, the names and description of the streets, roads and highways upon which it proposed to extend its road, it shall then be entitled to the same privileges in the construction and operation thereof in such streets as it acquired in its original certificate of incorporation to build in the places therein mentioned.

The method of incorporating railroads under Article V. of the railroad law, which includes railroads in cities and

counties other than street surface railroads, is the same as the procedure set forth in the Rapid Transit Act upon which the article is based, except that there cannot be less than nine directors, while formerly it was left to the determination of the commissioners appointed by the Supreme Court, and the affidavit of the directors attached to the certificates of incorporation need not state that the prescribed prepayment has been paid in cash. It will therefore, be unnecessary to discuss the organization of this class of corporation. The alterations which have been made are concerned with securing the consent of the proper authorities and land owners and the acquisition of the requisite property, which will be subsequently considered under the head of "the acquisition of lands and other property".

Secs. 15 and 16 of the General Corporation Law, relating to the admission of foreign corporations within the state for the transaction of business are entirely new. In brief, they provide that no such corporate body shall exercise its powers in this jurisdiction without first obtaining from a Secretary of State, a certificate that it has complied with all the requirements of law preliminary thereto and that its business is such as might lawfully be carried on by ^a domestic corporation. This certificate must also be procured by all

similar corporations already within the state not later than December 31 st, 1892. As a penalty, it is added that no action can be maintained upon any contract made in violation of these requirements. Before granting the certificate, the secretary of state must require every such corporate body to file in his office, a sworn copy of its certificate of ~~inc~~ incorporation and a statement under seal, setting forth its proposed business, the principle place for transacting the same within the state, and designating the person upon whom process against the corporation may be served, which designation shall remain in force until revoked by a written instrument indicating someother individual for the like purpose. If such person dies or removes from the principal place of business of the corporation, and no successor is appointed within thirty days there after, the Secretary of State may revoke the authority given and service of process in an action upon any liability~~ty~~ previously incurred, may be made upon the Secretary of State, who shall forth with mail a copy thereof^{of} to the corporation or any of its officers.

By an amendment to Article^{le} 1 of the railroad law, introduced during the present year and which is taken from Chap. 413 Laws of 1890, a beginning has been made in a department of rail road law which will undoubtedly^t receive considerable

future attention. The privilege conferred, though limited in its application, allows electric light and power corporations to become rail road companies. The section provides that whenever all the stock holders, of whom there must be at least five, of a domestic electric light company, shall file in the office in which its original certificate of incorporation was recorded, an amended certificate complying with the provisions of the railroad law except in the number of signers and directors, of whom there must be not less than five, and shall add the words "and railroad" before the word "company" in its corporate name, such corporation may build and operate by electricity, except in any city of this state, a railroad not exceeding twenty miles in length and not a street surface railroad, subject to all the provisions of the Rail Road Law.

The special legislation relating to the formation of corporations for the purpose of constructing and operating railroads in foreign countries is entirely repealed and they are now subject to the regular method prescribed for domestic corporations. Formerly, their articles of association were approved by the Governor and filed with the Secretary of State upon payment of a \$50.00 fee; a majority of the incorporators, the minimum number of whom was ten, while its

directors need not exceed seven, were required to be inhabitants of this state; the period of its existence could not exceed one hundred years but apparently, no limit was placed upon the amount of its capital stock.

III. The general powers and liabilities of railroad companies common to other corporations and those peculiar to the former.

(a) Powers common to rail road and other corporations.

If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other may be filed in place thereof as of the date of its original filing, whose force and effect shall be the same as that of the original certificate at the time of its filing. This is the first comprehensive embodiment of this privilege in statutory form. It is based however, on Chap. 506 Laws of 1888 relating to the destruction of those certificates filed in the city hall of Albany, which provided that to file a duplicate of any certificate lost therein application must be made to a special term of the supreme court; and if this were granted, permitted the copy to be filed as of the date when the original certificate was recorded, and attached the same force and effect to it as pertained to the one destroyed.

Every corporation may now acquire real and personal property by devise or bequest subject to such limitations as the law prescribes. The introduction of this clause was

largely due to the inhibition of the Revised Statutes (4 R. S. 3th ed. pp. 2545-6) that no corporation could take by devise unless expressly authorized by charter or statute, and the result of which has been, the insertion in ^{the} ~~may~~ laws of such authority and the passage of confirming or enabling acts in special cases. In addition to this, every corporate body having capital stock may borrow money or contract debts when necessary for any lawful purpose of its incorporation, but the amount of its outstanding obligations at any one time secured by mortgages, except mortgages given for the purchase price of realty and any authorized by contract made prior to May 1st, 1891, shall not exceed the amount of its paid up capital stock or a sum equal to two thirds of the value of its corporate property. By both the General Railroad Act and the Rapid Transit Act money could be borrowed for the purpose of completing or operation the road but there was apparently no limit placed upon the exercise of the power. Two thirds of this stock must now consent in writing to the issuance of such mortgages unless given as security for a purchase price, which assent must be accorded with the clerk of the county where the corporation has its principal place of business, or it may be given by vote ^{at} ~~of~~ a special meeting called therefore, in which event, a certificate of the vote, signed and sworn to by the chairman and secretary of the

meeting, must be filed in the above mentioned office.

This procedure is much more elaborate than that proscribed in the General Railroad Act, wherein it was simply necessary to obtain an affirmative vote of a majority of the stock at a meeting called for that purpose, while under the Rapid Transit Act, it apparently was not necessary to obtain the consent of any proportion of the Stock holders but a resolution of the directors alone was all sufficient. ^{the} Previous penalty for violating these provisions is incorporated into section 610 of the Penal Code with a change in the imprisonment from not exceeding one year to not less than six months.

The power of one corporation to purchase the stocks and other evidences of indebtedness of another has been the subject of a gradual development until at present ^{it} is almost unrestricted. The General Railroad Act entirely prohibited a Railroad from purchasing any stock of its own or of any other corporation. This was amended by Laws 1872 Chap. 140 and Laws 1883 Chap. 361 so that it could invest in the stocks and bonds of corporate bodies owning lands in this state, provided dividends had been declared thereon for the three years immediately preceding, and their market value was 20% greater than the amount loaned or continued thereon. In the Stock Corporation Law as passed in 1890, these provisions

were included but a corporation was also privileged to purchase stock ^{and} in bonds if pledged, hypothecated or transferred to it as security for or payment of, a previously contracted debt, or if purchased at a judgement sale for such debts or in the prosecution thereof. By the present law, these restrictions are yet more reduced, and any domestic or foreign stock corporation may now invest in the evidences of indebtedness of any other corporate body and issue an exchange therefore its own stock, bonds or other obligations, if authorized^{to} to do by a certificate of incorporation or any certificate amendatory thereof; or if the two corporations are engaged in a similar business; or if the corporation whose stock is purchased is engaged in the manufacture or sale or in the construction or operation of work necessary or useful in the business of such purchasing corporation, or in which the manufactured articles or property may be used; or if they are two corporations which are authorized to consolidate. As a result of these additional privileges, the president and other officers of any corporate body thus owning stock in another are eligible to the office of director in the latter as if they were individual stock holders and the corporation owning the stock is entitled to all the rights and privileges of private persons. Any stock corpor-

ation may also "guarantee the bonds of any other domestic corporation engaged in the same general line of business", if authorized^{to} to do by an unanimous vote of its stock holders at a special meeting called therefor~~e~~ after due notice in writing sixty days prior thereto.

In *Milbank V F. V. L. E. R. R.* 44 How. Pr. 20, the Supreme Court maintained that the investment of the corporate funds of a railroad in the stock of another corporation is ~~not~~ authorized and consequently ultra vires, by virtue of the General Railroad Act, and that while such stock was in its possession^s, it might collect the dividends thereof, yet it could not vote upon it and might be enjoinedⁱⁿ if attempted. This case serves as an illustration of the general tendency of the courts to limit the purchasing power of corporations to such classes of property as they are expressly authorized by statute to acquire and especially to prohibit them from acquiring the obligation of other corporate bodies. It was held however, in *Frothingham V Broadway R. R. Co.* 9 Civ. Pro. Rep. 304, that a corporation might purchase stocks, bonds and transfer them to its president as a gift in trust.

The power of reorganization upon the sale of any corporate property and franchises, given by Sec. 3 of the Stock Corporation Law, which now applies to all stock corpor-

ations was not by the repealed statute made applicable to street railroad companies. The changes which have been introduced show a tendency to have the exercise of this privilege conform as much as possible to the procedure in obtaining an original certificate of incorporation. The purchaser, who upon the sale gets only such property and franchises as are then possessed by the corporation, cannot associate with himself, any less number of persons than were originally required to incorporate; the number of directors must be the same as for the old corporation, bonds cannot be issued to exceed in the aggregate the amount to which any other corporation is limited, the certificate required to be executed must also be filed with the clerk of the county wherein the principal place of business is to be located and it must contain any agreement whatsoever entered into previous to the sale, ^{and} pursuant to which the purchase was made. No alterations appear in the law relating to the assent of stockholders to the plan of re-adjustment, except that cities, towns and villages no longer have the privileges of right to accept stock of the new corporation in exchange for that previously held by them, "at par", thus placing ~~the~~ municipalities upon the same basis as individual stock holders.

A most salutary power which did not appear in any of the

repealed railroad laws, has been given to directors in Sec. 26 of the Stock Corporation Law. The provision is very brief and is as follows: "If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid provided a copy of this section is written or printed upon the certificate of stock". This additional power given to the corporation is somewhat counterbalanced, by the privilege which every stock holder owning 5% of the capital stock, if it is less than \$100000.00, and 3% if it exceeds that sum, has of requiring the chief fiscal officer to make within thirty days after a request, a statement of the corporate affairs under oath, embracing a particular account of all its assets and liabilities, and this report must be kept on file for twelve months thereafter and be opened to the examination of any stock holder during business hours. Not more than one such certificate however, shall be required each year and the Supreme Court may for good cause shown extend the time for making and delivering it. For every neglect or refusal of the proper officer to prepare this statement, he shall forfeit to the person making the request, the sum of \$50.00 and \$10.00 additional for each twenty four hours thereafter until compliance.

By an amendment to the same general law (Sec. 32) passed during the last legislative session, all stock corporations may extend or alter their business so as to include any purposes and powers which at the time shall have been conferred upon corporations engaged in the same general business or which might be included in the original certificate organizing any such corporation, by filing an amended certificate executed by a majority of their directors, stating the ²proposed extension and that the same has been authorized by three fifths in amount of its capital stock at a meeting specially called therefor. With this certificate must be filed, a copy of the proceedings of such meeting verified by one of the directors present. This amendment was evidently framed with a view to the future development of the law relating to corporate bodies and to place all corporations upon an equal footing by giving to those already organized, the means of acquiring the same privileges which any subsequent legislation may grant to future corporations.

