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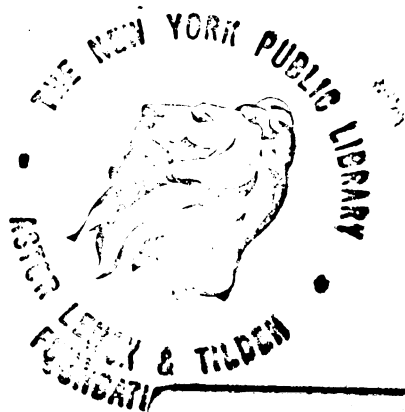


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Parks - U.S. Brooklyn

"L A W S

RELATING TO THE

PUBLIC PARKS, PARKWAYS

AND OTHER PROPERTY

UNDER THE CARE AND CONTROL

OF THE

BROOKLYN PARK COMMISSIONERS.

EMBRACING ALSO

Opinions of the Court of Appeals in the Matter of the Sale of the East Side Lands, the Matter of Widening and Opening Ninth Avenue and Fifteenth Street, and Opinions by John A. Taylor, Esq., and William C. DeWitt, Esq., in relation to Department of Parks, together with the

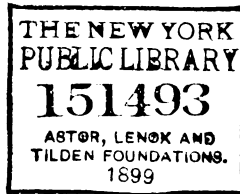
CIVIL SERVICE LAW.

COMPILED BY
JOHN A. ANDERSON,
COUNSELLOR-AT-LAW.

BROOKLYN :

W. WALLACE DAVIS, PRINTER, DAILY UNION BOOK AND JOB PRINTING ESTABLISHMENT

1887.



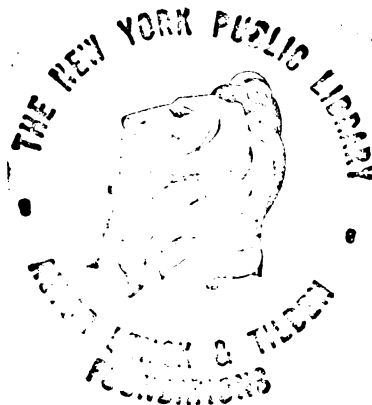
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At a meeting of the BROOKLYN PARK COMMISSIONERS, held September 30th, 1886, the following resolution was, on motion of Commissioner Henry Harteau, adopted :

Resolved, That the matter of compiling all laws relating to the Department of Public Parks in this city, be referred with power to the Finance Committee ; also, the printing of the By-Laws for the use of all whom they may concern.

Attest:

ANDREW A. SMITH,
Secretary and Clerk.



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ACTS OF THE LEGISLATURE.

CHAPTER 466.

AN ACT to authorize the selection and location of certain grounds for public parks, and also for a parade ground, for the city of Brooklyn.

Passed April 18, 1859, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. John Greenwood, J. Carson Brevoort, William Wall, James Humphrey, John A. Cross, Nathaniel Briggs, Abraham G. Berry, Samuel S. Powell, Thomas H. Rodman, Nathan B. Morse, Thomas G. Talmage, Jesse C. Smith, Daniel Maujer, William H. Peck and Luther B. Wyman, or such of them as shall undertake the office of this commission, are hereby appointed Commissioners to select and locate such grounds in the city of Brooklyn, and adjacent thereto, as may, in their opinion, be proper and desirable to be reserved and set apart for public parks, and also for a parade ground for said city; and they shall report such selection and location to the Common Council of said city on or before the first day of November next, and also to the next legislature, upon the assembling thereof.

Commissioners appointed for selection and location of parks.

§ 2. The said Commissioners shall receive no compensation for their services under this act, but they are hereby authorized to procure maps and plans of the grounds so selected and located, and to employ surveyors for that purpose at an expense of not exceeding the sum of two hundred and fifty dollars, and the same shall be a charge upon said city of Brooklyn, and shall be paid as other city charges.

To receive no compensation.

§ 3. The said Commissioners shall make such selection and location in view of the present condition and future growth and wants of said city; and the first meeting of the Commissioners shall be held on the first Monday of May next, at twelve o'clock at noon, at the Mayor's office in the City Hall in said city.

Duties of Commissioners.

§ 4. This act shall take effect immediately.

CHAPTER 488.

AN ACT to lay out a public park and a parade ground for the city of Brooklyn, and to alter the Commissioners' map of said city.

Passed April 17, 1860, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Public Park to be laid out.

SECTION 1. All the following tracts, pieces and parcels of land in this act described, having been selected and located for a public park and for a parade ground for the city of Brooklyn, by the Commissioners appointed for that purpose, by the act entitled "An Act to authorize the selection and location of certain grounds for public parks and also for a parade ground for the city of Brooklyn," passed April eighteenth, eighteen hundred and fifty-nine; the said tracts, pieces and parcels of land are hereby declared to be public places, that is to say: All that piece or parcel of land, situate, lying and being in the city of Brooklyn, and town of Flatbush, and bounded and described as follows:—Commencing at the intersection of Warren street and Washington avenue; running thence southerly along Washington avenue to the city line at Montgomery street; thence southwesterly in a straight line to a point one thousand feet easterly in a straight line drawn from the intersection of Ninth street with the city line; thence to the intersection of the city line and Ninth street; thence northwesterly along Ninth street to Tenth avenue; thence northerly along Tenth avenue to the northerly side of Third street; thence northwesterly along Third street to Ninth avenue; thence northerly along Ninth avenue to Flatbush avenue; thence along Flatbush avenue to Vanderbilt avenue; thence along Vanderbilt avenue to Warren street; thence easterly along Warren street to Washington avenue, at the place of beginning, is hereby declared to be a public place to be known as Prospect Park, and which shall be a charge upon said city as hereinafter provided.

Boundaries.

Parade ground.

§ 2. All that piece or parcel of land situate, lying and being in the town of New Lots, to be taken from the southerly part of the lands belonging to the heirs of White Howard, deceased, containing about twenty-five acres, is hereby declared to be a public place, to be known as the Parade Ground, and which shall be a charge upon

the County of Kings, as hereinafter provided, and shall be under the management and control of the Supervisors thereof.

§ 3. The aforesaid several pieces of land shall, from and after the passage of this act, be public places, and the lands in the first section of this act mentioned shall be deemed to have been taken by said city of Brooklyn, for public use, as and for a public park, and to have been declared open as a public place, with the same effect as if the whole of the same had been within the city of Brooklyn, and as if they had been taken and declared open under and in pursuance of the provisions of an act, entitled "An Act to revise and amend the several acts relating to the city of Brooklyn," passed April fourth, eighteen hundred and fifty, and the acts amendatory thereof, except as herein otherwise provided, and with the same effect as if the same had been originally laid down upon the Commissioners' map of the city of Brooklyn, and from and after the passage of this act, they shall be and form a part of said city of Brooklyn, and of said Commissioners' map; and the parts of all streets, avenues and highways (except Flatbush avenue and Third street), laid out as running through said pieces of land, are hereby closed and discontinued and stricken from the said Commissioners' map, so far as the same would run through or intersect said pieces of land, and the land in the second section of this act mentioned shall be deemed to have been taken by the County of Kings, as and for a parade ground.

Park and Parade grounds to be public.

§ 4. Three discreet and competent persons, being citizens of the State of New York, shall be appointed to act as Commissioners of Estimate and Assessment, in relation to the taking and the value of the land mentioned in the first section of this act; and three other persons shall also be appointed Commissioners of Estimate in relation to the taking and the value of the lands mentioned in the second section of this act. All of said Commissioners shall be appointed in the manner provided for by an act, entitled "An Act to provide for the opening of Washington Park, on Fort Greene, in the city of Brooklyn," passed April twenty-seventh, eighteen hundred and forty-seven, except that such Commissioners shall be appointed by the Supreme Court of the Second Judicial District, at any Special Term thereof, and all other proceedings in any Court contemplated by this act shall be had in said Court; and in case of the death, resignation, disqualification or refusal to act, of either of said Commissioners, it shall be lawful for the said Court, at any General or Special Term thereof, on application, as in said act provided, and from time to time, as often

Commissioners of Estimate and Assessments, how appointed.

as such event shall happen, to appoint any other discreet and disinterested person, being a citizen of the State of New York, in the place and stead of such Commissioner so dying, resigning or refusing to act; and said Commissioners shall proceed to discharge the duties of their appointment, and to complete their estimate and award, as soon as conveniently may be; and shall, if practicable, file their final report in the office of the Clerk of the County of Kings within twelve months of the date of their appointment.

Majority may perform duties.

§ 5. It shall be competent and lawful for a majority of each of said Board of Commissioners designated, as aforesaid, to perform the trust and duties of their appointments, and their acts shall be as valid and effectual as the acts of all the Commissioners so to be appointed, if they had acted therein, would have been; and in every case the proceedings and decisions of a majority in number of either of said Boards of Commissioners acting in the premises shall be as valid and effectual as if the said Commissioners appointed for such purpose had all concurred and joined therein.

Commissioners to make estimate.

§ 6. The Commissioners herein provided for, in relation to the taking and value of the lands mentioned in the first section of this act, shall make just and true estimate of the value of the said lands and of the loss and damage to the respective owners, lessees, and parties and persons respectively entitled to or interested in the same, together with the tenements, hereditaments, and appurtenances, privileges or advantages to the same belonging or in any wise appertaining, by and in consequence of relinquishing the same to the said city of Brooklyn; and in making such estimate they shall not make any deduction or allowance for, or on account of any supposed benefits or advantages to be derived from taking said lands as public places, or in consequence thereof, and the amounts so estimated, when duly confirmed, shall be paid as hereinafter in this act provided. But after the cost of the said lands shall have been determined by the confirmation of the final report in relation thereto, it shall be the duty of said Commissioners to apportion such part of said cost as they may deem equitable, and not exceeding twenty per cent. thereof, among the lands outside of said park, which they shall deem to be benefited thereby, and in proportion to such benefit; and said Commissioners may extend such apportionment to such distance from said park as they may deem equitable and proper within the Western Fire District of said city of Brooklyn. And whenever their report in relation to such apportionment shall be completed, they shall file the same

Deductions or allowances.

with the Clerk of Kings County, and thereupon proceedings may be had to correct or confirm the same, as in this act provided. And after the confirmation of any final report of said Commissioners making such apportionment, the one-twentieth part of the amount thus apportioned shall be assessed annually upon the lands in said city affected thereby, and shall be included annually in the taxes to be levied thereon, and shall be levied and collected like other taxes upon property in said city; and the proceeds thereof shall be paid over to the Commissioners of the Sinking Fund of said city, to be by them applied to the redemption of the bonds of said city, to be issued by virtue of this act.

§ 7. The Commissioners appointed in relation to the taking and value of the lands mentioned in the second section of this act shall, in like manner, make just and true estimate of the value of the lands in said second section mentioned, and of the loss and damage to the respective persons, owners thereof, or entitled to or interested in the same in any wise, in consequence of relinquishing the same to the county of Kings; and the value of the lands so taken and mentioned in the second section of this act, and the amount of compensation so estimated by the Commissioners to the owners thereof, shall, when confirmed, as herein provided, be paid by said county of Kings to the parties thereto respectively entitled; and for the purpose of making such payment the said county may issue and dispose of its bonds to such amount as may be necessary, in such form and manner as the Supervisors thereof may direct.

Commissioners to estimate value of lands and losses or damage of owners.

§ 8. Payment of the damages awarded by the Commissioners provided for in this act, in any report made in pursuance hereof, shall become due and payable, and shall be paid immediately upon the confirmation of any such report of said Commissioners in the premises.

Payment of damages.

§ 9. Said Commissioners and any party being owner of or interested in any of the lands mentioned in this act may agree upon the value thereof and upon the amount of damages and compensation to be awarded therefor, and said Commissioners may make special reports in relation to any matters so agreed upon; and any such special report may be filed, and proceedings may be had to confirm the same, and the same may be confirmed in the same manner and with like effect as is provided herein in relation to other reports of said Commissioners; and upon the confirmation of any such special report, the amount of the awards thus confirmed shall be paid in the same manner as if such awards had

Special reports concerning value of lands, etc.

been made in a general report of said Commissioners, and duly confirmed.

Commissioners
to subscribe
oath.

§ 10. Before proceeding to discharge any of their duties, the Commissioners shall respectively take and subscribe an oath in writing, before some officer authorized by law to administer oaths, honestly and faithfully to discharge the duties which shall devolve upon them in pursuance of this act, which oath shall be filed in the office of the Clerk of the county of Kings. Said Commissioners shall proceed, as soon as may be after their appointment, to discharge the duties of their trust, and to make and complete their estimates, and awards and reports, as hereinbefore provided; and every estimate, award and report so made shall be signed by at least a majority of said Commissioners, and filed in the office of the Clerk of the county of Kings, and notice thereof given to the Counsel of the Corporation of said city of Brooklyn. Within twenty days after receiving such notice of the filing of any report of said Commissioners, said Corporation Counsel shall give notice by publication for ten days in two daily papers of said city, that he will at the then next ensuing Special Term of the Court aforesaid, and at the time and place to be specified in such notice, present such report for confirmation; and if said Corporation Counsel shall not, within the time above prescribed, cause such report to be presented for confirmation, then such notice may be given, and said report may be presented for confirmation, as above prescribed, by any party whose lands are to be taken, and to whom compensation is estimated and awarded by such report; and thereupon all such proceedings as are provided for in the fifth section of an act, entitled "An Act to provide for the opening of Washington Park, on Fort Greene, in the city of Brooklyn," passed April twenty-seventh, eighteen hundred and forty-seven, shall be had for the confirmation of said report, or for the revision and correction thereof, until a report shall be made or returned in the premises, which the Court shall confirm; and any such report, when so confirmed by the said Court, shall be filed in the office of the Clerk of the county of Kings, and shall be final and conclusive upon the said city of Brooklyn, and upon the owners of and persons interested in the lands and premises mentioned in said report, and also upon all other persons whomsoever; and upon the confirmation of any such report, and upon payment being made to the owners of the lands in such report mentioned, or upon their assent thereto by deed duly executed, the said lands shall vest forever in the said city of Brooklyn for the uses and purposes in this act mentioned; and whenever and as often as the title shall have been perfected in said city to the lands

embraced in the park and public place provided for in the first section of this act, the Common Council of said city shall forthwith declare and establish said lands to which the title shall have been thus perfected, as a public park or place, as herein provided (and may make any improvements thereon, as such park and public place, which they may deem proper). In case any party, officer or person who is by this act directed or authorized to apply for the appointment of Commissioners, or for the confirmation of any report made by such Commissioners, shall neglect to make any such application in the manner and within the times in this act limited, such application may be made by any resident of the city of Brooklyn, being an owner of real estate in the said city, and the Court shall proceed thereon as if the same had been made by the person or officer hereinbefore authorized or directed to make the same.

§ 11. For the purpose of paying for the land mentioned in the first section of this act, and for the regulation and improvement of the same as in this act provided, the bonds of the city of Brooklyn, to such an amount as shall be necessary for that purpose, shall be issued by the Mayor, Comptroller and Clerk of said city, from time to time, as the same shall be required for the purposes aforesaid; which bonds shall be issued in the manner, and shall be in the form of the bonds issued by said city under the provisions of the act entitled, "An Act to provide for the supply of the city of Brooklyn with water," passed February eleventh, eighteen hundred and fifty-seven, except as herein otherwise provided; and said bonds shall be payable in not less than forty-five, nor more than sixty years from the date thereof, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, on the first day of January and July, in each year; and the said bonds and the proceeds of the sale thereof shall constitute the fund for paying the costs of the lands in the first section of this act mentioned, and for the improvement of the same. And as the said bonds are from time to time issued, the Mayor, Comptroller and Clerk shall each cause to be kept in his office, in a book to be provided for that purpose, a true and correct statement and account of each and every bond by him executed, showing the number of each bond and the date and amount thereof, and the time when due, and such book shall be open for public inspection, and shall be delivered by them to their successors in office.

For the purpose of paying for lands or expenses, bonds of city of Brooklyn may be issued.

§ 12. The bonds of the City of Brooklyn, which shall be issued by virtue of this act, may be used by said city, or by the Treasurer thereof, at their par value, in paying

Bonds may be used at par value in payment for damages.

any amounts which said city shall have become liable to pay for compensation or damages awarded under this act; or the same may be sold at public or private sale, or by subscription, and on such terms as the Common Council of said city may think proper; and the proceeds of all such sales shall be paid over to the Treasurer of said city, or said Treasurer may, with the concurrence of the Mayor and Comptroller of said city, pledge any of said bonds for money borrowed temporarily, at a higher rate of interest, not exceeding seven per cent. per annum, if they shall deem it expedient and necessary so to do.

§ 13. The property of the city of Brooklyn, and the lands authorized to be taken by the first section of this act as a public park and place, are hereby pledged for the payment of its bonds to be issued by virtue hereof.

For the purpose of paying interest on bonds, moneys may be raised by tax annually.

§ 14. In order to pay the interest upon the bonds hereby authorized to be issued by said city, there shall be added to the general tax, for the city of Brooklyn at large, in the year eighteen hundred and sixty-two, and yearly thereafter, and levied and collected therein as hereinafter specified, such sum of money in each of said years as shall be sufficient to pay the interest upon the bonds issued by virtue of this act; and from and after the year eighteen hundred and sixty-five, there shall be added to the general tax for the city of Brooklyn at large, and levied and collected, as aforesaid, in addition to any amount so required, to pay the interest upon said bonds, a sum equal to one-half of one per cent. upon the total amount of bonds which shall have been issued in pursuance of this act; and from and after the year eighteen hundred and seventy-five, there shall be in like manner levied and collected, in each year, and in addition to the amount required to pay the interest aforesaid, a sum equal to one per cent. upon the total amount of bonds which have been issued in pursuance of this act; and from and after the year eighteen hundred and eighty-five, there shall be in like manner annually levied and collected, in addition to the interest aforesaid, a sum which, together with the amounts above required to be levied and collected, and the accumulations thereof, will, with its accumulations, be adequate to pay and discharge the bonds to be issued under this act by the maturity thereof, which said several sums shall be, from time to time, and each year, paid over to the Commissioners of the Sinking Fund of the city of Brooklyn, to be held and managed by them, and shall be applied to the payment of the interest upon said bonds as it shall become payable, and to the full and final redemption of said bonds, and for no other purpose. And it shall be the

duty of the Mayor and Comptroller of said city to estimate and ascertain the amounts required to be so added to the general tax, by virtue of this section, and to transmit a statement of the same in each year to the Board of Supervisors of the County of Kings, in time to have such amount included in the general tax of the said city, for that year; and it shall be the duty of said Supervisors to cause such amount to be included in such general tax. And said Supervisors shall annually provide by tax for the payment of the principal and interest of the bonds to be issued by the said County of Kings, by virtue of this act. And in making the levy of taxes in this section prescribed, the said Supervisors shall so apportion and levy the same, as that all sums of money which shall be levied for the purpose of paying principal and interest of the bonds which may have been issued on account of the purchase, improvements and ornamentation of the lands comprising the said Prospect Park, shall be levied and collected exclusively upon and from the taxable property within the first twelve wards of said city.

Amounts required to be added to general tax to be estimated and ascertained.

§ 15. The Commissioners appointed by virtue of section four of this act shall have authority to employ surveyors and to use any map on file or belonging to said city, and to cause maps to be made as may be necessary; and said Commissioners shall be allowed a compensation of three dollars per day for their time actually employed in discharging their duties as such Commissioners; and all such compensation, and the necessary expenses of the Commissioners in discharging their duties, shall be allowed on taxation by the Court aforesaid, and paid by said city of Brooklyn, and shall be added to and form a part of the cost of the said park.

Surveyors may be employed.

§ 16. The said Prospect Park shall be under the exclusive control and management of a Board of Commissioners, to consist of seven persons, who shall be named and styled "The Commissioners of Prospect Park;" a majority of said Board of Commissioners in office for the time being shall constitute a quorum for the transaction of business, and no action of said Board shall be final or binding, unless it shall receive the approval of a majority of the said Board, whose names shall be recorded in its minutes.

Park to be under management of Board of Commissioners.

§ 17. James S. T. Stranahan, Thomas H. Rodman, E. W. Fiske, R. H. Thompson, Thomas G. Talmage, Stephen Haynes and Cornelius J. Sprague are hereby appointed, and shall constitute the first Board of Commissioners of Prospect Park; they shall hold office as

Commissioners of Prospect Park.

such Commissioners for three years from the passage of this act. No member of said Board shall receive any compensation for his services, except the President or Treasurer, but each Commissioner shall nevertheless be entitled to receive for his personal expenses, in visiting and superintending said park, a sum not exceeding three hundred dollars per annum. In case of a vacancy, the same may be filled by the remaining members of the Board, for the residue of the term then vacant; and all vacancies occasioned by expiration of the terms of office shall be filled by the Mayor, by and with the advice and consent of the Common Council of said city.

Powers.

§ 18. The said Board shall have the full and exclusive power to govern, manage and direct the said park; to lay out and regulate the same; to pass ordinances for the regulation and government thereof; to appoint such engineers, surveyors, clerks and other officers, except a police force, as may be necessary; to prescribe and define their respective duties and authority; to fix the amount of their compensation; and generally in regard to said park, they shall possess all the power and authority now by law conferred on or possessed by the Common Council of said city, in respect to the public squares and places in said city.

Commissioners not to be pecuniarily interested in any contract work.

§ 19. It shall be a misdemeanor for any Commissioner to be directly or indirectly, in any way pecuniarily interested in any contract or work of any kind whatever, connected with said park, and it shall be the duty of any Commissioner or other person, who may have any knowledge or information of the violation of this provision, forthwith to report the same to the Mayor of the city of Brooklyn, who shall present the facts of the case to any Judge of the Supreme Court of the Second Judicial District. Such Judge shall hear, in a summary manner, such Commissioner in relation thereto, and any evidence he may offer; and if, after such hearing, he shall be satisfied of the truth thereof, and shall so certify to the Mayor, he shall immediately remove the Commissioner thus offending. Every Commissioner shall, before entering upon the duties of his office, take and subscribe the oath prescribed by the Constitution of the State, which oath shall be filed in the office of the Clerk of the city of Brooklyn.

To make Annual Report.

§ 20. Said Board of Commissioners for the government of said park shall, in the month of January of every year, make to the Common Council of said city a full report of their proceedings, and a detailed statement of all their receipts and expenditures.

§ 21. Whenever the city of Brooklyn shall have become vested with the title to said park, as in this act provided, it shall be lawful for the Commissioners of said park to let from year to year any buildings and the grounds attached thereto, belonging to said city, which may be within the limits of said park, until the same shall be required for the laying out and regulation thereof, when the said buildings shall be removed, except such as may be used for the purposes of said park.

Further duties.

§ 22. Whenever the said city shall have become vested with the title to said park, as aforesaid, said Commissioners may sell any buildings, improvements, and other materials being within the limits of said park, and belonging to said city, which, in their judgment, shall not be required for the purposes of the said park, or for public use, the proceeds of which shall be deposited to the credit of the Commissioners, and devoted to the improvement of the park.

Buildings, etc., may be sold.

§ 23. No plan for the laying out, regulation and government of said Prospect Park shall be adopted or undertaken by the Commissioners thereof, of which the entire expense, when funded, shall require for the payment of the annual interest thereon a greater sum than thirty thousand dollars per annum; and bonds shall be issued, sold and disposed of as directed in this act, for the purpose of providing such sums of money as shall be from time to time required by said Board of Commissioners having the government of said park, subject to the limitations in this section prescribed.

Expenses.

§ 24. The money raised from the bonds in the preceding section mentioned shall be deposited, as fast as the same shall be realized, to the credit of said Board of Commissioners, in such banks of the city of Brooklyn as shall be by said Board designated; such banks shall allow such interest upon such deposits as may be agreed upon with said Board, and shall open and keep an account therewith. All moneys received by said Commissioners shall be immediately deposited with such banks to the credit of their account, and no moneys shall be drawn therefrom by said Board of Commissioners except upon a warrant signed by at least a majority of said Board, and all receipts and vouchers shall be filed in the office of said Board.

Moneys realized from bonds to be deposited to credit of Commissioners.

§ 25. None of the said Commissioners, nor any person, whether in the employ of said Commissioners or otherwise, shall have the power to create any debt, obligation, claim or liability, for or on account of said Board, or the moneys or property under his control, ex-

Debts may not be created except, etc.

cept with the express authority of said Board, conferred at a meeting thereof duly convened and held.

Office, when declared vacant.

§ 26. The office of either of said Commissioners who shall not attend the meetings of the Board for three successive months, after having been duly notified of said meetings, without reasons therefor satisfactory to said Board or without leave of absence from said Board, may be by said Board declared vacant.

Real and personal property may be granted.

§ 27. Real or personal property may be granted, devised, bequeathed or conveyed to the said city of Brooklyn for the purposes of improvement or ornamentation of said park, or for the establishment or maintenance within the limits of said park of museums, zoological or other gardens, collections of natural history, observatories or works of art, upon such trusts and conditions as may be prescribed by the grantors or donors thereof, and agreed to by the Mayor and Common Council of said city; and all property so devised, granted, bequeathed or conveyed, and the rents, issues, profits and income thereof shall be subject to the exclusive management, direction and control of the Commissioners of the park.

§ 28. It shall be lawful for said Board of Commissioners, at any meeting thereof duly convened, to pass such ordinances as they may deem necessary for the regulation, use and government of the park under their charge not inconsistent with the ordinances and regulations of the city of Brooklyn, or with the provisions of this act; such ordinances shall, immediately upon their passage, be published for ten days in two daily papers published in said city.

Offenders against ordinances guilty of misdemeanor.

§ 29. All persons offending against such ordinances shall be deemed guilty of misdemeanor, and shall be punished, on conviction before any court of competent jurisdiction in the county of Kings, by a fine not exceeding fifty dollars, and, in default of payment, by imprisonment not exceeding thirty days.

§ 30. All acts and parts of acts inconsistent herewith are hereby repealed.

§ 31. This act shall take effect immediately.

NOTE.—In consequence of the supposed Constitutional objection of laying out a parade ground for the county by the same Commissioners who were appointed to lay out a park for the city, the act of 1861 was passed by the Legislature.

CHAPTER 340.

AN ACT to amend an act entitled "An Act to lay out a Public Park and a Parade Ground for the city of Brooklyn, and to alter the Commissioners' map of said city," passed April seventeenth, eighteen hundred and sixty.

Passed May 2, 1861, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The act entitled "An Act to lay out a Public Park and a Parade Ground for the city of Brooklyn, and to alter the Commissioners' map of said city," passed April seventeenth, eighteen hundred and sixty, is hereby amended so as to read as follows:

§ 1. The following tract, piece or parcel of land, having been selected and located for a public park for the city of Brooklyn, by Commissioners appointed for that purpose, by the act entitled "An Act to authorize the selection and location of certain grounds for Public Parks, and also for a Parade Ground for the city of Brooklyn," passed April eighteenth, eighteen hundred and fifty-nine, is hereby declared to be a public place, that is to say: All that piece or parcel of land situate, lying or being in the city of Brooklyn and town of Flatbush, and bounded and described as follows: Commencing at the intersection of the Tenth avenue and Ninth street, and running thence southerly along the north-easterly side of Ninth street, and on a line in continuation thereof, into the town of Flatbush, to a point in said line which is one thousand feet distant from the city of Brooklyn; thence northeasterly on a line drawn parallel with Tenth avenue, until it intersects a line drawn southerly from and in continuation of the westerly side of Washington avenue; thence northerly along Washington avenue to its intersection with Warren street; thence westerly along Warren street to Vanderbilt avenue; thence southwesterly along Vanderbilt avenue to Flatbush avenue; thence southerly along Flatbush avenue to the easterly side or line of Ninth avenue; thence southerly along Ninth avenue to Third street; thence southeasterly along Third street to the easterly line or side of Tenth avenue, and thence southwesterly along Tenth avenue to its intersection with Ninth street at the place of beginning.