Any domestic corporation may now increase or reduce its capital stock, although not above the maximum or below the minimum prescribed by law. If there is an increase, the holders of the additional stock become subject to the same liabilities in regard to the increase as they were with

respect to the original capital, while if it is reduced, it cannot be to such an extent that the amount of its debts and liabilities will exceed the amount of its capital thus diminished. The details of the procedure to be followed in order to obtain any such increase or diminution are now accurately specified. The alteration must be decided upon at a meeting specially called therefor after notice published for two weeks, instead of three as formerly, in the county in which the principal office of the corporation is located and the certificate of the proceeding, signed and acknowledged by the chairman and secretary of the meeting, must have the approval of the board of rail road commissioners endorsed thereon in place of the sanction of the comptroller. If a reduction is voted, the amount thereof shall be returned to the stockholders pro rata in such manner as the directors may determine.

"Every domestic stock corporation may have both preferred and common stock and different classes of preferred stock, if the certificate of incorporation so provides or by the unanimous consent of the stock holders." This provision is the first embodiment of the privilege in statutory form, for while chap. 1225 Laws 1880 allowed the exchange of preferred for common stock, it did not grant to any corporations the

power of issuing these classes.

Sec. 21 of the Stock Corporation Law prescribing the manner in which the number of directors may be increased or decreased is practically new so far as rail roads are concerned. It declares that the board of directors may be enlarged or reduced, but not above the maximum or below the minimum prescribed by law, if a majority of the stock shall so determine at a meeting held after two weeks notice in writing to each stock holder of record, served personally or by mail. Proof of the service must be filed in the office of the corporation and the proceedings at the meeting entered in the corporate minutes and a transcript thereof, verified by the president and secretary, recorded in the offices where the original certificates of incorporations are filed.

The right of extending the existence of a corporation has been very materially enlarged, especially by an amendment of the present year. If the corporation has reached the end of the period prescribed by law as the limit of its corporate life and if through mistake bonds have been issued payable subsequent thereto, which are still unmaturing and unpaid, the Supreme Court may upon the application of any person interested and after notice to such parties as it shall direct authorize the filing of a certificate which shall revive

the existence of such a corporation for a period not exceeding the time for which it was originally incorporated. This certificate, after being recorded in the manner provided for an ordinary certificate of extension, revived the defunct corporation but not so to affect any litigation commenced after such expiration. The procurement of any such certificate, which must be filed in the offices wherein the original certificate of incorporation was recorded, forms no bar to obtaining another subsequently, but when a corporation has once extended its existence by means of this section or any other general law, it becomes thereafter subject to their provisions, notwithstanding any stipulations in its charter, and shall be deemed to be incorporated under the general laws of the state.

In acquiring additional lands in place of corporate realty previously sold, the supreme court may "notwithstanding any restriction of a general or special law," authorize the purchase of any real estate, thus abolishing the former restriction which limited the corporation to lands ~~or~~ adjacent to those already held by it. ~~§ 111. 1888~~ If a domestic corporation is engaged in business in another state or foreign country, it may acquire and dispose of any property necessary for the convenient transaction of its business,

but this statement is merely declaratory of the power given either expressly or by implication by the repealed statutes. An extension however is made in allowing corporations created under the laws of the United States or of any territory to purchase real property in this state, and in permitting any foreign corporation in place merely of those organized under the laws of ^{the} different states, to purchase upon the foreclosure sale of lands lying within the jurisdiction of New York.

The present law omits the provisions found in most of the repealed statutes to the effect that the legislature may amend or repeal the charter of any corporation and allowing it to sue or be sued in its corporate capacity, but as these powers are contained in Secs. 1 and 3, ^{of} Art. 3 of the Constitution, it would be a needless repetition to embody them in statutory form. Sec. 27 of the Stock Corporation Law which is permissive simply, allows the directors to choose a president, treasurer or such other inferior officers as may be necessary with the privilege of removal at pleasure and to require security for the faithful performance of the duties imposed, but this is obviously only a statement of the powers which are necessarily implied in the management of any corporation.

(b) General ^aLiabilities common to railroad and other

corporations.

Sec. 23 of ^{the} a Stock Corporation Law relating to the liabilities of directors for unauthorized dividends is based on the R. S. c. 1728 Sec. 2. As passed in 1890, it was a radical change upon the previous statute but since by the amendment of this year, it has been entirely rewritten, an enumeration of those provisions will be unnecessary. In its present form, it is restored to nearly its original ~~form~~ ^{condition}.

It omits however, the former privilege which existed in favor of creditors that the statute of limitations should not run against any suit at law or in equity prosecuted for a violation of this section or for the assumption of any unauthorized debts.

If a director creates or consents to the creation of any debt whereby the total indebtedness of the corporation, not secured by mortgage, exceeds the amount of its paid up capital stock, he now becomes personally liable therefor to the corporate creditors. The penalty which is thus made to attend the office of a director will probably be imposed with much more frequency than has been done under the repealed statute. Under the 18th, a director was personally liable only in case of dissolution when the debts of the corporation over and above its actual deposits should exceed three times

the amount of its capital stock actually paid in, and this liability was avoided if he were not present when the obligation was assumed, or if he caused his dissent therefrom to be entered upon the minutes of the directors. If any officer or director loaned corporate funds to a stock holder, or discounted ^{ed} or received a note or other evidence of indebtedness in payment of an installment upon stock, or with intent to enable a stock holder to withdraw any money previously paid in, or if any such officer assents thereto, he becomes personally liable, to the extent of such loan for all the debts of the corporation contracted before the repayment of the sum loaned, and also to the full amount of the notes and other evidences of indebtedness received or discounted. The additional provision is introduced in Sec. 24 that if bonds or other obligations, secured by mortgage, are issued in a excess of the prescribed limit, the directors voting therefor shall be personally liable to the holders for the amount held by each respectively and to all persons for any damages sustained thereby.

As far as railroads are concerned, the imposition on their officers of a liability for false certificates, reports or public notices is entirely new. If a director or officer sign any such document containing a material repre-

sentation which is false, he is made personally liable to any one who has become a creditor or a stock holder of the corporation upon the faith thereof, for the amount of the debt contracted, if not paid when due or for any damages sustained, and this liability is imposed even where the contents of such papers have been indirectly communicated to the persons so becoming a creditor or stock holder. What constitutes a material representation must necessarily depend upon the circumstances of each particular case and its determination is therefore left as a matter of fact for the jury. Any action brought for a violation of these provisions must be commenced within two years from the time the false representation shall have been made.

The alterations which have been made with ~~the~~ reference to the liabilities of stock holders are commensurate with the additional burdens imposed upon officers and directors. All stock holders are now joint^{ly} and severally liable to an amount equal to the stock sold by them respect~~ively~~^{ively} for every debt of the corporation, "until the whole amount of its capital stock issued and outstanding at the time such debt was incurred shall have been fully paid." Thus if a stock holder own \$5000.00 worth of stock, half of which he has paid for, and the corporation becomes insolvent while part of

the capital stock is outstanding and unpaid, he may be compelled to account for the remaining \$2500.00 of his subscription which is still a corporate asset, and at the same time pay over again to the creditors of the corporation the total amount which he has subscribed. Under the repealed statute, each stockholder was individually liable only to the amount of his unpaid stock so long as the whole capital stock held by him remained unpaid, and he was entitled to a ^a rat^a proportion from the other stock holders for every recovery obtained against him. In *Wellington V Continental C. & I. Co* 92 Ill 408, it was held that the liability of the stockholder ceased absolutely when the whole amount of his capital stock had been paid in and that in any event, an action should not be brought against him alone but should be in equity against ^{all} similarly situated. This case follows the spirit of the earlier one of *Stephens V Fox* 33 N. Y. 313, in which the Court of Appeals maintained that the effect of the law was not to impose any penalty or original liability upon the stock holder but simply to confer upon the creditors of the corporation, a right to pursue the unpaid subscription of such members for the satisfaction of their claims. It would seem however from the increased burdens to which the new laws have subjected members of corporate bodies that it was the

intention of the Revision Commission to punish for a violation of these provisions as well as to secure ample satisfaction for the demand of creditors. The changes in the law however, do not affect the additional holding of *Richens V Fox*, which practically overruled *McMahon V Macy* 51 N. Y. 155, and the record of a judgement against the corporation is competent evidence of the plaintiff's status as a creditor and of the amount due him, in an action to hold a stock holder.

The members of the corporation are also made jointly and severally responsible to its laborers and servants for the value of their services rendered during any period of time, instead of for 90 days to which the original 30 days limit was extended by Chap. 392 Laws 1873. This change renders obsolete the decision in *Galagher V Ashby*, 26 Barb. 145, to the effect that a stock holder cannot be compelled to pay the amount of a laborer's unsatisfied judgement against the corporation after he has paid his stock in full, but it does not affect the interpretation given therein to the words "laborers and servants," as including only the immediate laborers and servants of the corporation in distinction from those employed by contractors. Executors, administrators, guardians or trustees, who now voluntarily invest trust funds in the stock of a corporation become personally liable as

though they were stock holders in their individual capacity, but neither such members nor any others can be held upon a corporate debt which is not payable within two years from the time contracted, nor unless an action for its collection shall be brought within the same period after it becomes due. If the former stock holder has ceased to be such, he becomes exempt from all liability for corporate indebtedness at the expiration of two years from the time he relinquishes his stock. *Mc Mahon v. Macy*, 51 N. Y. 155, holds that a judgment against the corporation is not necessary in order to subject a stockholder to the payment of a debt, unless it be due to a laborer or servant, but this is no longer law by Sec. 55 of the Stock Corporation Law, which provides that such a judgment is a condition precedent in every case.

(c) General powers peculiar to railroads.

Sec. 3 of the railroad law provides that in case the names and places of residence of the directors have been omitted from the original certificate of incorporation, the defect may be remedied by recording a supplemental certificate instead of by inserting such names and residences in the certificate already filed as prescribed in the repealed statute. It would seem however, as if this provision might properly be inserted in the General Corporation Law as

applicable to all corporate bodies or even be omitted entirely, since the language of Sec. 7 of the General relating to amended and supplemental certificates is probably broad enough to cover such an omission.

While the procedure relating to the consolidation of railroads has not been materially changed except in its details, the power itself has been considerably extended. Any railroad company which now owns or operates a tunnel, wholly or partly within the state, may consolidate with other bridge or tunnel corporations as freely as with railroads and the former inhibition existing in the Railroad Law of 1890, which prevented street railroads from exercising this privilege is removed. The variations in the minutiae of the proceeding are in requiring the notice of the meeting of the directors at which the consolidation is to be considered, to be published once a week for four weeks instead of daily and in filing the agreement of consolidation or a certified copy thereof, with the clerk of the county where the new corporation is to have its principal place of business. If however, the stockholders owning two thirds in amount of the stock consent to such consolidation by a written, acknowledged instrument, a special meeting there ^{need} ~~may~~ not be called. The exception of mortgages from the liabilities of the consolidating corporation assumed by the new, which

formerly existed has been omitted and they are now treated the same as other evidences of indebtedness. The practical effect of this exception had however been destroyed by the interpretation given to it in *Polhemus V Fitchburg R. R.*, 123 N. Y. 502, where it was held that it did not include bonds or even a debt to which the mortgage was a collateral security, following same case 50 Hun 397 and over-ruling *Jones V Fitchburg R. R.* 50 Hun 310. The privilege formerly given only to the officers of a municipal corporation which held stock of corporate bodies in this state and Pennsylvania who desired to consolidate, of voting in regard to the advisability thereof, is now granted without restriction, no matter where the corporations whose stock is possessed are situated. If a foreign corporation acquires the title to a railroad partly within and partly without this state upon foreclosure sale, it must file in the office of the clerk of the county where its principal place of business is located an exemplified copy of its certificate of incorporation, the judgement or decree by virtue of which the railroad was sold and the order or decree of confirmation.

The power of leasing railroads is now granted to "any corporation owning or operating any railroad or railroad route within this state" in addition to "any railroad cor-

poration", which were the words used in donating the privilege in chap. 218 Laws 1839. Art. 3 of the Railroad Law, Sec: 78, further adds that such contract which must be under the corporate seals and proved and acknowledged ~~and~~ in such manner ^{as} to entitle it to be recorded, may provide for the exchange or guaranty of the stocks and bonds of the interested corporation and if the lease is to continue for more than one year, it will not be binding unless approved by two thirds of the stock of each corporation at a meeting called for that purpose after due notice to every stock holder and publication thereof for four successive weeks. The repealed statute required the sanction in every instance of a majority of the stock represented at a meeting called for that purpose within three months after its adoption by the directors, ^{and} in the case of a street surface railroad it can only guarantee the bonds of another similar corporation wholly or partly within the same state by a unanimous vote of its stock holders. If approved the secretaries of the respective corporations must certify on the contract that such consent has been given after which duplicates must be filed in the offices where the original certificates of incorporation have been recorded. This change renders nugatory the decision in ~~the~~ Beveridge V N.Y. R. R. Co., 112 N. Y. 1, where it was held

that a lease of the property and franchises of a railroad corporation may be made by its board of directors without the concurrence of the stock holders.

The question has frequently arisen under this leasing privilege whether a railroad might lease its franchises to a private person and the matter is not settled apparently by the new law. The latest expressions in regard to this subject however, are in *Abbott V Johnstown etc., R. R.*, ⁸⁰~~80~~ N. Y. 27, and *Woodruff V Erie R. R.* 93 N. Y. 309, in which the court held that while Chap. 313 Laws 1859 does not expressly authorize the lease of a railroad to an individual, neither does it expressly prohibit^{it} and that on the contrary, granting the power to make it, it is recognized as valid by chap. 582 Laws 1854. These two laws are incorporated into Secs. 72 and 32 of the rail road law so that it may be argued that these decisions still hold good. But does not the word "person" as used in chap. 303 and upon which the court seems largely to rest its opinion, refer~~ed~~^{to} to a receiver or a person acting in a similar capacity?

If at a foreclosure sale any person shall be entitled to certificates of stock, they may be issued notwithstanding the corporation was not organized under the laws of this state and there has been no neglect on the part of its officers,

and this issuance, if within six months after the foreclosure, may be made by any officer of the corporation instead of the president, treasurer or secretary. The possession of the purchaser at such sale however is now limited to six months.

(d) The liabilities peculiar to railroads.

The liability of the corporation to the employes of a contractor for their services performed in the construction of the road has been extended from thirty to ninety days labor and the time after notice served upon the corporation within which an action may be commenced from thirty days to six months. If the corporation has no agent, engineer or superintendant to receive service of the notice, or if he cannot be found or has no place of business open, service may be made on any officer or director of the corporation. This general liability was held in Kent V N. Y. Central R.R., 12 N. Y. 328, to extend to employes ^{hired} ~~engaged~~ by parties to whom the original contractor had sub-let portions of his work.

IV. The requirements to be complied with after incorporation to preserve corporate life.

By an amendment (Sec. 59) to the Railroad Law passed during the legislative session of 1892, it was enacted ^{that} ~~no~~ no future railroad corporation except street railroads should exercise any of its powers or begin the construction of its road, until a copy of its articles of association had been published once a week for three successive weeks in each county in which the road is to be located, proof of which must be filed with the board of railroad commissioners, not until the board shall certify that the same has been done and that the public convenience renders the proposed railroad necessary. If such certificate is refused, the application cannot be repeated until the expiration of one year therefrom. Upon request, it is the duty of the board to certify a copy of the maps and profiles filed in its office and of its findings, and these may be presented to the Supreme Court of the department in which any portion of the road is to be constructed. If the court believes it to be a proper case, it may order the board to issue the required certificate which must then be filed in the office of the Secretary of State. These requirements however, do not pre-

vent a corporation from making preliminary surveys and entering upon lands for that purpose.

The Railroad Law copies the provision of the repealed statute requiring railroad corporations to begin the construction of their roads within five years after filing the certificate of incorporation, and to complete the same within ten years, but it is now made applicable to every domestic railroad corporation, while formerly it referred only to those railroads formed under the general railroad Act. This change is directly in line with the general purpose of the Revision Commission to place all railroad corporations upon an equal basis, so far as possible.

V. The acquisition of lands and other property for the construction and operation of a railroad.

In discussing the changes which have been made in this department of Railroad Law, it is proposed to consider the new statute as applying (1) to the ordinary steam surface railroad, (2) to street surface railroads and (3), to that large and diversified class of corporations previously formed under the Rapid Transit Act and now included in Art. 5 of the Railroad Law. These alterations are necessarily in the details of the law, those relating to the last two classes above mentioned being much more complex on account of the intricate interests frequently involved but all the changes have been introduced with a view to securing a general, uniform system having as few delays and complications as possible. At the very beginning, however the Revision Commission has embodied in language too plain to be misunderstood; the doctrine upon which the courts have been acting, though modified somewhat by chap. 282 Laws 1864, allowing lands acquired by appraisal for freight and passenger depots to be held in fee, that when real property is acquired by condemnation, it can be held and used only for the purposes of the corporation during the continuance of its corporate existence

but on the other hand it has compensated somewhat for this sale, by removing the restriction that voluntary grants to corporations shall be for the purpose of such grant only.

(a) Steam surface railway. Sec. 3 of the Railroad Law which prescribes the manner of locating the proposed route, includes all railways except street surface and elevated roads, and is thus made to apply to foreign corporations who come within the limits of the state and who were not included under the terms of the statute from which many of which these provisions were taken. The troublesome requirement which formerly existed, demanding of each company to deposit with the comptroller, accurate plans and specifications, of the mechanical work to be constructed ~~and~~ ^{is} repealed, and in place of the old is substituted the map and profile of the portion of the adopted route in each county, but this must be filed in every such county in which the road is to be constructed and fifteen days elapse after the service of the required notice before any proceeding for condemnation purposes there in can be instituted, following Matter of Rochester Electric R. R. 57 Hun 56. The map and profile of the entire road however, must now be deposited in the office of the railroad commissioners instead of with the state engineer and surveyor

An appeal from the decision of the commissioners appointed to examine the route may be taken to the general term of the department in which the lands of the petitioner are situated instead of the judicial district but if on such appeal, *any* change made by the commissioners is reversed, the corporation is not bound to reimburse the land owner for the expenses incurred in securing the appointment of the commissioners. The allowance of the latter has been increased from \$3.00 per day for services and expenses to \$8.00 for services and to their reasonable expenses. The privilege of locating their proposed route through Indian lands has been extended from corporations organized under the laws of this state to all railroad companies, while the ratification of any contracts made with the chiefs must be by the county court in place of the court of common pleas.

In the Matter of the Long Island R. R. 45 N. Y. 384, it was decided that under Sec. 32 of the General Railroad Act, the determination of commissioners appointed to examine the proposed route was final and conclusive upon all questions considered by them. This decision was reached in 1872 and led to the enactment during that same year of Chap. 580, allowing an appeal to the Supreme Court, which has been incorporated into Sec. 6 of the Railroad Law. It was

also maintained in this case however, that when appointed the commissioners had jurisdiction to examine the location of the route through the entire county in which the lands of the petitioner were situated and this power, they evidently retain under the present law. This decision followed to a certain extent the matter of *Harman v. Abb.* Pr. N. S. 1824 now obsolete, in which it was maintained that notice of the application for the appointment of commissioners need not be given to the corporation and that it could not litigate before the judge, the advisability of their appointment.

If the railroad is to be constructed across or along any street in an incorporated village, notice of the application to be made therefor to the Supreme Court must be given to the board of trustees of such village, corresponding to the notice given to highway commissioners in towns. The General Railroad Act upon which these provisions are based prohibited a railroad from constructing its road "upon and along" any highway without first obtaining certain consents and in *Osborne v. Jersey City etc.*, R. R. 27 Hun 589, it was argued that these words did not apply to a mere crossing of the street although the court held that they were broad enough to cover such a case. All doubt however in regard to the question has been dissipated by inserting the word "across"

in Sec. 11 of the Railroad Law. In order to change the grade at which it is proposed to cross a canal in this state, the consent of the superintendant of public works, who is substituted in place of the canal commissioners, must first be obtained and the former is given the additional supervisory power over that part of any railroad which passes or approaches within ten rods of, any canal or feeder belonging to the state so far as may be necessary, to preserve the free and perfect use of such canal or feeder, or to make any repairs improvements or alterations in the same". If the road is to be constructed only partly within the state such portion shall be treated as a connected line with the same powers and subject to the same liabilities as any other railroad.

In building a tunnel railroad, which is now made subject to the provisions of the Railroad Law, beneath the streets of any incorporated city or village, the consent of either the board of trustees of the village or the proper authorities having control of the streets must first be obtained instead of both. If the consent of the property owners cannot be obtained thereto, the decision of the commissioners appointed to examine the route may still be taken in lieu of the assent of such property owners, but it can no longer answer for that of the proper authority. The statute allowing the

construction and maintenance of railroad tracks by an individual or joint stock association has been extended and simplified so that it may now be of some practical benefit. In place of the previous law which prohibited the exercise of the privilege in any city or village and which placed no limit upon the length of the road unless the corporation were engaged in the manufacture of railroad cars when it could not exceed one mile, the new law allows any individual joint stock association or corporation to lay and maintain railroad tracks, except within the city limits, not exceeding three miles in length on or across any street or highway, upon obtaining the written consent of the owners of all the lands bounded on and the local authorities having control of, such street or highway. If the consent of the property owners cannot be obtained, the commissioners appointed to determine the advisability of the proposed railroad may also assess the damages if they decree the road necessary. The former statute (chap. 140 Laws 1882) made no provision whatever if the property owners refused their consent and apparently it was within the power of a single individual to obstruct the entire proceeding.

(b) Street surface railroads.

Article 4 of the Railroad Law, relating to street surface railroads is based on the general Street Surface

Railroad Act, chap. 252 Laws 1884. Under this latter statute, the question has arisen whether it was intended to include under ground railroads and in the Matter of N.Y. District R.R. Co. 107 N. Y. 42, the court decided the inquiry in the negative. In the subsequent case of Peoples R. T. Co. V-Dash 125 N. Y. 93, however, it was held that the words "in, upon or along any street" , which are used in the Street Surface Act, applied to railways either above or below the surface of the street, which would seem to be inconsistent with the previous case. In the revision, the phrase used is "upon and along any street etc.," and following the interpretation given to the words in the latest case, it would include under ground railroads. It may be said however that it was the intention of the Revision Commission to limit this article to railroads built upon the surface of streets and to apply the provisions of Article 5 denominated, "other railroads in cities and counties", to all other city railroads.