Bounds of park.

To be used as a public park, etc.

§ 2. The said piece of land shall, from and after the passage of this act, be deemed to have been taken by said city of Brooklyn, for public use, as and for a public park, and to have been declared open as a public place with the same effect as if the whole of the same had been within the city of Brooklyn, and as if it had been taken and declared open, under and in pursuance of the provisions of an act entitled "An Act to revise and amend the several acts relating to the city of Brooklyn," passed April fourth, eighteen hundred and fifty, and the acts amendatory thereof, except as herein otherwise provided, and with the same effect as if the same had been originally laid down upon the Commissioners' map of the city of Brooklyn, and from and after the passage of this act, it shall be and form a part of said city of Brooklyn, and of said Commissioners' map; and the parts of all streets, avenues and highways (except Flatbush avenue), laid out as running through said land, are hereby closed and discontinued and stricken from the said Commissioners' map, so far as the same would run through or intersect said land.

Commissioners to be appointed.

§ 3. Five discreet and competent persons, being citizens of the State of New York, shall be appointed to act as Commissioners of Estimate and Assessment, in relation to the taking and the value of said land. Said Commissioners shall be appointed in the manner provided by an act entitled "An Act to provide for the opening of Washington Park, on Fort Greene, in the city of Brooklyn," passed April twenty-seven, eighteen hundred and forty-seven, except that they shall be appointed by the Supreme Court of the Second Judicial District, at any special term thereof, and all other proceedings in any court contemplated by this act shall be had in said court; and in case of the death, resignation, disqualification or refusal to act, of either of said Commissioners, it shall be lawful for the said court at any general or special term thereof, on application, as in said act provided, and from time to time, as often as such event shall happen, to appoint any other discreet and disinterested person, being a citizen of the State of New York, in the place and stead of such Commissioners so dying, resigning or refusing to act. And said Commissioners shall proceed to discharge the duties of their appointment, and to complete their estimate and award, as soon as conveniently may be; and shall, if practicable, file their final report in the office of the Clerk of the county of Kings, within twelve months after the date of their appointment.

A majority of Commissioners to act.

§ 4. It shall be competent and lawful for a majority of said Commissioners to perform the trusts and duties of

their appointments, and their acts shall be as valid and effectual as the acts of all the Commissioners so to be appointed if they had acted therein would have been; and in every case the proceedings and decisions of a majority in number of said Commissioners acting in the premises shall be as valid and effectual as if the said Commissioners appointed for such purpose had all concurred and joined therein.

§ 5. The said Commissioners shall make just and true estimate of the value of the lands mentioned in the first section of this act, and of the loss and damage to the respective owners, lessees, parties and persons, respectively entitled unto, or interested in the same, together with the tenements, hereditaments and appurtenances, privileges or advantages to the same belonging, or in any wise appertaining, by and in consequence of relinquishing the same to the said city of Brooklyn, and in making such estimate they shall not make any deduction or allowance for or on account of any supposed benefits or advantages to be derived from taking said lands as public places, or in consequence thereof, and the amounts so estimated, when duly confirmed, shall be paid as hereinafter in this act provided. But after the cost of the said lands shall have been determined by the confirmation of the final report in relation thereto, it shall be the duty of said Commissioners to apportion such part of said cost as they may deem equitable, upon any lands outside of said park, which they shall deem to be specially benefited thereby, in proportion to such benefit. And whenever their report in relation to such apportionment shall be completed, they shall file the same with the Clerk of Kings County, and thereupon proceedings may be had to correct and confirm the same, as in this act provided. And after the confirmation of any final report of said Commissioners making such apportionment, said assessment shall be a lien upon said lands. The one-twentieth part of the amount thus apportioned shall, with interest, be chargeable annually upon the lands so assessed for benefit, and shall be included annually in the taxes to be levied thereon, and shall be levied and collected like other taxes upon property; and the proceeds thereof shall be paid over to the Commissioners of the Sinking Fund of said city, to be by them applied to the redemption of the bonds of said city, to be issued by virtue of this act. But any person interested in the land so assessed may at any time pay the whole amount due thereon, with interest, to the said Commissioners of the Sinking Fund, to be by them applied in the manner hereinbefore mentioned; and from and after such payment, the lien hereinbefore created shall cease. (a)

Estimates of
value of land to
be made.

(a) Section 5 amended by § 1, Chap. 409, Laws 1864.

Damages, pay-
ment of.

§ 6. Payment of the damages awarded by said Commissioners, in any report made in pursuance hereof, shall become due and payable, and shall be paid immediately upon the confirmation of said report.

Oaths of Com-
missioners.

§ 7. Before proceeding to discharge any of their duties, the Commissioners shall respectively take and subscribe an oath, in writing, before some officer authorized by law to administer oaths, honestly and faithfully to discharge the duties which shall devolve upon them in pursuance of this act, which oath shall be filed in the office of the Clerk of the county of Kings. Said Commissioners shall proceed, as soon as may be after their appointment, to discharge the duties of their trust, and to make and complete their estimates, and awards and reports as hereinafter provided; and every estimate, award and report so made shall be signed by at least a majority of said Commissioners, and filed in the office of the Clerk of the county of Kings, and notice thereof given to the Counsel of the Corporation of said city of Brooklyn. Within twenty days after receiving such notice of the filing of such report, the Corporation Counsel shall give notice, by publication for ten days in two daily papers of said city, that he will at the next ensuing special term of the court aforesaid, and at the time and place to be specified in such notice, present such report for confirmation; and if said Corporation Counsel shall not within the time above prescribed cause such report to be presented for confirmation, then such notice may be given and said report may be presented for confirmation, as hereinafter prescribed.

§ 8. All such proceedings as are provided for in the fifth section of an act entitled "An Act to provide for the opening of Washington Park, on Fort Greene, in the city of Brooklyn," passed April twenty-seventh, eighteen hundred and forty-seven, shall be had for the confirmation of said report, and for the revival* and correction thereof, until a report shall be made or returned in the premises, which the court shall confirm; and any such report, when so confirmed by the said court, shall be filed in the office of the Clerk of the county of Kings, and shall be final and conclusive upon the city of Brooklyn, and upon the owners of and persons interested in the lands and premises mentioned in said report, and also upon all other persons whomsoever. Upon the confirmation of any such report, and upon payment being made to the owners of the lands in such report mentioned, or upon their assent thereto, by deed duly executed, the said lands shall vest forever in the said city of Brooklyn, for the uses and purposes in this act mentioned. (a)

(a) Section 8 amended by § 1, Chap. 599, Laws 1865.

* So in the original.

§ 9. In case any party, officer or person who is by this act directed or authorized to apply for the appointment of Commissioners, or for the confirmation of any report made by such Commissioners, shall neglect to make any such application in the manner and within the times in this act limited, such application may be made by any resident of the city of Brooklyn, being an owner of real estate in the said city, and the court shall proceed thereon as if the same had been made by the person or officer hereinbefore authorized or directed to make the same. Commissioners.

§ 10. For the purpose of paying for the land mentioned in the first section of this act, and for the regulation and improvement of the same as in this act provided, as well as for the payment of such interest as may accrue upon any bonds to be issued by virtue of this act, prior to the collection of said interest on the annual tax of said city, in the year eighteen hundred and sixty-four, the bonds of the city of Brooklyn, to such an amount as shall be necessary for that purpose, shall be issued by the Mayor, Comptroller and Clerk of said city from time to time as the same shall be required for the purposes aforesaid; which bonds shall be issued in the manner, and shall be in the form of the bonds issued by said city under the provisions of an act entitled, "An Act to provide for the supply of the city of Brooklyn with water," passed February Eleventh, eighteen hundred and fifty-seven, except as herein otherwise provided; and said bonds shall be payable in not less than forty-five nor more than sixty years from the date thereof, and shall bear interest at the rate of six per cent. per annum, payable half-yearly, on the first day of January and July in each year; and the said bonds, and the proceeds of the sale thereof, shall constitute the fund for paying the cost of the lands in the first section of this act mentioned, and for the improvement of the same; and as the said bonds are from time to time issued, the Mayor, Comptroller and Clerk shall each cause to be kept in his office, in a book to be provided for that purpose, a true and correct statement and account of each and every bond by him executed, showing the number of each bond, and the date and amount thereof, and the time when due, and such book shall be open for public inspection, and shall be delivered by them to their successors in office. (a) Bonds may be issued.

§ 11. The bonds of the City of Brooklyn which shall be issued by virtue of this act may be used by said city, or by the Treasurer thereof, at their par value, in paying Bonds may be used by city, etc., at par value.

(a) Section 10 amended by § 2, Chap. 409, Laws 1864.

any amounts which said city shall become liable to pay for compensation or damages awarded under this act ; or the same may be sold at public or private sale, or by subscription, and on such terms as the Common Council of said city may think proper ; and the proceeds of all such sales shall be paid over to the Treasurer of said city, or such Treasurer may, with the concurrence of the Mayor and Comptroller of said city, pledge any of said bonds for money borrowed temporarily at a higher rate of interest, not exceeding seven per cent. per annum, if they shall deem it expedient and necessary so to do.

Property
pledged for pay-
ment of bonds.

§ 12. The property of the City of Brooklyn, and the lands authorized to be taken by the first section of this act as a public park and place, are hereby pledged for the payment of its bonds to be issued by virtue hereof.

How the inter-
est is to be paid.

§ 13. In order to pay the interest upon the bonds hereby authorized to be issued by said city, there shall be added to the general tax for the city of Brooklyn at large, in the year eighteen hundred and sixty-four, and yearly thereafter, and levied and collected therein as hereinafter specified, such sum of money in each of said years as shall be sufficient to pay the interest upon the bonds issued by virtue of this act ; and from and after the year eighteen hundred and eighty-five there shall be added to the general tax for the city of Brooklyn at large, and levied and collected as aforesaid, in addition to any amount so required to pay the interest upon said bonds, a sum equal to one-half of one per cent. upon the total amount of bonds which shall have been issued in pursuance of this act ; and from and after the year eighteen hundred and ninety, there shall be in like manner levied and collected in each year, and in addition to the amount required to pay the interest aforesaid, a sum equal to one per cent. upon the total amount of bonds which shall have been issued in pursuance of this act ; and from and after the year eighteen hundred and ninety-five, there shall be in like manner annually levied and collected, in addition to the interest aforesaid, a sum which, together with the amounts above required to be levied and collected, and the accumulations thereof, will, with its accumulations, be adequate to pay and discharge the bonds to be issued under this act by the maturity thereof ; which said several sums shall be from time to time, and in each year, paid over to the Commissioners of the Sinking Fund of the city of Brooklyn, to be held and managed by them, and shall be applied to the payment of the interest upon said bonds as it shall become payable, and to the full and final redemption of said bonds, and for no other purpose. And it shall be the duty of the Mayor and Comptroller of the said city to

estimate and ascertain the amounts required to be so added to the general tax by virtue of this section, and to transmit a statement of the same in each year to the Board of Supervisors of the County of Kings in time to have such amount included in the general tax of said city for that year; and it shall be the duty of said Supervisors to cause such amount to be included in such general tax. And in making the levy of taxes in this section prescribed, the said Supervisors shall so apportion and levy the same as that all sums of money which shall be levied for the purpose of paying principal and interest of the bonds which may have been issued on account of the purchase, improvement and ornamentation of the lands comprising the said Prospect Park, shall be levied and collected exclusively upon and from the taxable property within that portion of said city now composing the first twelve wards thereof.

§ 14. The Commissioners appointed by virtue of section three of this act shall have authority to employ an attorney and surveyors, and to use any map on file or belonging to said city, and to cause such maps to be made as may be necessary; and said Commissioners shall be allowed a compensation of three dollars per day for their time actually employed in discharging their duties as such Commissioners. Before any award or compensation shall be paid for land taken for the park, the Attorney and Counsel for the city of Brooklyn shall certify that the title thereof is free from encumbrances, and that the city will acquire a perfect title thereto. He shall be allowed such reasonable compensation as shall be proper, to be taxed by the County Judge of Kings county, or one of the Justices of the Supreme Court for the Second Judicial District, and the same, together with the compensation of said Commissioners, shall form a part of the general expense. (a)

Attorney and surveyors may be appointed.

§ 15. The said Prospect Park shall be under the exclusive control and management of a Board of Commissioners, to consist of eleven persons, who shall be named and styled "The Commissioners of Prospect Park." A majority of said Board of Commissioners in office for the time being shall constitute a quorum for the transaction of business, and no action of said Board shall be final or binding unless it shall receive the approbation of a majority of the said Board, whose names shall be recorded in its minutes. (b)

§ 16. James S. T. Stranahan, Thomas H. Rodman,

(a) Section 14 amended by § 3, Chap. 409, Laws 1864.

(b) Section 15 amended by § 2, Chap. 599, Laws 1865.

Board of Commissioners of park.

Thomas McElrath, Edwards W. Fiske, R. H. Thompson, Thomas G. Talmage, Stephen Haynes, Cornelius J. Sprague, Joseph A. Perry, Abraham B. Baylis and Conklin Brush are hereby appointed, and shall constitute the first Board of Commissioners of Prospect Park; they shall hold office as such Commissioners for three years from the passage of this act. No member of said Board shall receive any compensation for his services. In case of a vacancy, the same may be filled by the remaining members of the Board for the residue of the term then vacant; and all vacancies occasioned by expiration of the terms of office shall be filled by the Mayor, by and with the advice and consent of at least two-thirds of the Common Council of said city. (a)

Powers of Board.

§ 17. The said Board shall have the full and exclusive power to govern, manage and direct the said park; to lay out and regulate the same; to pass ordinances for the regulation and government thereof; to appoint such engineers, surveyors, clerks and other officers, such police force as may be necessary; to prescribe and define their respective duties and authority; to fix the amount of their compensation; and generally, in regard to said park, they shall possess all the power and authority now by law conferred on or possessed by the Common Council of said city in respect to the public squares and places in said city. (b)

Commissioners not to be directly or indirectly interested in contracts.