The sections relating to this subject are made to apply only to those corporations organized since May 6th , 1884, the date of the enactment of the general Street Surface Railroad Act and in applying the alterations which have been made, this fact must be born in mind. The consents which

must necessarily be obtained before the road ^{can} ~~must~~ be constructed have not been changed except to prescribe that in towns, the town board shall act as the municipal authority, but the details of the procedure to be followed when the property owners and the municipal authorities refuse their assent are materially modified. The former provision requiring the application to be published when made to an incorporated village has been extended to all villages and towns and the notice thereof must also contain the time and place when it will be considered, but if the application is granted, it is no longer compulsory to require of the grantee security for the proper compliance with any conditions that may be imposed. Sec. 93 prescribes the condition upon which the consent of the local authority ^{may} shall be given but as it applies only to cities having 1250,000 inhabitants or over, thus practically limiting it in New York and Brooklyn, a discussion of its contents would be out of place here.

If the property owners refuse~~d~~ to consent to the proposed road, application for the appointment of commissioners may be made to any general term within the department in which the road is to be constructed instead of within the district. If the person upon whom notice of the application is to be served is unknown or his residence and post office

address, service thereof may be made by publishing it once a week for two successive weeks in such newspaper of the county as the court direct. In the Matter of the Broadway R. R. 34 Hun 414, it was held that if a persons name does not appear on the assessment roll of the city or town, he is not entitled to notice of the application but it would seem as if the above provision rendered the present force of this decision very doubtful. Under the previous statutes, there was no particular order in which the various consents were to be obtained, decided in the Matter of the 34th St. R. R. Co. 102 N. Y. 343, and the revision has evidently *not* changed the situation. In towns of less than 1250000 inhabitants, the railroad cannot lay its tracks over a bridge without first obtaining the consent of the corporation owning and maintaining the same, except that it may construct them over any such bridge, if used wholly or partly for foot passengers, whenever the court shall be satisfied that such use is necessary to unite main portions of a railroad or to connect with a ferry and that the public convenience requires the same.

(c) Other railways in cities and counties.

When the application for the proposed road is first made to the board of supervisors, they may under the present

statute simply approve thereof and authorize its presentation to the Supreme Court, which then appoints the commissioners. If the road is to be wholly within the limit of any city, the application must be addressed to the mayor thereof by householders and tax payers of the city and this officer may within thirty days thereafter, endorse thereon his approval and direction that it be presented to the Supreme Court; if however, the proposed railway is to be constructed partly within and partly without any city limits, the application must be approved and its presentation to the court authorized by both the mayor and board of supervisors. The request may then be ^{laid} ~~made~~ before any special term held in the district in which the railroad or some part thereof is to be built and if approved, the court shall ~~then~~ appoint five commissioners, residents of the city if the road is to be wholly within the limits of any municipality and of the county if it will be wholly or partly outside of such city. In the Matter of the N. Y. Elevated R. R. 70 N. Y. 327, 358, decided in 1877, it was held that such appointment could be made without notice to the property owners in as much as "it was simply a proceeding to constitute a tribunal to hear and to determine", and "not a proceeding to take property or to deprive any person of his

rights". It can scarcely be argued that this decision holds good under the present statute for the commissioners have certainly extended powers which affect property rights. The certificate of the appointment of such commissioners need no longer be filed with the Secretary of State and in the County Clerk's Office. The appointees may immediately proceed to determine the necessity of the railroad upon taking the constitutional oath of office, which must be recorded with the county clerk instead of the Secretary of State, without waiting to file a bond. If the consent of the adjoining property owners cannot be obtained, the application for the appointment of three other commissioners may be made to the Supreme Court of the Department instead of the district in which the road is contemplated. Their report must be confirmed by the court as formerly. This was construed in the Matter of the Kings Co., Elevated R. R. 20 Hun 217, 82 N. Y. 95, to mean that the whole matter rested in the sound discretion of the court and that it has power to examine the entire case upon its merits, and to pass upon the sufficiency of the facts to warrant the determination reached.

Changes have been made among the excepted streets ~~and~~^{of} N. Y. City by including the whole of Broadway and Fifth

Avenues instead of on at part below 50th St. and also 4th Avenue above 42nd St. and by omitting the boulevards and St. Nicholas Avenue. The repealed statute read that no railroad should be located "over, under, through or across" such exempt streets and as the revision simply uses the words "in or upon" in place thereof, there might be some question as to whether there had not been a relaxation by this change of phraseology were it not for the decision in Peoples Rt. Co. v D ash 125 NY. 93, where the court held, that the words "in, upon or along", prohibited a railroad from intersecting a street either at grade or under or above the surface. There has been an important alteration however, by the introduction of the general clause allowing the construction of railroads across the excepted streets at their intersection with others. The new law has apparently omitted the power which the commissioners formerly possessed of changing the route in case it has been located upon a street that has become exempt before the construction of the railway, provided they verify their proceedings and file them with the Secretary of State but it may be said perhaps, that this power is necessarily implied.

After notice to the local authority and a hearing of all the parties interested, the commissioners must determine

the compensation either in a gross sum or in a certain percentage of receipts, to be paid to the local authorities by the corporation for the use of the streets and highways, and also ascertain the damages caused and apportion the money deposited, which duties were previously performed by a special board. They may, if it is deemed advisable, ^{reignate} two or more routes upon which, or parts thereof, the local authorities may consent to the construction of the railroad but the latter have power also to recommend any changes they think necessary. If material testimony is offered by or on behalf of a party interested in regard to the diminution in the value of his property, its receipt is no longer discretionary with the board but compulsory. The giving of security by the corporation before it can enter upon any street or highway is still required but by an amendment of the present year, the court is allowed to accept in lieu of the deposit of the prescribed money or negotiable securities, the bond of the corporation with two or more approved sureties in double the amount of the damages, to the effect that before constructing its road in front of any premises, it will pay to the owner thereof, the damages and costs allowed by the commissioners. The former elaborate proceedings which were necessary in order that a property owner might get at

the security deposited has^{ne} been entirely omitted and he is now left to follow his remedy as in any other similar case.

In the form in which this section (Sec. 125) relating to the adjustment of the injuries to property owners exists, it imposes the duty upon the commissioners of ascertaining the aggregate damages in the lump to all abutting owners and also, the specific damage in each particular case, while under the Rapid Transit Act, this latter apportionment might be done by several separate commissions. The imposition of these additional labors is criticised by the state board of railroad commissioners as placing too great a burden upon the original commissioners, especially in view of the fact that they have but 140 days in which to complete their work. With reference to New York city particularly, it would be exceedingly difficult to secure competent persons for the compensation offered who would devote their whole time to the matter in hand. By an amendment of the present year, ^{however} in which the Supreme Court is given power to extend the time one year, the force of this objection is materially diminished.

The commissioners must within 140 days after their appointment, report to a special term of the department in

which the railroad is to be located, the pecuniary damage resulting to property owners along the streets or highways on which the road is to be constructed and the statement must also contain the name and place of residence of the owner of each parcel of land, with a specific description thereof, or if he is unknown the person designated by the county clerk as having the title to the property, and the same accompanied by the testimony taken. Not later than 30 days after its organization, the corporation must move to confirm the report by giving notice to the property owners in the same manner as in the case of a hearing before the commissioners, but if it omit to do so, any land owner may move for confirmation, after which the proceedings are conducted as prescribed in the condemnation law. The corporation must pay to every proprietor, the costs and damages finally allowed before it can construct its railway before his property, and the court may direct that such expenditures be taken out of the money or securities required by law to be deposited, or if a bond has been executed in lieu thereof, that the sureties pay the damages as ascertained and in default thereof be punished as for a contempt of court. The pay of the commissioners for which the corporation is liable has been increased so as to include all expenses necessarily incurred in the discharge of their duties.

VI. Regulations upon the internal affairs of the ~~the~~ corporation and the operation of the railroad.

Under this subdivision, it is proposed to consider the variations between the present law and the repealed statutes with reference to the general workings of the corporation as an artificial person both in its internal affairs and in its dealings with other corporations, and also the new requirements to be observed in the actual operation of the railroad. And first, the interior affairs of the corporation.

The directors, two of whom must be residents of the state are now chosen by a plurality of the stock holders voting at the election, instead of a majority, but what proportion of the stock must be represented in order to constitute a quorum for this or any other purpose, is left to the by-laws to decide unless otherwise prescribed by law. Instead of requiring the whole number of directors to be chosen annually, an election of one fourth of the entire board each year will now suffice, but notice of the time and place of electing them must be published at least once a week for two successive weeks in a news paper of the county in which the election is to be held. The revision apparently omits the former proviso that no stockholder shall be a director unless he owns stock absolutely in his own right

and is qualified to vote for directors at the election at which he is chosen, but its effect is retained by providing that " if a director shall cease to be stock holder, his office shall become vacant."

At every election of directors or meeting for any other purpose, each member is entitled ~~to~~^{to} one vote for every share of stock held by him for ten days, (instead of the former period of thirty) immediately preceding the meeting, if he is not disqualified by the bylaws and is not in default in the payment of his subscription, and for the purpose of exercising this privilege, every person having stock ~~pledged~~ pledged in his name on the books of the corporation shall be deemed the owner thereof. The certificate of incorporation may also provide, if it is thought desirable, that in electing directors; each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected", all of which may be cast for one director or may be distributed. This when exercised shall be termed cumulative voting. The provision that no person can vote or issue a proxy upon any bond which he has not owned for at least ten days next preceding the meeting is substituted in place of the clause of chap. 510 Laws 180 reading, "which are not in his possession

or under his control, or when he has ceased to retain the title thereto," but if a proxy is issued in this or in any other instance, it must be executed in writing by the member himself or his duly authorized attorney. At the meeting, only those books need be exhibited upon the request of any member which contain the record of membership, thus modifying the former law, which prescribed that all the corporate books be present for inspection. The privilege of requiring any person proposing to vote to take an ^{oath} ~~oath~~, that he has not received a bribe for his vote is extended to all members present, but the form of the oath to be administered in this and in certain other instances has been somewhat changed. Every proxy may now be revoked at pleasure and at the expiration of eleven months from its date becomes invalid unless the stock holder issuing it has specified therein the length of time for it to continue.

If an election for directors is not held on the day designated by law, a meeting for that purpose must be called by the directors forthwith in place of the previous limit of three months, and notice thereof given in the same manner as for the ^{annual} ~~annual~~ election. By an amendment ^{of} ~~for~~ the present year, the clause is omitted providing that no person shall be entitled to vote thereat who could not have exercised

the privilege if the meeting had been held at the regular time and the effect of this would seem to be to leave the qualifications of the voter to be determined as in any ordinary case. A month must now elapse before the members themselves can call any such meeting although previously, they could proceed without delay, unless there was no by law providing for the ⁷annual election when they were obliged to wait sixty days. They must also give the same notice as when the meeting is pursuant to a notification of the directors but if this requirement has been complied with, the stock holders present, no matter how few they may be, shall constitute a quorum and may transact any business which could properly come up at the annual meeting. This constitutes an exception to the rule as expressed in the General Corporation Law, that a majority shall form a quorum. Every director must hold his office and discharge its duties until his successor has been elected.

Chap. 498 of the Laws of 1885 provided for changing the time and place of holding the election for directors, when approved by a majority of the stock and while this statute is repealed, nothing has been inserted in any of the new laws to take its place. The only inference to be drawn from this is, that it was the intention of the Revision

Commission to leave the matter to the regulation of the by laws. The inspectors of election who must be appointed in the manner prescribed in the by laws, before acting at any meeting of the stock holders are required to take an oath, faithfully to execute the duties of their office and this must be filed with the clerk of the county in which the meeting is held, together with a certificate of the result of the vote. Previously this precaution was necessary only in the event of ~~the~~ an election of directors or some other corporate officer. "Each inspector shall be entitled to a reasonable compensation for his services to be paid by the corporation and ~~if~~ any inspector shall refuse to serve or neglect to attend at the election, or if his office becomes vacant, the meeting may appoint an inspector in his ^lplace unless the by laws otherwise provide".

The filing of an ~~annual~~^{annual} report is now incumbent upon "every person or corporation owning, leasing, operating or in possession of a railroad wholly or partly in this state" Its contents must be for the year ending June 30th, instead of Sept. 30th, and it is required to be recorded by Sept. 1st in place of Dec. 20th. Its form which was previously embodied in the statutes, shall be such as the railroad commissioners may prescribe and it must be directed to them

and filed in their office instead of that of the State engineer and surveyor. Such quarterly and further statements may be required as the board seems necessary and it may also change the date of the annual report and of the filing thereof, but the period between the two shall not be less than that already prescribed. If any report is not corrected within ten days after notice, the same penalty is imposed as for a usual neglect to file it, but the commissioners may extend the time for good cause shown.

Every railroad corporation must now keep at its principal office or place of business correct books of account of all business, and a stock book containing the names of all persons who ~~are~~ stock holders or within two years (in place of the former place of six) have been, showing their residences, the number of shares of stock held by each, the time when they became the owners thereof and the amount paid thereon. The stock book must be open^e daily during business hours for the inspection of stock holders and judgment creditors, who are entitled to make extracts therefrom. The original statute, R. S. p. 1728 Sec. 1 went to one extreme and only required this book and that in which the transfers of stock were registered, to be open for thirty days previous to any election of directors for the examination of stock holders

alone. The provisions relating to this matter as passed in 1890, went to the opposite extremity and prescribed that all the books of the corporation be opened daily during business hours for the benefit of all stock holders and creditors of the corporation and their personal representatives. Every corporation that now neglects or refuses to keep the required books or to maintain open for inspection, any book

in conformity with the law, shall forfeit to the people of the state, the sum of fifty dollars for every day of such neglect or refusal and if any officer or agent willfully neglects or refuses to make a proper entry or to exhibit such book or books or to allow extracts to be taken therefrom, both the corporation and the officer or agent shall each forfeit to the injured party \$50.00 for every offence and all damages sustained by him. Previously any officer who neglected or refused to exhibit the prescribed books was liable to a penalty of \$250.00, half of which went to the people of the state and the remainder to whoever could sue for it. No transfer of stock shall be valid as against the corporation, its stock holders and creditors, except to render the transferee liable for the corporate debts, until it shall have been recorded in the stock book by an entry showing from and to whom transferred and in any

action brought against the corporation or its offices, directors or stock holders, this book shall be presumptive evidence in favor of the plaintiff.

Corporate stock must be represented by "certificates prepared by the directors and signed by the president or vice-president, and the secretary or treasurer and sealed with the seal of the corporation". An important relaxation in regard to the issuance of stock or bonds has been accomplished by allowing "labor done or property actually received for the use and lawful purposes of the corporation" to be accepted as a consideration, but no stock can be delivered for less than its par value nor bonds issued for an amount beneath their fair market value. As a result of this change the force and effect of the decisions in *Ogdensburg etc., R. R. V. Nolley & Keyes* 118, *P. R. & M. R. R. V. Clarke* 25 N. Y. 208, *Beach V. Smith* 30 N. Y. 116 and *N. Y. and O. R. R. V. VanHorn* 57 N. Y. 473, maintaining that a subscription to the stock of a railroad after incorporation is invalid and cannot be enforced, unless 10% thereof has been paid in money, has been very materially diminished. In dealing with subscriptions made to stock after the organization of the corporation, the Revision Commission in requiring 10% thereon to be paid to directors have substituted the word cash for money but this is evidently, a mere change of

phraseology. An important interpretation was given to this provision in *Beach V Smith* 30 N. Y. 113, where it was held that it was not the intention of the legislature to invalidate every subscription until 10% had been paid thereon, but that actual payment at any period after subscribing, made with an intent to complete the subscription should be adequate, and in *Ogdensburg etc., R. R. V Frost* 21 Barb. 541, the court decided that apayment of 10% on each subscription was necessary only when the contract was entered into after incorporation.

If any stock shall be forfeited through non payment of instalments as they become due, it may be re-issued or new subscriptions received therefor but if not so subscribed for or sold at its par value within six months after forfeiture, it shall be ~~cancelled~~ and deducted from the capital stock. If this proceeding reduces the capital stock of the corporation below the legal minimum, three months are allowed in which to obtain the requisite increase after which, if there has been no compliance, the business may be closed as in insolvency. In *Mills V Stewart* 41 N. Y. 584, the conclusion was reached that under the statute relating to forfeiture of stock by non payment of calls, a stock holder cannot be held personally responsible by a creditor of the corporation for the ~~company's~~ debts even though ~~the~~

contracted before the stock was forfeited and the additional stipulations which appear in the new law have not apparently affected this holding. If a receiver has been appointed, all unpaid subscriptions shall be paid in such manner as he or the court may direct.

To the prohibition which previously existed that no corporation which has refused to meet any of its obligations shall transfer any of its property to its officers, directors or stock holders, for the payment of a debt, is added the clause, "or upon any other consideration and the full value of the property paid in cash", and this is further supplemented by the provision that no transfer of the corporate property nor any payment made or lien created by it or any of its officers or stock holders, ^{when} the corporation is insolvent or insolvency is imminent, executed with the intent of giving a preference to any creditor over others, shall be valid, and any person receiving such property shall account therefor to the corporate creditors and stock holders.

Every officer or director guilty of a violation of any of these regulations shall be personally liable to the creditors and stock holders of the corporation to the full extent of any loss suffered by them on account thereof.

The Revision however, has failed to enact anything corres-

pending to Chap. 223 Laws 1884, which was aimed at selling "short" in Wall St. This statute prohibited any officer or director of a railroad corporation from selling or being interested in the sale of any shares of stock of the corporation of which he is such officer or director, unless at the time, he was the actual owner thereof and every violation of the act was punishable by not less than six months imprisonment or by a fine not exceeding \$5000.00, or both.

If a stock holder desires to pay a mortgage debt pending fore closure, he may do so at any time previous to the sale thereunder, but the six months period, after the transfer in which he could previously purchase, is now cut off. The owner of a lost certificate has now the additional privilege of applying to the Supreme Court of the district in which the principal business office of the corporation is located to compel the execution of a duplicate.

In the formation of contractual relations between corporate bodies, the accomplishment of their purpose or affording mutual benefit to each, frequently results in injury, direct or indirect and more or less remote, both to private individuals and to other corporations. The two great safeguards, which though not entirely new, have yet been greatly enlarged by the Revision Commission are found in

Secs. 7 of the Stock and 80 of the Railroad Law. The former prohibits any stock corporation from combining "with any other corporation or person, or the creation of a monopoly, or the unlawful restraint of trade or for the prevention of competition in any necessary of life." The terms used are exceedingly broad and comprehensive and their authoritative application will depend greatly upon the manner the courts are disposed to treat them. The language used in the Railroad Law is much less indefinite and in a certain sense, more stringent. To the former prohibition that no parallel or competing corporations of this state shall merge or consolidate is added the stipulation, "or enter into any contract for the use of their respective roads or lease the same the one to the other, unless the board of railroad commissioners of the state or a majority of such board shall consent thereto." This inhibition, had it been in existence, would have caused a different decision in *Gere v N. Y. Central R. R.* 19 Abb. N. Cases 193, decided in 1885, in which it was held that there was no statutory restraint upon the lease of the West Shore R. R. by the N. Y. Central, even though the roads are parallel and competing. Street Surface Railroad are expressly excepted from the operation of this inhibition and by Sec. 78, they still retain their

former privilege of leasing, even though the roads be parallel in which latter instance however, they were prohibited by the General Street Railroad Act from exercising the power in cities of over \$00000 population. This change renders obsolete, *People v O'Brien*, 111 N. Y. 1, holding that the corporations might contract for the use for their respective roads beyond the line of parallelism. This latter section which in general terms allows one railroad to lease another in all cases, must be construed in connection with Sec. 80, just quoted, and upon the well recognized principle, that particular statements override those of broader application, the authority which it confers must be restricted to roads which are not parallel or competing.

No preference for the transaction of business can be given under the present law by a railroad to any one of two or more persons or corporations, competing in the same business and this restraint is added to that formerly existing, which applied only to persons engaged in transporting property for themselves or others, but the Revision has omitted the previous liability for the damages suffered by the ^{aggrieved} ~~aggrieved~~ party if the provision is violated. If one of two or more connecting roads feels itself injured by the other, it may carry its complaint direct to the board of

railroad commissioners whose decision is final and without need of confirmation. This simple proceeding is substituted for the former method of presenting a petition to the Governor, who appointed three commissioners to investigate the charges and their report was inconclusive without the assent of the Supreme Court.

The alterations which have been introduced in the practical management and operation of the railroad are not of great importance and only those will be mentioned which are most likely to appear during its administration. These changes will be considered first with reference to steam surface railways and then the variations therefrom, with respect to street railroads in general.

Upon the payment of his fare, each passenger is entitled to the transportation of his ordinary baggage not exceeding 150 pounds in weight, in place of the former limit of 100 pounds, ^{and} upon presentation of the checks and 30 minutes notice to the baggage master in charge of the train, it must be delivered at any other regular intermediate stopping place besides its destination. The penalty for injury ^{ing} luggage is fixed at \$50.00, in addition to the damages sustained, all of which must be paid to the injured party, while previously, it could not exceed \$50.00, half of which went to

the complainant. If baggage remains unclaimed, notice of the sale thereof must be published in a newspaper within the county in which it is stored, instead of the state paper, and " a copy of such notice shall be posted in a conspicuous place at each depot or station, where any portion of such freight or baggage remains unclaimed, at least four weeks before such sale", as well as mail[✓] to the owners residence, if it can be ascertained. Perishable freight may be sold without notice but proof of its character must be made in the report of the sale to the controller.