§ 18. It shall be a misdemeanor for any Commissioner to be directly or indirectly in any way pecuniarily interested in any contract or work of any kind whatever connected with said park, and it shall be the duty of any Commissioner or other person who may have any knowledge or information of the violation of this provision forthwith to report the same to the Mayor of the city of Brooklyn, who shall present the facts of the case to any Judge of the Supreme Court of the Second Judicial District; such Judge shall hear in a summary manner such Commissioner or other person in relation thereto, and any evidence he may offer, and if after such hearing he shall be satisfied of the truth thereof, and shall so certify to the Mayor, he shall immediately remove the Commissioner thus offending. Every Commissioner shall, before entering upon the duties of his office, take and subscribe the oath prescribed by the constitution of the State, which oath shall be filed in the office of the Clerk of the city of Brooklyn.

§ 19. Said Board of Commissioners shall, in the month

(a) Section 16 amended by § 5, Chap. 409, Laws 1864.

(b) Section 17 amended by § 3, Chap. 599, Laws 1865.

of January of every year, make to the Common Council of said city a full report of their proceedings, and a detailed statement of their receipts and expenditures.

Report of Commissioners.

§ 20. Whenever the city of Brooklyn shall have become vested with the title to said Park, as in this act provided, it shall be lawful for the Commissioners of said park to let, from year to year, any buildings, and the grounds attached thereto, belonging to said city, which may be within the limits of said park, until the same shall be required for the laying out and regulation thereof, when the said buildings shall be removed, except such as may be used for the purposes of said park.

When the city shall be vested with title, buildings may be let, etc.

§ 21. Whenever the said city shall have become vested with the title to said park as aforesaid, said Commissioners may sell any buildings, improvements and other materials, being within the limits of said park, and belonging to said city, which in their judgment shall not be required for the purposes of the said park, or for public use, the proceeds of which shall be deposited with the City Treasurer, to the credit of the Commissioners, and devoted to the improvement of the park.

§ 22. No plan for the laying out, regulation and government of said Prospect Park shall be adopted or undertaken by the Commissioners thereof, of which the entire expense shall exceed the sum of five hundred thousand dollars, nor shall they expend more than ten thousand dollars during either of the years eighteen hundred and sixty-one or eighteen hundred and sixty-two. But the Common Council of the city of Brooklyn may, on the application of said Commissioners, authorize said expenditures to be increased to twenty thousand dollars in either or both of said years, by a vote of not less than two-thirds of the members elected to said Common Council. Bonds shall be issued, sold and disposed of as directed in this act, for the purpose of providing such sums of money as shall be from time to time required by said Board of Commissioners having the government of said park, subject to the limitation in this section prescribed.

Plan for laying out, etc.

§ 23. The money to be raised from the bonds referred to in the preceding section shall be deposited as fast as the same shall be realized with the Treasurer of the city of Brooklyn, who shall keep a separate account of all moneys received by him for the improvement of the said park. He shall hold such moneys on account of and for the purposes of the said improvement, and shall pay them out as provided in this act, and not otherwise. The said Board of Commissioners shall draw their drafts

Money raised on bonds.

upon the said Treasurer, signed by their President and Secretary, for all claims, charges and expenses authorized and incurred by them in performance of their duties under this act, specifying in such drafts the purpose for which they are drawn; and the Treasurer shall pay the same out of said improvement moneys upon the presentation of said drafts. (a)

No debt to be created.

§ 24. None of the said Commissioners, nor any person, whether in the employ of said Commissioners or otherwise, shall have the power to create any debt, obligation, claim or liability for or on account of said Board, or the moneys or property under his control, except with the express authority of said Board, conferred at a meeting thereof duly convened and held.

When office of Commissioner becomes vacant.

§ 25. The office of either of said Commissioners who shall not attend the meetings of the Board for three successive months after having been duly notified of said meetings, without reason therefor satisfactory to said Board, or without leave of absence from said Board, may be, by said Board, declared vacant.

Property may be granted to city, etc., to improve said park.

§ 26. Real and personal property may be granted, devised, bequeathed or conveyed to the said city of Brooklyn for the purpose of improvement or ornamentation of said park, or for the establishment or maintenance, within the limits of said park, of museums, zoological or other gardens, collections of natural history, observatories or works of art, upon such trusts and conditions as may be prescribed by the grantors or donors thereof, and agreed to by the Mayor and Common Council of said city. And all property so devised, granted, bequeathed or conveyed, and the rents, issues, profits and income thereof shall be subject to the exclusive management, direction and control of the Commissioners of the Park.

Ordinances.

§ 27. It shall be lawful for said Board of Commissioners, at any meeting thereof duly convened, to pass such ordinances as they may deem necessary for the regulation, use and government of the park under their charge, not inconsistent with the ordinances and regulations of the city of Brooklyn, or with the provisions of this act. Such ordinances shall, immediately upon their passage, be published for ten days in two daily papers published in said city. (b)

§ 28. All persons offending against such ordinances

(a) Section 23 amended by § 4, Chap. 599, Laws 1865.

(b) Section 27, amended by § 5, Chap. 599, Laws 1865.

shall be deemed guilty of a misdemeanor, and shall be punished on conviction before any court of competent jurisdiction in the county of Kings, by a fine not exceeding fifty dollars; and in default of payment by imprisonment not exceeding "thirty days."

§ 29. All acts and parts of acts inconsistent with this amended act are hereby repealed.

§ 30. This act shall take effect immediately.

CHAPTER 409.

AN ACT to amend an act passed May second, eighteen hundred sixty-one, entitled, "An Act to amend an act entitled, 'An Act to lay out a public park and a parade ground for the city of Brooklyn, and to alter the Commissioners' map of said city,' passed April seventeenth, eighteen hundred and sixty."

Passed April 28th, 1864, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION. 1. Section five of the act passed May second, eighteen hundred sixty-one, entitled, "An Act to amend an act entitled, 'An act to lay out a public park and a parade ground for the city of Brooklyn, and to alter the Commissioners' map of said city,' passed April seventeenth, eighteen hundred sixty," is hereby amended so as to read as follows :

Estimate of value of lands.

§ 5. The said Commissioners shall make a just and true estimate of the value of the lands mentioned in the first section of this act, and of the loss and damage to the respective owners, lessees, parties and persons respectively entitled unto or interested in the same, together with the tenements, hereditaments and appurtenances, privileges or advantages to the same, belonging or in any wise appertaining by and in consequence of relinquishing the same to the said city of Brooklyn ; and in making such estimate they shall not make any deduction or allowance for or on account of any supposed benefits or advantages to be derived from taking said lands as public places, or in consequence thereof, and the amounts so estimated, when duly confirmed, shall be paid as hereinafter in this act provided. But after the cost of the said lands shall have been determined by the confirmation of the final report in relation thereto, it shall be the duty of the said Commissioners to apportion such part of said costs as they may deem equitable, upon any lands in the western district of said city, outside of said park, which they shall deem to be specially benefited thereby, in proportion to such benefit ; and whenever their report in relation to such apportionment shall be completed, they shall file the same with the Clerk of King's County, and thereupon proceedings may be had to correct and confirm the same, as in this act is provided ;

No allowance for benefit.

Apportionment of cost.

Filing of report and action thereon.

and after the confirmation of any final report of said Commissioners making such apportionment, said assessment shall be a lien upon said lands. The one-twentieth part of the amount thus apportioned shall, with interest, be chargeable annually upon the lands so assessed, for benefit, and shall be included annually in the taxes to be levied thereon, and shall be levied and collected like other taxes upon property, and the proceeds thereof shall be paid over to the Commissioners of the Sinking Fund of said city, to be by them applied to the redemption of the bonds of said city, to be issued by virtue of this act; but any person interested in the land so assessed may at any time pay the whole amount due thereupon, with interest, to the said Commissioners of the Sinking Fund, to be by them applied in the manner hereinbefore mentioned; and from and after such payment the lien hereinbefore created shall cease.

Collection of assessments.

§ 2. Section ten of said act is hereby amended by inserting immediately after the words "For the purpose of paying for the land mentioned in the first section of this act," the words, "And for the services of the said Commissioners and expenses of the attorney and counsel, surveyor, appraisers and clerk of said Commissioners, appointed by virtue of section three of this act, and of stationery and room hire."

Fees and expenses.

§ 3. Section fourteen of the said act is hereby amended so as to read as follows: The Commissioners appointed by virtue of section three of this act shall have authority to employ an attorney, surveyor, clerk and appraisers, and to use any map on file or belonging to said city, and to cause such maps to be made as may be necessary, and said Commissioners shall each be allowed a compensation of five dollars per day for the time actually employed in discharging their duties as such Commissioners. Before any award or compensation shall be paid for land taken for the park, the attorney and counsel for the city of Brooklyn shall certify that the title thereof is free from incumbrances, and that the city will acquire a perfect title thereto. He shall be allowed such reasonable compensation as shall be proper, to be taxed by the Supreme Court of the Second Judicial District, at a special term thereof, and the same, together with the compensation of said Commissioners, and of their employees aforesaid, and expenses for stationery and room hire, shall form a part of the general expense.

Commissioners may employ assistance.

Lands purchased must be unencumbered.

§ 4. Before the report of the said Commissioners of estimate and assessment shall be presented for confirmation or confirmed, the said Commissioners shall cause a notice to be published in the corporation news-

Notice to be published.

Appeals of ag-
grieved persons.

papers of said city for twenty days, that they have completed their report, and that they will meet at a time and place in the city of Brooklyn, to be designated in such notice, for the purpose of hearing objections thereto. Any person aggrieved by said report shall have the right to appear at such hearing, and the said Commissioners shall have the power to review and reconsider their said report, and to correct the same in any particular thereof which they may deem proper before the said report shall be presented for confirmation.

Commissioners.

Appointments
to fill vacan-
cies.

§ 5. Section sixteen of said act is hereby amended so as to read as follows: James S. T. Stranahan, Thomas McElrath, Edward W. Fiske, Richard H. Thompson, Cornelius J. Sprague, Joseph A. Perry, Abraham B. Baylis, Conklin Brush, Walter S. Griffith, Seymour L. Husted, Stephen Haynes and Teunis J. Bergen are hereby appointed and shall constitute the Board of Commissioners of Prospect Park, to hold office as such Commissioners for five years from and after the second day of May, eighteen hundred and sixty-four, and until their successors shall be appointed and duly qualified. No member of said Board shall receive any compensation for his services. In case of a vacancy the same may be filled by the remaining members of the Board for the residue of the term then vacant, and all vacancies occasioned by the expiration of the terms of office shall be filled by the Mayor, by and with the advice and consent of at least two-thirds of the Common Council of said city.

CHAPTER 599.

AN ACT to amend an act passed May second, eighteen hundred and sixty-one, entitled, "An Act to amend an Act entitled, 'An Act to lay out a public park and parade ground for the city of Brooklyn,' and to alter the Commissioners' map of said city," passed April seventeenth, eighteen hundred and sixty."

Passed April 28, 1865 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The eighth section of the act passed May second, eighteen hundred and sixty-one, entitled, "An Act to amend an Act entitled, 'An Act to lay out a public park and parade ground for the city of Brooklyn,' and to alter the Commissioners' map of said city," passed April seventeenth, eighteen hundred and sixty," is hereby amended so as to read as follows : "All such proceedings as are provided for in the fifth section of an act entitled, 'An Act to provide for the opening of Washington Park or Fort Greene, in the city of Brooklyn,'" passed April twenty-seventh, eighteen hundred and forty-seven," shall be had for the confirmation of said report, and for the revision and correction thereof, until a report shall be made or returned in the premises which the Court shall confirm; and every such report, when confirmed by the said Court shall be filed in the office of the Clerk of the County of Kings, and shall be final and conclusive upon the city of Brooklyn, and upon the owners of, and persons interested in, the lands and premises mentioned in said report, and upon all other persons whomsoever. And upon the confirmation of any such report, the title to the lands and premises therein described shall vest absolutely and forever in the said city of Brooklyn.

Amendment of former act.

§ 2. Section fifteen of the said act is hereby amended so as to read as follows : "The said park shall be under the exclusive control and management of a Board of Commissioners, to consist of not less than seven nor more than twelve persons, who shall be named 'The Commissioners of Prospect Park,' and a majority of the persons composing the said Board in office for the time being shall constitute a quorum for the transaction of business."

Park to be under control of Commissioners of Prospect Park.

Quorum.

Powers of
Board.

§ 3. Section seventeen of the said act is hereby amended so as to read as follows: The said Board shall have the full and exclusive power to govern, manage and direct the said park, and the public use thereof; to lay out and regulate the same; to pass ordinances for the regulation and government thereof; to appoint such engineers, surveyors, clerks, and other officers, and such police force as may be necessary; to prescribe and define their respective duties and authority, and to fix the amount of their compensation; and generally in regard to the said park, they shall possess all the power and authority by law conferred on or possessed by the Common Council of said city, in respect to the public squares and places in said city. And they shall also in the name of the said city, or in the name of the said Board of Commissioners at their option, bring any action which they may deem proper to recover damages for the breach of any agreement, express or implied, relating to or growing out of the management or improvement of the said park; for penalties for the violation of any of their ordinances; for injuries to personal or real property appertaining to the said park, and also to recover the possession of any such property.

Where moneys
raised from
bonds to be
deposited.

§ 4. Section twenty-three of the said act is hereby amended so as to read as follows: The money to be raised from the bonds referred to in the last preceding section shall be deposited, as fast as the same shall be realized, with the Treasurer of the city of Brooklyn, who shall keep a separate account of all moneys received by him for the improvement of the said park. He shall hold such moneys on account of and for the purposes of the said improvement, and shall pay them out as provided in this act, and not otherwise. The said Board of Commissioners shall draw their drafts upon the Comptroller of the city, signed by their president and secretary, for all claims, charges and expenses to be authorized or incurred by them in the performance of their duties under this act, specifying in such drafts the purposes for which they are drawn; and the Treasurer shall pay the same out of the said improvement moneys on the draft of the Comptroller, countersigned by the Mayor and City Clerk.