Few changes have been made in the rates of fare, except that to charge five cents for overcoming an elevation of from 300 to 1000 feet per mile, it must be accomplished within a distance of two miles, and that when a railroad, not exceeding twenty miles in length, attains an elevation of two hundred feet for every mile, instead of two hundred and fifty, it may charge ten cents. The penalty for excessive fare may be imposed for either asking or receiving it instead of requiring both elements to be present. In Johnson V. Hudson River R. RW. Y. 455, decided in 1872, it was maintained that the General Railroad Act had the effect of authorizing an existing railroad, whose prescribed rates

of fare were less than the amount therein determined, to increase its rates to such limit. The decision however, was rendered obsolete by Chap. 724 Laws 1887, amending Sec. 28 of that act, which added the clause, "the re-enactment of this provision shall not be construed as increasing the rate of passenger fare which any railroad of this state is now authorized to charge." In the new law, this latter provision does not appear and the effect of the omission must necessarily be to revive the doctrine ^{stated} ~~enumerated~~ in the above case.

The application of the law relating to the issuance of tickets and checks for connecting steamboats, which was limited to steamers on the Hudson River and to railroads terminating in Albany or Troy, except the N. Y. Central and the N. Y. and Harlem, has been extended to all connecting steamboat and railroads lines within the state. The alterations which have been instituted in the statute aside from the minute details, are the ^amaking of its application permissive instead of compulsory, the insertion of the privilege of charging for the transfer of a passenger or his baggage from depot to landing, which formerly had to be done gratuitously, the extension of the penalty for a refusal to sell tickets or check baggage to steamboat

companies as well as railroads and the granting of permission to railroads to demand of steamboat companies, payment of their charges immediately upon the delivery of any freight.

Fences, farm crossings and cattle guards must be constructed as soon as the company has acquired the right of way for its road and wherever reasonably necessary, and any one in possession of the corporate property is liable for a neglect of this provision as well as the owners or lessee. The fences, which need not necessarily be of the height prescribed by law for a division fence, cannot hereafter be built of barbed wire. In passing through forest lands, crossings must be maintained wherever reasonably necessary in order to enable the land owners to obtain timber and logs, and in case of neglect or dispute, the Supreme Court may compel the construction of the same by mandamus and also determine the location. In *Rochester and H. V. R. R. Co. v Myers* 17 N. Y. Supp. 311, it was held that this privilege of the land owner of requiring farm crossings to be constructed might be considered in reducing damages under condemnation proceedings. In cities and villages of less than 50000 inhabitants, where the crossings are protected by gates, the local authorities cannot limit the speed of passing trains ^{to} ~~at~~ less than

forty miles an hour, which is ten miles faster than was previously allowed. If a station is situated within the limits of an incorporated village, it must be given the name of such village or if there are two, the one nearest the geographical center must be so denominated, but no station whatever, whether for freight or passengers may be discontinued without the consent of the railroad commissioners.

If an engineer fails to stop before reaching the grade crossing of another railroad or violates any rule of the railroad commissioners in regard thereto, he shall be liable to a penalty of \$100.00, while that of the corporation or any person operating the road is fixed at \$500.00, in place of "not exceeding \$500.00", and the fine to be inflicted upon any company or its officers or agents for stopping cars or horses upon any such crossing for the receiving or delivering of passengers or freight shall be \$250.00, instead of not less than \$50.00 nor more than \$500.00. These penalties were formerly sued for by the Attorney general and all recoveries were paid into the general fund of the state but as this provision has not been inserted in the new laws, it may be assumed that the action would be

for the benefit of the informant. The former punishments which were inflicted for violating the statutory requirements in regard to switches, warning signals, guard posts, couplers, brakes and tools in passenger cars range from \$100.00 for every offense with \$5.00 additional for each days continuance, to \$1000.00 and \$100.00 daily during the infringement, and in place thereof is substituted the uniform fine of \$100. for every violation of the law and \$10.00 for each 24 hours of its perpetration. The railroad commissioners have also had their power materially extended in this connection, so as to authorize the use of any safe guard other than those mentioned in article II of the Railroad Laws, and any neglect or refusal to comply with any recommendation of the board with reference thereto, renders the corporation liable to the above mentioned penalty.

The general act in relation to narrow guaged roads containⁱⁿ certain restrictions upon the weight of the engines to be used and their speed, if the rails did not exceed 25 pounds per lineal yard in weight, but they have been omitted from the new laws and such roads will henceforth be bound only by their own discretion, unless the railroad commissioners regulate the manner. If the Post Master General cannot agree with any railroad company for the

transportation of the mails, the railroad commissioners shall act as a board of arbitration to decide upon the terms, instead of a committee of three appointed by the Governor.

Only one conductor or brakeman on any train, instead of all, can be appointed for the "preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land or property of the corporation owning or operating such railroad," but such person is no longer required to take the oath of office before the secretary of state or a county clerk, and the penalty of \$250.00 for neglecting or refusing to ~~pe~~ perform his duties is omitted. It is also no longer requisite to post a copy of these provisions in a conspicuous place in each passenger car. No person can be employed as driver or conductor or in any other capacity upon any railroad, if addicted to the use of intoxicating liquors or if not fit and competent therefore.

The duty of repairing the streets, which was previously imposed only upon those street surface railroads incorporating or extending under Chap. 252 Laws 1884, is now required of every street surface railway, which will obviously include many companies previously exempt. If the construction

of any such road within the prescribed time is prevented by legal proceedings, the supreme court may extend the period as formerly but not for a term longer than that during which the obstruction continued. Sec. 101 of the Railroad Law, which prescribes the rate of fare to be charged by street surface railroads, does not apply to any part of a railroad constructed prior to May 6th 1884, the date of the enactment of the General Street Surface Railroad Act, and then in operation, unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof, under such chap^{tu}, or shall ^{have} acquired the right to extend such road or to construct branches thereof under the provisions of this article (Art. IV.), in which event its rate of fare shall not exceed its authorized rate prior to such extension", and no corporation which has been formed under the general act above mentioned, or which shall hereafter be organized under the new laws shall charge more than one ~~third~~^{fare} within the limits of any incorporated city or village for passage over its main line and branches. If two or more corporations have entered into contractual relation for the transportation of passengers however, they are now obliged to carry for one fare only when the roads are situated wholly within the limits of any one

incorporated city or village.

A street surface company need now have operated its road upon the greater portion of its proposed route for only five years instead of ten, in order to preserve its corporate rights, but the entire section (Sec. 106) relating to the preservation of corporate rights and the operation of branches is applicable to only those cities and towns which have less than 20000 inhabitants. By an amendment of the present year, the Revision Commission have stipulated that no street surface railroad can hereafter, in any incorporated city or village lay down center bearing rails, but must provide "grooved", or some other kind approved by the local authority of such shape and so laid as to permit paving stones to come in close contact with the projection which serves to guide the flange of the car wheel. If any such road has crossed a bridge as a part of its route for at least five years and thereafter, another is substituted, the company shall be deemed to have the right to cross the latter and to make all necessary changes and extensions .

All difficulty in regard to the question whether Art. V of the Railroad Law applies also to railroads built upon the surface of streets or avenues is removed by the insertion

of the clause that no corporation shall construct under any of its provisions, "a street surface railroad to run in whole or in part upon the surface of any street or highway"/. If any corporation which has constructed or put in operation a railway under this article desires to abandon or change its route, it must present its petition to the mayor or board of supervisors as the case may be, for his or their approval and direction that it be exhibited to the supreme court, which may then appoint five commissioners to determine the question. The previous method allowed the mayor ^{or} supervisors to appoint directly without any other formality, and with reference to those corporations previously organized, this procedure is still retained. The appointees must hear the application of all parties who may be interested therein as well as the corporation, and before the road can be constructed upon any new route, the consent of one half of the adjacent land owners must be obtained, the same as for a street surface railway. If the commissioners decide upon a new location or extension of the route, they shall ascertain the pecuniary damage resulting to property owners and proceed as prescribed in Secs. 125 and 133, while if the road is to be forfeited, and is situated wholly or partly within any city limits,

it must be made to the municipality instead of the board of supervisors. These provisions however, do not authorize the location of a railroad upon any lands on which it could not have been constructed prior to the 5th day of June 1888.

sec. 142 which was enacted during the last legislative session, provides that the supreme court may for good cause shown, extend the time within which any act is required to be done by Art. V., one year but only one extension can be granted. It also adds that any elevated railroad corporation now operating its road shall be deemed to have been duly incorporated notwithstanding a failure to insert in its articles of association, the requisite statutory matters.

VII. The Board of Railroad Commissioners.

Each member of the board of railroad commissioners, who are now chosen without reference to parties or upon the recommendation of any particular officials, holds his office for five years and until his successor shall have been appointed and qualified, which is substituted in place of the former method of dividing the tenure into three, four and five year periods and in case of a suspension, the office itself simply becomes vacant without an expiration of the ~~term~~ term as formerly. All appointees of the board must take the constitutional oath of office, which was previously required only of the secretary, accountant and inspector and their acceptance of the appointment depends upon their freedom from any interest, direct or indirect, in a railroad corporation. The restriction however that the commissioners shall not be engaged in any other business vocation is removed.

Any member of the board may now enter upon the railroads of any corporation doing business within the state, whether it be domestic or not, and may examine its books and affairs and compel the production of original papers as well as copies. An express inhibition is placed upon giving publicity to any information thus obtained, in place of the

previous statute which provided that the commissioners should not be required to make public any such knowledge, apparently leaving the matter in their discretion. But the revision has omitted, the clause making it a misdemeanor for an officer or agent of any railroad corporation to neglect or refuse to furnish any statement or report required by the board or to willfully hinder or delay it in the discharge of its duties. If requested by the corporation, the board must sit for the purpose of any examination or investigation, in the city or town where its principal business office is located, and if the subject of repairs is under consideration and any recommendation made by the board is not complied with within a reasonable time, a definite period may be fixed for their completion, and if the corporation still refuses to comply, the matter may be reported to the attorney general. The supreme court, special term, is also given power to enforce the decisions and recommendations of the board by mandamus, subject to appeal to the general term and the court of appeals, which may reverse upon the facts as well as the law. The addition of this clause is unusually important in view of the decision in *People v. N.Y. L.E. W. R. R.* 104 N. Y. 58, where it was held that the board of railroad commissioners has no power given to it nor is

authority given to any court to enforce its decisions, and that its proceedings and determinations amount to nothing more than an inquest for information. It was also decided that no obligation is imposed upon railroads to provide depots for passengers or freight warehouses which is apparently good law under the revision.

All copies of papers filed with the board in order to be used as evidence must be certified under its official seal. No railroad corporation can now offer any position or appointment to any clerk or employee of the commissioners as well as of the board and the clause making it a misdemeanor to violate this provision is incorporated into Sec. 416 of the Penal Code. It was somewhat doubtful under the language of the repealed clause whether all the minor officers attached to the board might be transported over the railroads of the state free of charge but they now have this right beyond question. All salaries and expenses are to be paid quarterly out of funds provided therefor by the railroads of the state upon an apportionment made by the comptroller. If the railroad lies partly within and partly without the state, it can be assessed only on that part of its net income which bears the same proportion to its whole net income, as the line of its road within the state,

bears to its whole length. Under the statute on which these provisions are based, the question arose in People v N. Y. O & W. R. R. 106 N. Y. 265, whether the phrase "Length of main track or tracks," included branches and auxiliary ^{lines} and it was decided that it did, so that while the word "branches" is inserted in Sec. 170, it does not add anything to the scope of the law.

CHAPTER VIII.

The Condemnation Law.

In dealing with the law relating to condemnation proceedings, the purpose of the Revision Commission has evidently been to set forth in full and in complete form, the procedure to be followed in acquiring lands, not only for railroad purposes but for any other public use. The new law, which has become Chap. 23 Title 1 ^{of the} Code of Civil Procedure, is based largely on the method of condemnation prescribed in the General Railroad Act, and the Rapid Transit Act, both of which are substantially the same, but the details of the proceeding are now specified clearly and accurately. The nomenclature of the Code has been largely preserved, each party being termed plaintiff or defendant as in an ordinary action or special proceeding, and the various customary phrases have been liberally used. The method provided for disposing of the issues raised is summary, thus avoiding the vexatious delays frequently incident to practice under the Code, but the process being entirely statutory necessitates a strict compliance with the provisions ~~with~~ ^{of} the law.

Sec. 3358 defines real property as including* any right,

interest or easement therein or appurtenance thereto", thus following the interpretation of the word, given in *In re Met. Elevated R. R.* ²~~to~~ N. Y. Supp. 278, as it was used in the General Railroad Act. The scope of the law is therefore unchanged but all uncertainties as to ^hwether incorporeal heraditaments could be included under the term real property, is now removed. The contents of the petition that commences the proceeding, which must be presented to a special term of the Supreme Court, the original jurisdiction of the general term being abolished, have been very materially enlarged. The new specifications are, that it must state whether the corporation is "foreign or domestic, its principal place of business within the state, the names and places of residence of its principal offices and of its directors, trustees or board of managers as the case may be, and the object or purpose of its incorporation ~~or incorporation~~" ^{or} if the owner of the property desired is an infant, lunatic, idiot, or habitual drunkard, the name and place of residence of his general guardian, committee or trustee, or if he has none, of the person with whom he resides; also the name and place of ^{the} ~~any~~ residence of any agent in the state of a non-resident owner authorized to contract for the sale of the property, a statement of the ^{total} ~~expense~~ of inquiry made, if the name or

place of residence of any owner cannot^{be} ascertained, the value of the property to be condemned, and that all the preliminary steps required by law have been taken to entitle the petitioner to institute the proceeding. These essentials as they appear in the General and Railroad Laws are, (1) the filing of the certificate of incorporation with payment of the necessary taxes and fees (General Sec. 3), (2) that ten per cent of the minimum amount of capital stock authorized by law has been subscribed and ten per cent thereof paid in cash to the directors (Railroad Law Sec. 2), (3) making and filing with each county clerk, a map and profile of the route adopted in each county certified by the president and engineer of the corporation (Railroad Law Sec. 6), *and* (4) the expiration of fifteen days from service except in case of street surface or elevated railroads, of a written notice upon all occupants of the lands sought, of the filing of the map and profile of the road. In place of this last requirement above mentioned, the General Railroad Act simply called for a statement that the whole capital stock of the company had been subscribed as required by law, that the route had been surveyed and certificates of such location filed in the proper county clerk's offices, thus omitting several conditions ^{ent}preceding to maintaining this proceeding.

If the railroad were narrow guaged however, it was essential that \$2000.00 be subscribed for every proposed mile and ten percent paid there-on in cash. The petition must also contain a prayer that it may be expressly adjudged that the public use requires the condemnation of the property in question, ^{and} that the plaintiff is entitled to take it, thus making the appropriation of the land, a judicial question for the court to determine. This clause did not exist in any of the statutes repealed but in the Matter of N. Y. Central R. R., 66 N. Y. 407, the court decided to the same effect, holding that the controverted fact must be presented in some form.

- The insertion of such a mass of details into the petition is certainly subject to criticism, as failing not only to serve any really useful purpose but on the contrary, to act as a hindrance to the free working of the law. If towards the close of the proceeding, it is discovered that some of the prescribed minutiae are omitted from the application of the company it may well be argued by the defendant that the whole case is vitiated and as the costs would be taxed against the plaintiff, such objections would be most strenuously urged. The changes are certainly not in the line of simplification upon which the Revision Commission have proceeded.

In the interpretation given to the previous laws, the courts have legislated various facts into the petition. In the Matter of Saratoga Electric R. R. 58 Hun 287, it was held that under Chap. 252 Laws of 1884, the company must state that it had acquired the consent of one half in value of the adjoining property owners and of the local authorities to the construction of its road, and this holds good under the above mentioned clause of the revision requiring a statement that all the preliminary steps have been taken. In N. Y. Central R. R. V Pierce, 33 Hun 274, the Supreme Court held that where a railroad already located and completed seeks to acquire additional lands, its application need not state that all the facts to be alleged in proceedings to acquire an original route. It may well be questioned whether this decision is of any force now, for Sec. 3359 makes this title apply to all condemnation proceedings whatever. The Matter of Met. Elevated R. R. Co., 18 State Reporter 134, is to the same effect. The general clause of both the Railroad Act of 1850 and the Rapid Transit Act requiring the application to contain a description of the real estate sought was construed in the Matter of N. Y. Central R. R. 70 N. Y. 191, to mean such a description as will show its location and boundaries, thus exacting the same particulars

as are mentioned in sub. 2 of Sec. 2360. The conclusion of the court of appeals in S. R. T. Co. V Mayor ~~and~~ etc., of N. Y. 128 N. Y. 510, that upon obtaining the necessary consents of the public authorities and property owners, a ^{lien} is created upon the land designated as the company's route in its certificate of incorporation, which ripens into title through condemnation proceedings, appears to loose none of its force through the changes which have been introduced.

A copy of the petition and notice is now served upon the land owners eight days prior to its presentation, instead of ten, which change is in harmony with the time required for notice of motion, and proof thereof may ^{be made} in the same manner as a summons in a Supreme Court action. The laws repealed ~~we~~ were cumbered with directions as to how service should be made under the various circumstances which might arise, each statute differing from the others have all at variance more or less with the Code. The effect of this change is to render obsolete, the decisions in the Matter of N. Y. Central R. R. 77 N. Y. 248, and in two Met. Elevated R. R. cases, 12 N. Y. Supp. 502 and 18 State Reporter 134, holding that in condemning any portion of a street or avenue, service by publication is necessary only when the fee itself is to be taken and not merely the easement appurtenant there to.

The statute under which these decisions were reached (Laws 1876 Chap. 198 Sec. 2) is repealed, and no corresponding section appears in the new law, requiring publication whenever a street or avenue is sought to be acquired.

The court is now bound to appoint an attorney to look after the defendants interests whenever personal service has not been made and he has not appeared, and a guardian ad litem in the case of an infant or lunatic, whose general guardian or committee has failed to appear, which provisions appear to be entirely new. There is no provision apparently corresponding to that in the repealed statutes prescribing that in all cases not specially provided for, service of notices and papers may be made as the Supreme Court shall direct, unless the last clause of Sec. 3364 providing for service upon guardians and attorneys can be construed to cover such cases. This section also applies "the provisions of law and of the rules and practice of the court relating to the appearance of parties in person or by attorney in actions in the Supreme Court" to the proceeding after the service of the petition.

If the defendant desires to contest the proceeding, he must now put in a verified answer containing a denial of each material allegation of the petition controverted by

him or a statement of new matter constituting a defense. The old laws were simply permissive, allowing him to appear and show cause against ^{granting} the prayer of the petition, and to disprove any of the facts alleged in it. This was construed in the Matter of N. Y. Bridge Co. 87 Barb. 295 and in Buffalo etc., R. R. V Reynolds 6 How. Pr. Rep. 96, to mean that the whole burden of disproving by legal evidence the facts alleged in the application is upon the land owner, and that an affidavit or answer for that purpose is not sufficient. While the revision does not make any direct reference to this subject, yet it is clear from Secs. 3365 and 3367 that the harshness of these holding has been alleviated and that it was not the intention of the Revision Commission to place property owners at such a disadvantage, especially in view of the subsequent decision in the Matter of N. Y. Central R. R. Co., 66 N. Y. 407, which practically overrules the above mentioned cases.

Sec. 3366 treats both the petition and answer as pleadings, thus extending the holding in the Matter of Met. R. R. Co., 28 State Reporter 968, that in as much as the application was in its nature a pleading, its allegations could be stated upon information and belief. This section directs their verification in the manner and by the persons

prescribed in the Code for pleadings in courts of record. Formerly the petition was verified ~~and~~ in accordance with the rules and practice of the courts. After issues raised, the court itself may try the case, which it was bound to do under the previous laws or it may refer it, but in either event a written decision must be filed or delivered to the attorney for the prevailing party within 20^y days after final submission of the proofs of the parties. The provisions of the Code relating to the form and contents of ^{the} decision upon the trial of issues of fact, the exceptions thereto, and appeal therefrom, the powers of the court or referee upon the trial ^{in regard} to any mistakes or irregularities are all made applicable. In the Matter of Union Elevated R. R. Co. 113 N. Y. 275, following Matter of Sheeps head ~~and~~, R. R. five Weekly Digest ~~188~~ 188, it was expressly decided that the duty is laid upon the Supreme Court alone to investigate the claims of a corporation to take private property, but this decision is obvious^{ly} without force under the power of the court to direct a reference.

After a decision is reached judgement must be entered. If it is in favor of the defendant, the application shall be dismissed with costs, the same as are allowed of courts^{se} to a defendant prevailing in a Supreme Court action; if in

favor of the plaintiff or if he entitled to relief, no answer having been interposed, the judgement must state that the property is necessary for the public use and that the plaintiff is entitled to it upon making compensation therefor; whereupon the court shall appoint the commissioners. "If a trial has been had, at least eight days notice of such appointment must be given to all defendants who have appeared." This complete procedure is in striking contrast with the former method wherein the court simply granted an order or refused it, in its discretion, for the appointment of the commissioners, of whom in the elevated railroad law there were five instead of three, and who were not required to be free holders, but merely residents of the county in which the property in question was situated. Eight days notice of a meeting of the commissioners, except where they meet by appointment of the court or pursuant to adjournment must now be given to the defendants who have appeared, in place of the reasonable notice to all the parties interested, required under the repealed statute, and they are no longer^a required to determine the compensation to be paid before proceeding to the examination of any other claim. The clauses providing that no reduction shall be made for the construction of any proposed improvement con-

nected with the use for which the property is to be taken,
 when
 and that the property belongs to a railroad company, its
 value shall be its fair value for railroad purposes, did
 not appear in the Rapid Transit Act but by Sec. 3370, they
 are now made to apply to every condemnation proceeding. It
 was previously the duty of the commissioners to decide
 upon the compensation to be paid to a guardian or committee
 of an infant or idiot, or to an attorney appointed by the
 court, but this is now determined by the final order of the
 court after appraisal, nor is it requisite that they sign
 the report as was prescribed by the Rapid Transit Act. Each
 commissioner is entitled to \$8.00 per day and expenses to be
 paid by the plaintiff; under the General Railroad Act, they
 received \$5.00 per day for services and expenses, to be paid
 by the company, unless the award rendered was less than that
 previously offered by the corporation, when the burden was
 shifted upon the land owner, while in proceedings instituted
 by elevated railroads, the salary was merely \$3.00 per diem
 for expenses and services to be paid by the company.