Publication of
ordinances.

§ 5. Section twenty-seven of the said act is hereby amended so as to read as follows: All ordinances which the said Board shall at any time pass for the regulation, use or management of the said park shall immediately after their passage be published for at least ten days in two daily newspapers printed in the city of Brooklyn.

§ 6. This act shall take effect immediately.

CHAPTER 603.

AN ACT to change the boundaries of Prospect Park, in
in the city of Brooklyn.

Passed April 28, 1865, three-fifths being present.

*The People of the State of New York, represented in Senate
and Assembly, do enact as follows :*

SECTION 1. The Commissioners of Prospect Park in the city of Brooklyn, are hereby authorized, for and in behalf of the said city and for the purposes hereinafter mentioned, to acquire the title to all that certain piece or parcel of land in said city, commencing on the northwesterly side of Flatbush avenue at its intersection with the southerly side of Douglass street, and running thence southerly and southeasterly on a line forming an arc of a circle of eight hundred and thirty feet radius to a point on the westerly side of the Ninth avenue, which is distant twenty-nine feet southerly from the intersection of said westerly side of Ninth avenue with the southerly side of Union street; thence northerly along the Ninth avenue to Flatbush avenue, and thence northwesterly along Flatbush avenue to the place of beginning; and also all that other piece or parcel of land beginning at a point on the northeasterly side of Flatbush avenue, which is distant thirty-five feet northwesterly from its intersection with the northeasterly side of Douglass street, and running thence easterly on a line forming an arc of a circle of three hundred and eight feet radius to a point on the northwesterly side of Vanderbilt avenue which is distant one hundred and four feet southerly from its intersection with the southerly side of Butler street; thence southerly along Vanderbilt avenue to its intersection with Flatbush avenue, and thence northwesterly along Flatbush avenue to the place of beginning.

Commissioners
to acquire cer-
tain land.
(Plaza.)

Description of
land.

§ 2. The lands described in the preceding section of this act, as well as all the other lands mentioned or referred to in an act passed April twenty-seventh, eighteen hundred and sixty-one, entitled, "An Act to amend an act entitled, 'An Act to lay out a public park and a parade ground for the city of Brooklyn,' and to alter the Commissioners' map of the said city," passed May second, eighteen hundred and sixty, with the streets and avenues intersecting the same, except Flatbush avenue, shall, from and after the passage of this act, be deemed to have been taken by the said city

Lands to be a
public park;
alteration of
map.

as and for a public park, and the Commissioners' map of the said city shall be altered to correspond therewith.

Commissioners of Estimate; duties, powers and pay.

§ 3. The said Commissioners may apply to the Supreme Court, in the Second Judicial District, for the appointment of five Commissioners of Estimate and Assessment relating to the lands and premises herein described and referred to, and the court shall thereupon proceed as directed by the act referred to in the last preceding section. The Commissioners so to be appointed shall estimate the value of the lands and premises to be taken under this act, and also all the estate, right, title and interest in all other lands heretofore taken by the said act of eighteen hundred and sixty-one remaining in the owners thereof, and the loss and damages to be sustained by them in consequence of their relinquishing the same to the city, and shall assess the same as directed by the said act, and they shall have the same powers and authority in the premises as are conferred by the act hereby amended, upon the Commissioners mentioned in the third section of the act hereby amended, in relation to the lands and premises therein mentioned. The Commissioners to be appointed by virtue of this act shall each be allowed five dollars a day for each day actually spent by them in discharging their duties as such Commissioners. The Board of Commissioners authorized by section sixteen of the act hereby amended shall have authority to employ an attorney and surveyor for the purposes of this act, and it shall not be necessary for the attorney and counsel of the city of Brooklyn to certify the title of the land taken under this act, but the compensation to be awarded for such land shall be paid upon the certificate of the counsel of the said Board of Commissioners. The Commissioners to be appointed under this act shall use the maps, abstracts of title, reports and other documents made under the act hereby amended, to assist them in the performance of their duties, and the same are hereby placed at their disposal for such purpose, and in order to avoid unnecessary expense.

Attorney and surveyor.

Taxation for expenses.

§ 4. No expenses, fees or compensation shall be allowed under this act unless the same shall have been duly taxed as herein provided; and for the purpose of such taxation the said Commissioners shall first certify and return to the court to which their report shall be presented for confirmation the several items thereof, and the amount incurred by them respectively, as well as by the said attorney and counsel; and they shall, at the same time, give notice in the corporation newspapers for ten days of their intention to present the same for taxation to the

said court, at a special term thereof to be therein designated, and to be held in the county of Kings. Any taxpayer of the city of Brooklyn may appear upon such taxation and show cause why the said expenses, fees or compensation, or any portion thereof, should not be allowed; and it shall be the duty of the court to examine the several items thereof, and to tax and adjust the same for such amount as in its judgment shall be just and reasonable.

§ 5. The payment of all damages to be awarded by the said Commissioners of Estimate and Assessment, as well as the expenses of their proceedings, shall become due and payable immediately after the confirmation of their report thereupon. And the title of the lands mentioned in such report shall, after such confirmation, vest forever in fee simple absolute in the said city of Brooklyn, and the said lands shall thenceforth form part of Prospect Park, and be under the exclusive management and control of the Board of Commissioners of Prospect Park in the same manner and to the same extent as the other portion of the said park now are or may at any time be under the management and control of the said Board.

When damages to be due and paid.

§ 6. For the payment of the award so to be made by the said Commissioners of Estimate and Assessment, and for the payment of their compensation and that of their employees and their expenses for stationery and room hire, as well as for the expenses of managing and improving the land hereby taken, the bonds of the said city shall from time to time be issued. And for the redemption of the said bonds, as well as for the redemption of the bonds issued and to be issued under the provisions of the act referred to in the second section of this act, with interest, all the lands embraced within the boundaries of the said park, including those now taken, are hereby specifically pledged.

City bonds to be issued for awards, etc.

§ 7. All the provisions of the act referred to in the second section of this act, and of any act amendatory thereof, relating to the issue, use and sale of bonds, and the redemption thereof, as well as in relation to the taking and paying for the lands and premises hereinbefore referred to, and the duties, powers and authority of the Commissioners of Estimate and Assessment, and their appointment and proceeding, including the confirmation of their report by the Supreme Court, which are not incompatible with the provisions of this act, shall apply to all bonds that may be issued, and to all proceedings, powers and authority that may be taken or exercised under this act.

§ 8. This act shall take effect immediately.

CHAPTER 852.

AN ACT to provide a parade ground for the County of Kings.

Passed April 28, 1866, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :

Boundaries of
parade ground.

SECTION 1. The land in the town of Flatbush, in the County of Kings, bounded on the north by Franklin avenue, on the south by lands now or late of David Clarkson, the west by the Coney Island plank road, and on the east by a line running from and at right angles to Franklin avenue southerly to said Clarkson's line, which shall be the easterly boundary of a tract of forty acres, are hereby set apart as a parade ground for the County of Kings, and declared to be a public place, and shall be taken and paid for in the manner hereinafter provided.

Commissioners
of Estimate.

§ 2. Three competent and disinterested persons, being citizens of the State of New York, shall be appointed to act as Commissioners of Estimate in relation to the taking and value of the lands mentioned in the first section of this act. The said Commissioners shall be appointed by the Supreme Court of the Second Judicial District of this State, at special term, upon the application of the Board of Supervisors of the said County of Kings, or owner of lands within said parade ground. The proceedings in Court upon such application, and for the appointment of new or other Commissioners, and for confirmation of said report, shall be conducted in the manner provided by the act entitled, "An Act to provide for the opening of Washington Park on Fort Greene in the city of Brooklyn," passed April twenty-seventh, eighteen hundred and forty-seven, except that such proceedings and all proceedings required to be had in Court by said act shall be had in the said Supreme Court; and said Supreme Court may fill any vacancy arising in said Commission.

How to be ap-
pointed.

Oath of office.

§ 3. The said Commissioners shall respectively take and subscribe an oath in writing before some office authorized to administer oaths, to honestly and faithfully discharge the duties which shall devolve upon them in pursuance of this act, which oath shall be filed in the

office of The Clerk of the County of Kings. The said Commissioners shall proceed to make just and true estimate of the value of the lands described in the first section of this act, and the loss and damage to the persons entitled thereto as owners or as otherwise interested in the lands, in consequence of relinquishing the same to the County of Kings; and shall make report of their doings to the said Supreme Court in the manner hereafter provided, and such report and all acts of said Commissioners shall be valid, if done and subscribed by a majority of the said Commissioners.

Duties.

§ 4. The report of the said Commissioners shall be filed in the office of the Clerk of the County of Kings, and notice thereof shall be published by said Commissioners for twenty days in at least two daily newspapers published in said county, and said Supervisors, or any person interested in said lands so to be taken, or any tax payer of said county, may move the said Supreme Court for a confirmation of said report, in the manner provided herein and by the said act to provide for the opening of said Washington Park, and thereupon such proceedings shall be had for the confirmation of said report or for its revision and correction, and in respect to a new or other report as directed by said act; and when the said report or any corrected or revised report shall be confirmed by the said court, the titles to the said lands described in the first section of this act shall vest in the said County of Kings as a parade ground; and such report and the order of confirmation shall be filed and entered in the office of the Clerk of the County of Kings, and shall be final and conclusive upon all parties interested in said lands and upon the said County of Kings.

Report, confirmation of report.

§ 5. Upon such confirmation the value of the lands so taken and the amount of compensation so estimated and awarded by the Commissioners to the owners thereof and other persons interested therein, and the expenses of such taking and opening shall be paid by the County of Kings to the parties thereto respectively entitled; and for the purpose of making such payments the said county may issue and dispose of its bonds to such amount as may be necessary, and in such form and manner as the Supervisors thereof may direct. And for the purpose aforesaid the said Board of Supervisors may levy, impose and collect such tax or taxes as may be necessary or proper.

Value of lands taken, by whom and in what mode to be paid.

§ 6. The fees of said Commissioners shall be three dollars per day for each Commissioner for each day actually and necessarily employed, and not to exceed for the three Commissioners the sum of two hundred dol-

Fees of Commissioners and expenses.

lars; and the said Commissioners may employ a surveyor to make a map, or a copy of a map, of said lands to be taken, and may cause searches to be made to ascertain the interests of persons who are entitled to awards for said lands; and may employ counsel to advise them, and to conduct such searches; but the whole cost of such searches and advice, exclusive of the fees of the register for searches, shall not exceed the sum of two hundred dollars; and the fees of such counsel, Commissioners, surveyor and register shall be taxed by the County Judge of said county upon due notice to the Board of Supervisors, and shall, when taxed and allowed, form a part of the expenses of said proceedings.

Who to have
charge of
ground.

§ 7. The said lands, when so taken, shall be the property of said county as and for a parade ground, but shall be under the exclusive charge and management of the Commissioners of Prospect Park in the city of Brooklyn, for the purposes of police and improvement as such parade ground.

§ 8. This act shall take effect immediately.

CHAPTER 853.

AN ACT to extend the boundaries of Prospect Park, in the city of Brooklyn.

Passed April 30, 1866, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Board of Commissioners of Prospect Park, in the city of Brooklyn, is hereby authorized, for and in behalf of the said city, to acquire title to all those certain pieces or parcels of land, situated partly in the said city and partly in the town of Flatbush, beginning at the easterly corner of the Tenth avenue and Ninth street, and running thence southwesterly along Tenth avenue to Fifteenth street ; thence southeasterly along the northeasterly side or line of Fifteenth street, to a point distant one hundred and sixty-one feet and ten inches northwesterly from the intersection of the said line with a line made by extending the easterly side of the Coney Island road as now laid out between Franklin avenue, in the town of Flatbush so-called, and Braxton street, northward ; thence southerly upon a curved line of three hundred and ninety feet radius to a point on said curve at which it coincides with and becomes a tangent to the said easterly line of the Coney Island road extended as aforesaid ; thence southerly on said extended line to a point in the circumference of a circle of one hundred and ten feet radius, of which the center rests upon the middle line of Sixteenth street at a point distant twenty-seven feet six inches westerly from and at right angles to said extended line ; thence westerly and following the circumference of said circle until it again intersects the said extended line ; thence southerly upon said extended line and along the said easterly side of said Coney Island road to a point distant two hundred and seventy feet and three inches northerly from the present northeast corner of said road and Franklin avenue ; thence westerly upon the circumference of a circle of two hundred and forty-five feet radius, having its center at a point in said Coney Island road, which is distant twenty-seven feet and six inches westerly at right angles from the easterly side of said road, and following said circumference to its intersection with the northerly line of Franklin avenue ; thence easterly along said avenue to the plank road in the village of Flatbush ; thence northerly on the westerly line

Powers of Board of Commissioners to acquire title.

Boundaries.

Reservation.

of said plank road twenty feet; thence westerly and parallel with Franklin avenue six hundred and fifty feet; thence northerly in a direct line to a point which is distant twenty feet westerly at right angles from the northwest corner of a workshop standing on the boundary line of the lands of Cornelia A. Willink, deceased, and Elizabeth Ludlow, and the lands of John Lott, deceased; thence again northerly in continuation of said direct line until it meets a line drawn westerly at right angles to Flatbush avenue from a point on the westerly side of said avenue, which is distant six hundred feet southerly from the intersection of said avenue with the southerly boundary of said park; thence easterly on said right-angled line to Flatbush avenue; thence northerly along said avenue to the southeasterly boundary of said park; thence southwesterly along the southeasterly line of said park to the southwesterly corner thereof; thence northwesterly along the southwesterly side of said park to the Tenth avenue, at the place of beginning. Excepting and reserving out of the above described lands and premises all those certain pieces or parcels of land now occupied by the religious societies of Friends for a cemetery, bounded and described as follows: Beginning at a point in the central line of the Eleventh avenue, which is distant one hundred and twenty-five feet northeasterly from the intersection of said central line with the northeasterly side or line of Fourteenth street, running thence northeasterly along said central line of said avenue five hundred and six feet and eleven inches; thence southeasterly to a point on the northwesterly side of the Coney Island plank road, which is distant two feet and nine inches southwesterly from Eleventh street; thence southwesterly and parallel to Eleventh avenue to a point which is distant one hundred and twenty-five feet northeasterly from Fourteenth street, and thence northerly parallel to Fourteenth street to the place of beginning.

Foregoing lands to be a public place.

§ 2. The lands described in the last preceding section of this act (omitting the reservation therein contained) are hereby declared to be a public place, and shall be deemed to have been taken by the said city of Brooklyn, and to have been opened for public use as an additional part of Prospect Park; and from and after the passage of this act the said lands shall be annexed to, and shall form a part of the said city, and of the Commissioners' map of the said city, and shall be laid down upon said map as if the same had been taken and declared open as a park, pursuant to the provisions of the act entitled, "An Act to revise and amend the several acts relating to the city of Brooklyn," passed April fourth, one thousand eight hundred and fifty; and all streets,

avenues, and highways intersecting the said lands, or any parts thereof, except Ninth avenue and Fifteenth street and the Coney Island road, are hereby closed and discontinued, and are stricken from the said Commissioners' map, so far as they run through or intersect the said lands; and Fifteenth street is hereby extended at its present width southeasterly, parallel with the southwesterly boundary of the said park, through the hereinbefore described circle, having a radius of one hundred and ten feet, until the said street meets Coney Island road, and shall be so laid down on the said map.

§ 3. Whenever the right of the said Board of Commissioners to enter upon that portion of the property of the said society of Friends hereby authorized to be taken shall be perfected, the said Commissioners shall provide and open a suitable and sufficiently commodious passageway, at least twenty feet wide, from Fifteenth street to the said cemetery, for the common use of all the societies of Friends occupying the same, so long as they shall continue to use it as a cemetery; and no assessment for benefit, hereinafter directed to be made, shall be levied or collected upon the residue of the property now used as a cemetery; so long as the said ground shall continue to be a cemetery or place of interment. The said Board of Commissioners may at any time agree with the said societies of Friends for the purchase of the said property, or any part thereof, and the valuation of the same, with the damages the said Friends may sustain by reason of their removal therefrom; and upon such contract being reported to the Comptroller by the said Board, with a proper certificate of their counsel as to title, the Comptroller is hereby authorized to pay the same, and may issue such additional bonds as may be necessary to complete the purchase thereof, in the same way and subject to the same redemption as other bonds directed to be issued under this act. And whenever the said purchase shall be completed and the property conveyed to the city, any assessment that may have been laid thereon by Commissioners of Estimate and Assessment under this act shall be canceled, and the said property shall become a portion of Prospect Park, and be under the exclusive control and management of the Board of Commissioners, in the same way and to the same extent as other portions of the said park now are or may at any time be.

Commissioners
to open passage-
way to the cem-
etery used by
the Societies of
Friends.

§ 4. The Coney Island and Brooklyn Railway Company is hereby directed to remove its railway tracks from Fifteenth street, and is authorized and directed to lay such tracks upon Sixteenth street, or upon Braxton street, or upon both said streets, at its option, and to

Removal of
railway tracks.

continue said tracks through said streets to Ninth avenue; thence through said avenue to Fifteenth street; thence through Fifteenth street to Sixth avenue, and thence through said avenue to Ninth street, and also through Ninth street, and also through Ninth avenue from Ninth street to Braxton street, and to operate their road and run their cars over the same. Braxton street and Sixteenth street and Sixth avenue and Ninth avenue shall be opened and graded so far as may be necessary for the purposes of said railroad, whenever the said railroad company shall make application therefor to the proper authorities; and the grade of Braxton street is established as follows, that is to say: One hundred and fifty feet above high water mark at Ninth avenue; one hundred and thirty-two feet at Tenth avenue; one hundred and fifteen feet and six inches at Eleventh avenue; and ninety-eight feet at the City Line, at its junction with the Coney Island road.

Applications to
Supreme Court
for appointment
of Commissioners
of Estimate.

§ 5. The said Board of Commissioners may apply to the Supreme Court in the Second Judicial District for the appointment of five Commissioners of Estimate and Assessment, relating to the lands and premises hereby authorized to be taken, and the court shall thereupon proceed as directed by an act passed May second, eighteen hundred and sixty-one, entitled, "An Act to amend an act entitled, 'An Act to lay out a public park and parade ground for the city of Brooklyn, and to alter the Commissioners' map of the said city,' passed April seventeenth, one thousand eight hundred and sixty." The Commissioners so to be appointed shall estimate the value of the lands and premises required to be taken by this act, and the loss and damage to be sustained by the owners and other persons interested therein in consequence of their relinquishing the same to the city; and after their report thereon shall have been confirmed by the court, they shall apportion such part thereof, together with such part of the amount of the several awards, with the expenses heretofore reported to and confirmed by the said court for lands heretofore taken for said park, as they may deem equitable, upon any lands in said city specially benefited thereby in proportion to such benefit. The one-twentieth part of the amount thus apportioned for benefit shall be annually assessed upon the particular lands chargeable therewith, as designated in the report of the said Commissioners, and shall be annually included in the taxes to be levied thereon, and shall be levied and collected like other taxes upon property in the said city. The proceeds of such collections shall be paid to the Commissioners of the Sinking Fund of said city, to be applied to the redemption of all bonds issued and to be issued for the purchase and im-

Estimation of
value of lands.

provement of lands taken and to be taken for the said park.

§ 6. The Commissioners of Estimate and Assessment appointed under the act mentioned in the last preceding section of this act, as well as those appointed under an act entitled, "An Act to change the boundaries of Prospect Park, in the city of Brooklyn," passed April twenty-eighth, one thousand eight hundred and sixty-five, are hereby discharged from the performance of all further duties under those acts; and all services, acts and duties which are thereby directed to be done and performed by the said Commissioners, and which yet remain unperformed in relation to assessing damages, or otherwise, are hereby devolved upon and shall be performed by the Commissioners who are to be appointed under this act. The expenses, fees and compensation which the said several Commissioners and their employees may be entitled to receive in pursuance of the said several acts, and not yet received by them, shall be added to and be paid as a part of the general expenses incurred and to be incurred for the opening of the said park; and the Comptroller of the said city is hereby directed to pay the same out of the Prospect Park Fund in his hands, as soon as the same can be properly taxed as hereinafter provided, and certified by the Counsel of the Board of Park Commissioners; and for this purpose and to this extent he is authorized to increase the issue of park bonds under the act last above-mentioned, if necessary.

Discharge of
Commissioners
of Estimate.

§ 7. The Commissioners of Estimate and Assessment who are to be appointed in pursuance of this act shall have all the powers and authorities,* and shall be entitled to the same compensation that is conferred upon or allowed to the Commissioners referred to in the several acts last above mentioned, and any act amendatory thereof. And the Board of Commissioners of Prospect Park may employ an attorney and surveyor for the purposes of this act, whose compensation shall be included in the general expenses to be incurred under this act; and the awards for lands to be taken pursuant to this act shall be payable upon the certificate of the counsel of the said Board.

Their powers
and compensa-
tion.

§ 8. No expenses, fees or compensation shall be allowed under this act, unless the same shall have been duly taxed as herein provided, and for the purpose of such taxation the said Commissioners shall return to the said court the several items thereof, and the amount incurred by them respectively, as well as by the said attorney and counsel. They shall at the same time give notice in two of the daily newspapers published in

Provisions for
allowance of
fees, etc.

*So the in original.

the city of Brooklyn, for ten days successively, of their intention to present the same to the said court for taxation at a special term thereof to be therein designated. And any taxpayer of the said city may appear upon such taxation and show cause why the said expenses, fees or compensation, or any portion thereof, shall not be allowed ; and it shall be the duty of the court to examine the several items thereof, and to tax and adjust the same for such amount as in its judgment shall be just and reasonable.

Payment of damages.

§ 9. The payment of all damages to be awarded by the said Commissioners of Estimate and Assessment, as well as the general expenses authorized to be paid by this act, shall become due and payable immediately after the confirmation of their report thereupon. And the title of the lands mentioned or referred to in their report upon valuation shall, immediately after the confirmation thereof by the said court, vest forever in fee simple absolute in the city of Brooklyn, and the said lands shall thenceforth form a part of Prospect Park, and be under the exclusive management and control of the said Board of Commissioners, in the same manner and to the same extent as the other portions of the said park now are or may at any time be under the management or control of the said Board.

Payment of awards.

§ 10. For the payment of awards so to be made by the said Commissioners, and for the payment of the said general expenses, fees and compensation, as well as for the payment of the expenses of managing and improving the said park, the bonds of the city shall from time to time be issued in the manner directed by the act referred to in the fifth section of this act; and such bonds, and also all other bonds which may hereafter be issued under the provisions of the two several acts mentioned or referred to in the fifth and sixth sections of this act, may bear an interest not exceeding seven per cent. per annum, payable semi-annually. And for the redemption of the said bonds, as well as for the redemption of the bonds issued and to be issued under the provisions of the said acts, with interest, all lands embraced within the boundaries of the said park, including those taken under this act, are hereby specifically pledged.

Issue of bonds.

§ 11. All the provisions of the act referred to in the fifth section of this act, and of any act amendatory thereof relating to the issue, use and sale of bonds, and the redemption thereof, with the interest to accrue thereon, as well as in relation to the taking and paying for the lands and premises referred to in this act, and the duties, powers and authority of the said Board of

Commissioners, as well as of the said Commissioners of Estimate and Assessment, and their appointment and proceedings, including the confirmation of their reports by the Supreme Court, which are not incompatible with the provisions of this act, shall apply to all bonds that may be issued, and to all proceedings, powers and authority that may be taken or exercised under this act.

§ 12. This act shall take effect immediately.

CHAPTER 848.

AN ACT in relation to parks in the city of Brooklyn.

Passed May 9, 1867, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Certain parks, etc., to be under control of Commissioners of Prospect Park.

SECTION 1. The several pieces and parcels of grounds, parks and squares in the city of Brooklyn, and the sidewalks, fences and trees adjacent thereto, and being between any part of the same, and any public street or avenue, or the part thereof devoted to carriages, hereinafter mentioned, shall hereafter be under the care and management and control of the Commissioners of the Prospect Park as fully and completely (with the qualifications or exceptions hereinafter mentioned) as the Prospect Park of said city is, or may hereafter be, under their control, care and management. And it shall be the duty of said Commissioners to take the care and control of, and put and preserve in the proper condition or repair, said grounds, parks, squares, sidewalks and fences; to plant and preserve therein or thereon, where appropriate, suitable trees, plants and shrubbery, and to make and keep in repair suitable fences, gates, seats, fountains, roads and walks and other structures in or around said grounds, parks and squares, and to establish reasonable and appropriate regulations to be enforced and observed in and in respect to the entry upon and preservation of any of said grounds, parks or squares and sidewalks, and anything therein or thereon; and the power and authority of the Mayor and Common Council of the city of Brooklyn to make ordinances or by-laws in respect to said grounds, parks and squares are hereby conferred on said Commissioners of the Prospect Park, and said power and authority may be exercised in making such regulations, and when the same are duly certified by the Secretary of said Commissioners, the same shall be treated as *prima facie* correct, legal and authorized, in all judicial proceedings; and the Board of Commissioners of Metropolitan Police shall, at the request of said Commissioners of the Prospect Park, so far as may be within the power and sphere of duty of the Police Board, enforce and execute all such regulations.

§ 2. The grounds, parks and squares aforesaid are the following, as now known and designated, and their

appurtenances, viz.: "Washington Park," "City Hall Park," "City Park" and "Carroll Park." And the power and authority of said Commissioners of Prospect Park shall extend to and include the fencing, care and preservation of all public monuments and the grounds about them, and the trees and shrubs therein; and the keeping, unobstructed and unincumbered, of the appropriate spaces adjacent to any monument. And, in reference to each and all said grounds, parks and squares, said Commissioners are clothed with all the powers relating to the care and custody thereof, and the erections thereon, and the sidewalks, and the curbstones and flagging of the same thereto adjacent, and fencing and repairing, and ornamenting and preserving order and propriety in the same, which now belongs to any officer, board, body or other authority, except that nothing herein contained shall interfere with any powers, rights or authority belonging to the Board of Commissioners of Metropolitan Police, or to the Metropolitan Board of Health, or with any rights that may belong to the State of New York. And in the exercise of the power and authority and the discharge of the duty hereby conferred upon said Commissioners of the Prospect Park, they shall be subject only to the conditions that pertain to like powers and duties when given or imposed on them, or exercised by them relative to the Prospect Park. And all sums of money raised, or hereafter to be raised, for the purpose of any of the grounds, parks or squares, shall be promptly raised, and paid over to said Commissioners of the Prospect Park.

§ 3. Authority and power are hereby given to said Commissioners of the Prospect Park, to plant such trees and shrubbery as they may deem expedient, and may not be unreasonably expensive, in and upon any public grounds, parks or squares aforesaid; and they may replace and take care of all such trees, plants and shrubbery. It shall also be the duty of said Commissioners to take immediate steps toward erecting a good and substantial new iron railing, with a stone foundation, of such style and description as they may deem suitable and proper, completely around the north, east and south side of said Washington Park, so that the said railing shall be completed before the first day of January, eighteen hundred and sixty-eight.

Planting of trees and erection of iron railing.

§ 4. In each annual report of said Commissioners they shall include a detailed report of all moneys expended upon or adjacent to each of said grounds, squares and parks, and for each and all the objects of this act, and of all acts done hereunder, and shall suggest any further legislation needed to promote any of said objects.

Annual report.

Raising of
moneys annual-
ly for purposes
of this act.

§ 5. The joint Board of Aldermen and Supervisors of the city of Brooklyn, shall annually cause to be levied and raised, the requisite amount of moneys for carrying this act into effect, and for the purposes thereof, and said moneys shall be promptly and regularly paid over to said Commissioners for said purposes; and, in the meantime, until such moneys shall be raised, the Mayor, Comptroller, and City Clerk of the city of Brooklyn, shall from time to time, as may be required by the said Commissioners, issue certificates of indebtedness, bearing interest, for such sums as may be required for said Commissioners, and which said certificates shall be provided for in the annual tax levy for the year eighteen hundred and sixty-eight.