After the report has been filed, any party may move to
 confirm it at a special term, upon notice to the parties
 who have appeared and it may be confirmed or set aside for
 irregularities ^{or} for error of law, or upon the ground that

the award is excessive or insufficient. It was held in the Matter of N. Y. Central R. R. 64 N. Y. 60, however, that such report might be set aside for "misconduct, palpable error or accident on the part of the commissioners, such as would authorize the setting aside of a verdict or a report of a referee." This case decided in 1876 certainly over rules Albany etc., R. R. V Cramer 7 How. Pr. 164, Rochester etc., R. R. V. Beckwith 10 How. Pr. 168, Matter of N. Y. etc., R. R. 21 How. Pr. 434 and Visscher V Hudson River R. R. 15 Barb. 37, holding that the report cannot be set aside by the court upon motion but that it can only be done on appeal. This last provision renders obsolete the decisions in the Matter of P. P. and C. I. R. R. 13 Hun 345 and 13 Hun 361 to the effect that the commissioners report cannot be set aside for error in the quantum of compensation awarded but that it can only be brought up on appeal. The practice under the previous laws required the plaintiff to move for confirmation at either a general ~~term~~ or special term, upon notice to all the parties to be affected but the statutes failed to ~~state~~ ^{state} any causes for refusing to confirm the report. If the report is set aside, the court may direct a rehearing before the same or new commissioners, whereupon the proceedings are the same as for an original

examination, while in case of confirmation, the order simply declares that after payment of the award to the land owners, the plaintiff shall be entitled to the ~~possession~~ possession of the property. The previous order of confirmation was an elaborate affair containing the substance of the appraisal proceedings, a description of the real estate involved and a direction as to whom the money should be paid or where deposited.

In the Matter of the Rhinebeck etc., R. R. 87 N. Y. 242, the court maintained that the giving of notice of the confirmation of the commissioners report was permissive merely in spite of the imperative language "shall give notice." (Chap. 140 Laws 1850 Sec. 17). The corresponding clause appears in Sec. 3371 of the new law and it would appear from the use of the word "upon," as if this decision were rendered obsolete and that notice was a condition precedent to a motion for confirmation. In the Matter of P.P. and C. I. R. R. 85 N. Y. 489, it was held, Earl J, writing the opinion, that when a new report of the commissioners is ordered which fails to change the amount first awarded, it need not be presented to the court for confirmation but is of itself final and conclusive. This decision is certainly founded in reason as well as in convenience to the parties

interested, but Sec. 3371 directs that the same proceedings shall be had for the confirmation of the second report as for the first, which would seem to prescribe the same formality of obtaining the approval of the court even in such a case as this.

The constitutionality of the clause directing the confirmation of the report was attacked in the Matter of N. Y. Central R. R. 60 N. Y. 116, on the ground of taking private property for public use without just compensation, "in as much as it does not direct the compensation to be paid to the party claiming to own the land but to be deposited in banks subject to the order of the court", but the objection was held untenable. This difficulty is avoided in the revision by the instruction in the final order to pay the award direct to the property owners, although it is provided that a deposit of the money to the credit of the owner pursuant to the direction of the court, shall be deemed a payment. After the award of the commissioners has been recorded and the money deposited, the title to the property rests wholly in the corporation--Crown~~er~~/the Watertown etc., R. R. 8 How. Pr. 457.

Sec. 3372 relating largely to the offer of a purchase price by the company before presentation of the petition, and the taxing of costs if it is not accepted, is almost entirely

new, as none of the railroad laws repeal^{ed} contain any corresponding provisions. In U& D R. R. ~~the~~^V *Gross* 31 Hun 83, although not necessary to the decision of the case, it was argued that the expense of taking private property could never be charged against the person owning it on the theory that the charges might equal if not exceed, the value of the property taken, which would violate the constitutional provision requiring just compensation to be made. This difficulty is avoided in the new law by providing, that "if the offer is not accepted and the compensation awarded by the commissioners does not exceed the amount of the offer with interest from the time it was made, no costs shall be allowed to either party." The decision in *Rensselaer etc, R. R. V Davis* 55 N. Y. 145, that in taxing costs no extra allowance can be made under Sec. 309 of the Code is rendered obsolete by permission to grant such charges, not exceeding 5% upon the amount awarded."

In place of the former method of recording at length a certified copy of the final order of the court in the county clerk's office, the order itself must now be attached to the judgement roll and the amount to be paid, docketed as a judgement against the person liable for the same, which may be enforced by execution the same as an ordinary

Supreme Court judgement. Before the plaintiff shall be entitled to possession of the property, he must serve a certified copy of the final order on the owner and if occupancy is not then given, payment having been duly made, the plaintiff may apply to the court without notice, unless it is directed to be given, for a writ of assistance which is executed as in other similar cases. The General Railroad Act was construed in the Matter of N. Y. Central R. R. 60 N. Y. 116, to give the Supreme Court power to make an order or to issue a process to possess a railroad corporation of lands acquired by condemnation, so that the introduction of the above mentioned writ is not entirely new. The holding of the Supreme Court in Niagara etc., R. R. V Hotchkiss 16 Barb. 270, that it was not justified in issuing a writ of possession or assistance upon the application of the railroad is thus rendered obsolete.

The clauses of the repealed statutes are omitted providing that after payment of the amount determined upon, all persons who have been made parties to the proceeding are barred of all right and interest in the real estate during the existence of the corporation, and that if the company neglect to have the final order of the commissioners recorded and to make payment within ten days after the date of the

order, any party may have it recorded, and thereupon the money directed to be paid shall become a ^{lien} ~~lien~~ on the property acquired, enforceable either at law or in equity.

Previously, if the plaintiff desired to abandon the proceeding, he had 30 days after written notice of the final order in which to do it -- his time is now limited to 30 days after the entry of the ~~order~~ ^{order} and he is also required to serve a notice in writing of such abandonment. As regards elevated railroads, the privilege would seem to be new in as much as there is nothing corresponding to it in the Rapid Transit Act. The result of the change in the law is to render nugatory, the decision in Matter of Rhinbeck etc., R. R. 67 N. Y. 242, that after confirmation of the commissioner, the corporation cannot abandon the proceedings without ~~leave~~ ^{an} ~~of~~ ^{the} court.

Various important changes has been introduced relating to appeals, the general purpose of which is to give property owners greater opportunity to test the proceedings of the commissioners. The appeal must be heard at a general term alone instead of at either a general or special term, and it must be taken within 30 ~~days~~ after service on the appellants attorney of a copy of the order appealed from and notice of the entry thereof, in place of ~~the~~ ~~then~~ within 20 days after the confirmation of the report. This abolition

of the appellant powers of the special term is not really a change in the law for in the Matter of the Met. Elevated R. R. Co. 57 Hun 130, the Supreme Court decided that though Sec. 18 of the General Railroad Act gives the power of review to both general and special terms, yet such appeal is governed by the procedure adopted by the court throughout the state, which is to restrict such appeals to the general term. All the provisions of Chap. 12 of the Code relating to appeals to the general term are made applicable to this instance but the appeal does not prevent the possession of the plaintiff, except by order of the court upon notice to him. The review brings up all the proceedings subsequent to the judgement and also those antecedent thereto, if the appellant states in his notice that he desires them reconsidered and a case and exceptions shall have been made out.

In the Matter of the Union Elevated R. R. 113 N. Y. 275, it was decided that the court of appeals will not interfere with the conclusion of the court below as to the necessity of condemning the lands in question but will confine its review, solely to the validity and legality of the proceedings. Neither the statutes under which this decision was reached nor the present law make any reference to a last appeal, so that the effect of this holding cannot be consid-

ered impaired. This decision follows the earlier one in the Matter of ^{the} L. S. & M. S. R. R. 89 N. Y. 442, which restricted the power of the court to questions of law simply, but which also went a step farther and maintained that the general term as well, could reverse on no other grounds.

Sec. 3376 regulates appeals to the general term from the judgement below, if in favor of the defendant, but omits any provision for review in case the plaintiff shall succeed. This section is entirely new as no judgement was entered under the former practice. The following section copies the provision of the laws repealed making the second report of commissioners final and conclusiive upon all the parties interested. This was interpreted in the Matter of the N. Y. Central R. R. 64 N. Y. 60, Matter of PP. & OI. R. R. 24 Hun 199, affirmed 85 N. Y. 489 and in the Matter of N. Y. Elevated R. R. Co., 41 Hun 502, as not leaving the petitioner wholly remediless but as giving him the right to move to set aside the report. The procedure thus pointed out for evading the stringency of this rule has lost none of its efficacy under the revision. This clause was also made inapplicable in the Matter of N. Y. W. S. R. R. 38 Hun 846, to a case where the proceedings upon the first

appraisal were dismissed without confirmation or any direction for a new appraisal and an entirely new action was subsequently commenced.

Sec. 3379 authorizes security to be given by the plaintiff when he is in possession of the property, for the purpose of retaining his occupancy and staying all proceedings against him on account thereof. The following section gives the company power to enter temporarily upon the desired realty after depositing with the court, the sum set up in the answer as the value of the property and directs the disposition to be subsequently made of such money. These two Secs. which are exceedingly important additions to the statute, greatly facilitate the proceeding in case the speedy acquisition of the property is desirable and by leaving the necessity of their operation to the discretion of the court, prevent any abuse of the privileges granted. They are a most fortunate relaxation from the strict holding of the supreme court ⁱⁿ Blodgett V. Utica etc. R. R. 64 Barb. 580, to the effect that under the general railroad act, a corporation cannot enter upon and occupy any land against the consent of the owner before having ascertained and paid the compensation to which he is entitled, which was followed in Jamaca etc. Co., V. N. Y. etc. , R. R. 25 Hun 585, where a corporation

desired to cross a turnpike.

Upon the service of the petition, the plaintiff may file a lis pendens, containing the names of the parties, the object of the proceeding and a brief description of the property to be affected thereby, which shall be constructive notice to all subsequent purchasers or incumbrancers of such realty. This notice must be immediately indexed by the county clerk in the book kept for that purpose, in the name of each defendant specified in the lis pendens. The laws repealed were without any corresponding provisions, except the Rapid Transit Act, which prescribed that no transfer of the real estate after condemnation had commenced, should pass title and that the proceeding could be continued as though no conveyance had been attempted. The court has power under Sec. 3382 to make all necessary orders and directions to effectually carry out the purpose of the law, when circumstances arise which are not expressly provided for but this authority would probably have been assumed, by virtue of the doctrine of "implied powers", without any express declaration to that effect. Under this broad statement may probably be included the repealed clause allowing the court to appoint other commissioners in place of any who shall die or neglect or refuse to serve, and to add new parties to the proceeding upon due notice.