NOTE.—As to the improvement and control of the public parks in the "Brooklyn Heights," see Chapter 644, Law of 1866, Chapter 8, Laws 1867 and Chapter 728, Laws 1868.

CHAPTER 314

AN ACT for the further extension of Prospect Park in the city of Brooklyn.

Passed April 24, 1868, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Commissioners of Prospect Park in the city of Brooklyn are hereby authorized for and in behalf of the said city, to acquire title to all those certain lots, pieces or parcels of land in said city, which, taken together, are described as follows: Beginning at the easterly corner of Ninth avenue and Third street and running thence southwesterly along Ninth avenue to a point between Fourteenth and Fifteenth street, which is upon the circumference of a circle of one hundred and fifty-four feet radius, of which the centre is at the intersection of the middle line of Ninth avenue with the middle line of Fifteenth street; thence westerly and again easterly following said circumference for more than three-fourths of said circle, to its intersection with the northeasterly side of Fifteenth street; thence southeasterly along said northeasterly side of Fifteenth street to the easterly corner of Tenth avenue and Fifteenth street; thence northeasterly along Tenth avenue and also along said park to the northeasterly side of Third street; and thence northwesterly along said street to Ninth avenue at the place of beginning.

Description of lands to be acquired.

§ 2. The lands described in the last preceding section of this act are hereby declared to be a public place, and shall be deemed to have been taken by the city of Brooklyn, and to have been opened for public use, as an additional part of Prospect Park; and from and after the passage of this act the said lands shall be laid down on the Commissioner's map of the said city as if the same had been originally laid down upon said map, and had been taken and declared open as a Park pursuant to the provisions of an act entitled, "An act to revise and amend the several acts relating to the city of Brooklyn," passed April fourth, eighteen hundred and fifty. And all streets, avenues and highways intersecting the said lands or any part thereof, except Ninth avenue and Fifteenth street, are hereby closed and discontinued and

Lands to be used as an addition to Prospect Park.

Certain streets discontinued.

are stricken from the said city map so far as they run through or intersect the said lands.

Commissioners of Estimate and Assessment to be appointed.

§ 3. The said Commissioners may apply to the Supreme Court in the second judicial district at any special term thereof, upon a notice to be published ten days successively in two newspapers printed in the city of Brooklyn for the appointment of five commissioners of estimate and assessment, for the purposes of this act; and the Court shall thereupon proceed to their appointment as directed by an act passed May second, eighteen hundred and sixty-one, entitled, "An act to amend an act to lay out a Public Park and Parade Ground for the city of Brooklyn, and to alter the Commissioners' map of said city," passed April seventeenth, eighteen hundred and sixty.

Commissioners to estimate value of lands taken.

§ 4. The Commissioners so to be appointed shall estimate the value of the lands and premises taken by this act, and the loss and damage to be sustained by the owners or other persons interested therein, in consequence of their relinquishing the same to the city. And after their report thereon shall have been confirmed by the said Court, they shall apportion such part thereof, together with such part of the whole amount of awards and expenses heretofore reported to and confirmed by the said court, for all lands heretofore taken and now constituting Prospect Park, as they may deem just and proper, upon any lands outside of the said park which they shall deem to be benefited by the opening of the said Park, in proportion to such benefit. One-twentieth part of the amount thus apportioned shall be annually assessed in each and every year, for twenty successive years, upon the lands respectively charged therewith, together with interest from the time of the confirmation of the report on assessment, to be computed from year to year, upon the respective amounts remaining unpaid, at the time of making such annual assessment; which interest shall be added to said assessment and form part thereof. And the said assessments and interests shall be annually included in the taxes to be levied upon such lands, and shall be levied and collected in the same manner as other taxes upon real estate annually for twenty successive years. The proceeds of such collections shall, immediately after their receipt, be paid over to the Commissioners of the Sinking Fund in the city of Brooklyn, to be applied to the redemption of all city bonds, issued, and to be issued, for the payment of the purchase and improvement of lands taken for said park. But any person interested in the said lands or any of them, may at any time pay to the said commissioners of the sinking fund, the amount so to be

After confirmation of report to apportion expenses upon lands benefited.

Assessment to run twenty years.

Tax to be raised annually.

Proceeds to be paid to Commissioners of Sinking Fund.

assessed thereon with interest to the time of payment; and thereupon his said lands shall be discharged from the said assessment. (a)

§ 5. The Commissioners of Estimate and Assessment heretofore appointed in pursuance of an act entitled, "An act to extend the boundaries of Prospect Park in the city of Brooklyn," passed April thirtieth, eighteen hundred and sixty-six, are hereby discharged from the performance of all further duties under that act; and all services, acts and duties which are thereby directed to be done and performed by the said Commissioners, and which remain unperformed by them in relation to assessments for benefit or otherwise, are hereby devolved upon, and shall be performed (reference being had to the principles of assessment indicated in the last preceding section of this act) by the Commissioners who are to be appointed under this act. The expenses, fees and compensation which the said Commissioners and other persons employed under that act may be entitled to receive thereupon shall be added to and paid as part of the general expenses incurred and to be incurred for the opening of the said park; and the Comptroller and Treasurer of the said city are hereby directed to pay the same, after they shall have been adjusted and taxed, in the manner directed by the said last mentioned act, and after the same shall have been duly certified by the counsel of the Park Commissioners. And for the purpose of making such payments, so many and such an amount of additional park bonds as may be necessary may be issued and sold by the said city authorities.

Commissioners appointed under act of 1866 discharged.

Compensation and expenses of Commissioners of 1866, and general expenses to be adjusted and taxed.

How paid.

§ 6. The Commissioners of Estimate and Assessment who are to be appointed under this act shall, except so far as otherwise directed by this act, have the same powers, discharge the same duties and be entitled to the same compensation that are conferred by, or imposed upon, or allowed to, the Commissioners referred to in the act specified in the last preceding section of this act. But the Board of Commissioners of Prospect Park shall employ an attorney, clerk, appraisers and surveyor for the purposes of this act, whose compensation shall be included in the general expenses to be incurred under this act. And the awards for lands taken under this act shall be payable upon the certificate of the counsel of the said board.

Powers and duties of new Commissioners.

Officers to be employed by Board.

Awards, how to be certified.

§ 7. The payment of all damages to be awarded, as

Damages and

(a) Section 4, amended by § 1, Chapter 498, Laws 1870, by § 1, Chapter 715, Laws 1872, and by § 1, Chapter 791, Laws 1873. See Chapter 244, Laws 1878.

expenses payable after confirmation of Commissioners' report.

City bonds to issue.

Title to lands to vest in city.

To be controlled by Park Commissioners.

Provisions of former acts to apply.

well as the general expenses to be incurred in pursuance of this act, shall become due and payable immediately after the confirmation of the said Commissioners' reports thereon; but no expenses or compensation to persons who are to be employed under this act shall be allowed or paid, unless the same shall have been first duly taxed and certified as directed in the fifth section of this act. For the payment of the said awards and expenses the bonds of the city shall, from time to time, be issued and sold in the manner directed by the act entitled, "An act to extend the boundaries of Prospect Park, in the City of Brooklyn," passed April 30th, 1866. Such bonds shall bear a similar interest, and be paid in the same manner, and within a like period, as the bonds referred to in that act; and for the redemption thereof the lands described in the first section of this act are hereby specifically pledged.

§ 8. The title to the lands described in the first section of this act shall, immediately after the confirmation of the said Commissioners' report upon valuation, vest forever, in fee simple, absolute, in the City of Brooklyn. And the said lands shall thenceforth form a part of Prospect Park, and be under the exclusive management and control of the Board of Commissioners of Prospect Park, in the same manner and to the same extent as the other portions of the said Park now are, or may at any time be, under the management and control of the said Board.

§ 9. All the provisions of the several acts referred to in the third and fifth sections of this act, and of any act amendatory thereof, relating to the issue, use and sale of bonds, and the redemption and payment thereof, with the interest to accrue thereon, as well as in relation to the taking and paying for the lands and premises referred to in this act, and the duties, powers and authority of the Board of Commissioners of Prospect Park, as well as of the said Commissioners of Estimate and Assessment, and their appointment and proceedings, including the confirmation of their reports by the Supreme Court, which are not incompatible with the provisions of this act, shall apply to and regulate all bonds that may be issued, and all acts, proceedings, powers and authority that may be had, taken or exercised under or by virtue of this act.

§ 10. This act shall take effect immediately.

CHAPTER 493.

AN ACT to provide for the improvement and maintenance of the public parks of the City of Brooklyn.

Passed May 1, 1868, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Commissioners of Prospect Park, in the city of Brooklyn, shall have full and exclusive power to lay out, regulate, improve and maintain the public parks of the city of Brooklyn, and to govern, manage and direct the same, and the public use thereof ; to make ordinances, rules and regulations for their proper management and government ; to appoint such engineers, surveyors, clerks and other officers, and such police force as they may deem expedient, and to prescribe and define their respective duties and authority ; to fix and regulate the compensation to be paid to the several persons so to be employed by them ; to open, widen and grade the northern side of Ninth avenue, between Montgomery and Union streets, and so much of Fifteenth street as was extended to meet the Coney Island Road, and laid down on the city map, by an act entitled, " An Act to extend the boundaries of Prospect Park, in the city of Brooklyn," passed April thirtieth, eighteen hundred and sixty-six ; to locate, erect and maintain fountains on the said parks, or either of them, as well as upon the streets and avenues which form the boundaries thereof or intersect the same ; to erect and maintain iron and other fences around the said parks ; to flag and reflag the sidewalks of said streets, roads or avenues on the side which is adjacent to the said parks ; to increase the width thereof, and to set and reset curb and gutter stones, shade trees and lamp posts thereon ; and to determine the particular location of any railroad track which is now or may be hereafter placed upon such road, street or avenue. They may also, in the name of the city, or of the said Board of Commissioners, at their option, bring any action which they may deem proper, to recover damages for the breach of any agreement, express or implied, relating to or growing out of the management or improvement of the said parks ; for penalties for the violation of any ordinance ; or for injuries to personal or real property appertaining to the said parks ; and to recover the possession of any such property.

Commissioners of Prospect Park to maintain and govern public parks.

To make by-laws and ordinances, appoint engineers, clerks, etc., and regulate compensation.

To open, widen and grade Ninth avenue and part of Fifteenth street.

To locate and erect fountains.

To erect fences around parks.

To flag sidewalks adjacent to parks.

Shade trees and lamp posts.

Location of railroad track.

May bring actions to recover damages growing out of management of parks or violation of ordinances governing same.

District of assessment on street openings.

§ 2. Whenever the Board of Commissioners shall by resolution direct the streets or avenues specified in the preceding section of this act to be opened or widened, they shall fix a district of assessment beyond which the assessment for such opening shall not extend. They shall then apply to the Supreme Court, at a special term thereof, to be held in the Second Judicial District, upon a notice to be published for ten days successively in the corporation newspapers, for the appointment of three Commissioners to estimate the expenses thereof, and the amount of damages to be sustained by the owners of property or other persons to be affected thereby, and to apportion and assess the same as hereinafter directed, and the court shall thereupon proceed to make such appointment.

Appointment of Commissioners to assess damages.

Powers and duties of such Commissioners.

§ 3. The Commissioners so to be appointed shall, after having been duly sworn, proceed to estimate such expenses and damages; and after their report thereon shall have been confirmed by the said court, they shall apportion and assess the same, upon the lands and premises benefited by the said improvement within the district of assessment, and to be fixed by the Park Commissioners, in the same manner as the Board of Assessors of the said city are by law directed to make similar assessments. And all laws now in force relative to the opening and widening of streets and avenues in the city of Brooklyn, subsequent to the appointment of Commissioners of Estimate, and the proceedings thereon, and the duties of the several persons to be employed therein, substituting the said Park Commissioners in place of the Common Council and Street Commissioner of said city, and substituting also the Commissioners of Estimate and Assessment in place of the Board of Assessors of the said city, and including the levy and collection of the assessments for such improvement and the lien thereof, as far as they are not inconsistent with the provisions of this act, shall apply to and regulate all duties arising out of, or proceedings that may be had or taken under this act. But such proceedings shall continue to be under the direction of the said Park Commissioners, who shall act when required as the Common Council and Street Commissioner of said city would be required to act in relation thereto, and who shall employ an attorney and counsel, and all such surveyors, clerk, appraisers and other agents as may be required for the purpose of the said proceedings.

To assess damages on confirmation of report.

Laws relative to opening and widening of streets made applicable.

Park Commissioners may employ surveyors, attorneys, etc.

Terms of office of Prospect Park Commissioners extended.

§ 4. The Commissioners of Prospect Park now in office shall continue to hold office for four years after the expiration of their present term of office, and until others are appointed in their places; and from and after

the passage of this act the Mayor of Brooklyn shall be *ex officio* a Commissioner of Prospect Park. (a) They shall together constitute a Board of Commissioners to be hereafter known as "The Brooklyn Park Commissioners," a majority of whom, for the time being, shall constitute a quorum for the transaction of business. If any of the said Commissioners shall not reside in the city of Brooklyn, or shall neglect to attend the meetings of the Board, for three monthly meetings, consecutively, after having been duly notified of the time and place of meeting, his office shall be deemed to be vacant; and after the present number of Commissioners shall, for any reason, have been reduced to eight, each succeeding vacancy shall be filled for the residue of the term then vacant by a majority of the remaining members of the Board; and upon such ballotings it shall be no objection to a candidate that he has once been a member of the Board.

Mayor of Brooklyn to be a Commissioner.

Official title of Board.

Business quorum.

Neglect to attend meetings of Board to work vacancy.

Vacancies how filled.

§ 5. The said Board shall, in the month of January of every year, make and render to the Common Council of the said city a full report of their proceedings during the preceding year, with a detailed statement of their receipts and expenditures. And all ordinances or rules which they shall at any time adopt for the regulation, use and management of the said parks shall immediately thereafter be published, for at least ten days, in two daily newspapers printed in the said city. No member of the said Board shall receive any compensation for his services; and it shall be a misdemeanor, punishable by fine and imprisonment, for any Commissioner to be in any way, directly or indirectly, interested in any contract for services to be rendered or materials to be furnished for or on account of the said parks, or either of them.

Annual Report to Common Council.

Publications of ordinances, etc.

Commissioners to receive no compensation.

Not be interested in contracts.

§ 6. For the purpose of providing the means of laying out, constructing and improving Prospect Park, the Mayor, Comptroller and City Clerk of the said city are hereby authorized and required to create and issue, at such times and in such amounts as the said Commissioners shall, by resolution, direct, the bonds of the said city, payable within fifty years from the date thereof, and bearing an interest not exceeding seven per cent. per annum, payable semi-annually. The bonds so to be issued shall not exceed three millions of dollars in amount, including the bonds already issued for such purposes, and shall be sold by or under the direction of the said Comptroller, at not less than par, either at public or private sale, and the moneys to arise there-

City bonds may issue for laying out and improving Prospect Park.

Bonds, when payable and rate of interest.

Aggregate issue of bonds.

Bonds to be sold at not less than par.

(a) See Charter of City of Brooklyn, Chap. 803, Title 15, Laws 1873.

from shall be called the Brooklyn Park Improvement Fund. All bonds heretofore issued for the improvement of Prospect Park shall constitute a portion of the same fund, and all the provisions of the act passed May second, eighteen hundred and sixty-one, entitled "An Act to lay out a public park and parade ground for the city of Brooklyn, and to alter the Commissioners' map of said city, passed April seventeenth, eighteen hundred and sixty," which relate to the redemption of bonds and payment of awards and improvement, and the creation and management of a sinking fund applicable thereto, shall apply to and regulate all bonds that may be issued for the purposes of the said Improvement Fund; and for the payment of all such bonds, issued and to be issued, with the interest to accrue thereon, all lands within the boundaries of the said park are hereby specifically pledged.

Provisions as to bonds heretofore issued.

Act of 1860 made applicable.

Temporary loans.

Avails of bonds sold to be deposited to credit of improvement fund.

Board of Commissioners may make drafts on Comptroller.

Drafts, how drawn and payable.

Annual addition to general tax for Park.

Levy and collection of tax.

§ 7. In case the said Commissioners shall at any time require money for immediate use before it can be realized by a sale of bonds, the said Comptroller, on the request of the said Commissioners, may pledge such bonds for a temporary loan of money thereon. All money to be realized from sales or pledges of bonds shall be immediately deposited with the Treasurer of the said city, to the credit of the said Improvement Fund, and shall be held and used for the construction, improvement and maintenance of the said park, and the adornment thereof. The said Board of Commissioners, through their President and Secretary, shall, from time to time, make drafts upon the said Comptroller for such amounts as may be required for the prosecution of the park business, after the same shall have been authorized by the Board; each of such drafts shall specify the object for which it is drawn, and the Treasurer shall pay the same on the order of the Comptroller, countersigned by the Mayor and City Clerk.

§ 8. In order to provide for the maintenance and general improvement of the said park, there shall be added to the general tax to be levied in said city, in each and every year, such sum of money, not exceeding one hundred thousand dollars, in any one year, as the said Board of Commissioners shall, from time to time, by resolution, determine to be necessary for the proper maintenance, improvement and ornamentation of the said park. The joint Board of Supervisors and Common Council of the city of Brooklyn shall annually cause the amount so determined by the said Commissioners to be raised and levied in like manner as other taxes are raised and levied in said city, and the same shall be promptly paid

over to the said Park Commissioners for the purposes aforesaid. (a)

§ 9. Real or personal property may be granted, conveyed, devised or bequeathed to the said city, for the improvement or ornamentation of the said parks, or either of them; or for the establishment or maintenance within their limits of museums, zoological or other gardens, collections of natural history, observatories or works of art, upon such terms and conditions as may be agreed upon by and between the grantors or donors thereof and the said Board of Commissioners. But all property so to be granted, conveyed, devised or bequeathed, and the rents, issues and profits thereof, must be subject to the management and control of the said Board, and may be improved and added to in its discretion; and shall be protected, preserved and arranged by the said Board for public use and enjoyment, under such rules and regulations as the said Board shall from time to time prescribe. Admissions to said gardens and museums may be either free to the public, or upon the payment of such sums of money as the Board may determine; and all income to be derived from such admissions shall be applied to the improvement and maintenance of such gardens and museums, or of the said parks. The Board may also agree for the management and maintenance of any of the said gardens or other institutions with any society, incorporated or to be incorporated under any law of this State; but such gardens or other institutions shall always remain subject to the control of the said Park Commissioners.

Real and personal property may be conveyed, devised or bequeathed to city for parks, museums, observatories, etc.

Property to be subject to control of Park Commissioners.

Gardens, museums, etc., to be open to public.

Income from admissions, how applied.

Management of Gardens, etc.

§ 10. This act shall take effect immediately.

(a) See § 1, Chapter 711, Laws 1872.

CHAPTER 631.

AN ACT to widen portions of Sackett, Douglass, and President streets, and otherwise to alter the Commissioners' map of the city of Brooklyn.

Passed May 6, 1868, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Sackett street widened.

SECTION 1. Sackett street in the city of Brooklyn, is hereby widened from Washington avenue easterly to the southerly limit or boundary line of the said city, to the width of two hundred and ten feet, and shall be opened to that width by adding seventy feet in width to each side of the said street, as now laid down on the Commissioners' Map of the said city. And President street and Douglass street are hereby also widened from New York avenue easterly to the said city line, to the width of one hundred feet; and shall be opened to that width by adding fifteen feet in width to each side of the said several streets, as now laid down on the said map.

President and Douglass streets widened.

Part of Degraw street narrowed.

§ 2. So much of Degraw street as lies easterly from New York avenue, and extends to the said city limits, is hereby narrowed to the width of thirty-five feet, by taking away thirty-five feet in width on the southerly side thereof; and so much of Union street as lies easterly from the said avenue, and extends to said city limits, is hereby also narrowed to the width of thirty-five feet by taking away thirty-five feet in width from the northerly side thereof; which said southerly side of Degraw street, and northerly side of Union street, are hereby abandoned for street purposes, and shall be stricken from the said city map.

Part of Union street narrowed.

Provisions concerning placing of buildings and other erections upon streets widened or narrowed.

§ 3. No buildings or other erections, except porches, piazzas, fences, fountains and statuary, shall remain or be at any time placed upon any of the lots, fronting upon either of the said streets, so to be widened, within thirty feet from the line or sides of the said several streets respectively. The intervening spaces of land on each side of the said several streets shall be used for court yards only, and may be planted with trees and shrubbery, and otherwise ornamented, at the discretion of the respective owners or occupants thereof. And no building now standing, or that may be hereafter erected, on any lot fronting or to front, on either Union or

Degraw streets so narrowed, shall ever be used for any purpose other than a stable, carriage house, conservatory for plants, or green house; but no livery or railway stable, or car house, shall at any time be erected, or maintained, upon any of the said lots. And at no time shall there be erected, established or carried on, in any manner whatever, upon any land to be affected by the said widenings, or either of them, any slaughter house, tallow chandlery, furnace, foundry, nail or other factory, or any manufactory for making starch, glue, varnish, vitriol, oil, or gas, or for tanning, dressing, repairing or keeping skins, hides, or leather, or any distillery, brewery, or sugar bakery, lime kiln, railway or other stable, or depot, or any other manufactory, trade, business or calling, which may be in any wise dangerous, noxious, or offensive to the neighboring inhabitants.

Carrying on of certain trades and business therein prohibited.

§ 4. The Commissioners of Prospect Park are hereby directed to take proceedings, within sixty days after the passage of this act, to open, grade, and otherwise improve the said several streets, described in the first and second sections of this act. And for the purpose of determining the amount to be paid to the owners of the lands and tenements required to be taken for the purposes of the several changes and improvements contemplated by this act, the said Park Commissioners shall cause application to be made to the Supreme Court, in the Second Judicial District, at a special term thereof, upon a notice to be personally served upon the Counsel of the said city, and to be also published ten days, successively, in the Corporation newspapers, for the appointment of three Commissioners to estimate the expense of such widenings and openings, and the amount of damages to be sustained by the owners of land, and all other persons to be affected thereby, and to apportion and assess the same, as hereinafter directed, and the Court shall thereupon proceed to make such appointment.

Prospect Park Commissioners to open, grade and improve said streets.

Application for appointment of Commissioners of Assessment.

Notice to be published.

§ 5. Before any assessment for such widening or opening is made, the Commissioners of Prospect Park shall, by resolution, fix a district of assessment, beyond which the assessment therefor shall not extend.

District of Assessment.

§ 6. The Commissioners so to be appointed by the Court, shall, after having been duly sworn, proceed to estimate such expenses and damages; and in making the estimate, they shall include the damages, if any, to be sustained by any person or persons, for being so obliged to build back from the line or sides of any of the said several streets, or for being restricted in the use of the lots fronting on said streets, as specified in the

Duty of Commissioners of Estimate and Assessment.

Report assessment upon lands.

third section of this act; and after their report thereon shall have been confirmed by the said Court, they shall apportion and assess the amount thereof, in such manner as they shall deem just and equitable, upon the lands and premises in their judgment benefited by the improvement, within the district of assessment so to be limited by the said Park Commissioners.

Laws relating to street openings; how far applicable.

§ 7. All laws now in force relative to the widening, opening and improving streets and avenues in the City of Brooklyn, subsequent to the appointment of Commissioners of Estimate, and the proceedings thereon, and the duties of the several persons to be employed therein, substituting the Commissioners of Prospect Park in the place of the Common Council, and also in the place of the Street Commissioner of said City, and substituting the said Commissioners of Estimate and Assessment in place of the Board of Assessors of said City, so far as relates to the opening of streets and avenues, including also payment for the work, and the levy and collection of the assessments for such improvements, and the lien thereof, so far as they are not inconsistent with the provisions of this Act, shall apply to and regulate all proceedings that may be had or taken under this Act. But such proceedings shall continue to be, under the direction of the Commissioners of Prospect Park, who shall stand in the place of, and act when required, as the Common Council of the City, or the Street Commissioner thereof, would be required to act in the premises; and they shall employ an Attorney and Counsel, and all such Clerks, Surveyors and other agents as may be required for the purposes of this Act.

Attorney, surveyors, etc., may be appointed.

Compensation of Commissioners, etc.

§ 8. The said Commissioners of Estimate and Assessment shall be allowed to make use of any maps on file in any of the public offices of the said City, and shall each receive five dollars a day for every day actually spent in the discharge of his duty, which expenses and compensation, together with the room hire, stationery and other necessary expenses of the said Commissioners, as well as the expenses and compensation of all other persons necessarily employed under the foregoing provisions of this Act, shall be included in the general expenses to be incurred herein.

Streets, how to be laid out.

Grading and planting of trees, etc.

§ 9. The streets specified in the First and Second Sections of this Act shall be laid out according to a plan to be devised or adopted by the said Park Commissioners. The said streets shall also be graded, paved, curbed and guttered, in such manner as the said Park Commissioners shall direct, and may be re-named, and

planted with suitable shade trees, or otherwise improved in their discretion; and they may construct such roads and walks through the said streets, or any of them, and make use of such materials of construction or pavements as they shall deem best. And Sackett street shall be graded within one year after the confirmation of the report of Commissioners of Estimate and Assessment. (a)

When Sackett street shall be graded.

§ 10. All expenses incident to the improvements specified in the Ninth Section of this Act, with the exception of so much thereof as shall appertain to one hundred and ten feet in width in the middle of Sackett street, after having been duly certified by the said Park Commissioners to the Board of Assessors of the City of Brooklyn, shall be by said Board apportioned and assessed as other local improvements are by law directed to be apportioned and assessed in the said City. The residue of the said expenses appertaining to the improvement of the said one hundred and ten feet in width, through the middle of Sackett street, shall also be apportioned and assessed upon the district of assessment, to be fixed by the said Park Commissioners, as directed in the Fifth and Sixth Sections of this Act. And the said assessments shall constitute liens upon the several parcels of property to be charged therewith, and shall be levied and collected in the same manner as other local assessments are levied and collected in the said city. (b)

Expenses for said improvements; how to be assessed.

Assessments to constitute liens upon property.

§ 11. After Sackett street shall have been opened, so much thereof as lies eastward of Prospect Park shall be under the exclusive control and management of the said Park Commissioners, and they shall make and enforce proper rules and regulations for the public use thereof. And after it shall have been improved as hereinbefore directed, its subsequent maintenance shall be provided for in the same manner as the public parks, now under the charge of the said Park Commissioners, are provided for.

Park Commissioners may enforce rules for use of Sackett street.

§ 12. This Act shall take effect immediately.

(a) Section 9, amended by § 1, Chap. 710, Laws 1872.

(b) Section 10, amended by § 2, Chap. 710, Laws 1872.

NOTE.—See Supplementary Act, Chapter 592, Laws 1873, and also Chapter 588, Laws 1874..

CHAPTER 641.

AN ACT to authorize the Brooklyn Park Commissioners to establish a pound in Prospect Park.

Passed May 6, 1868, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Brooklyn Park Commissioners are hereby authorized to seize and impound any cattle, sheep, swine, goats, horses, geese or other animals found running at large upon any of the public parks of the city of Brooklyn ; to impose a penalty of not exceeding five dollars, with reasonable expenses, upon any animal so seized, and to enforce the payment thereof in such manner as they shall by ordinance direct.

§ 2. This act shall take effect immediately.

CHAPTER 821.

AN ACT to provide for widening the Coney Island Plank Road in the County of Kings, and for the subsequent management thereof.

Passed May 15, 1868.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. It shall be lawful for the Commissioners of Prospect Park, in the city of Brooklyn, by resolution adopted at a legal meeting held by them, to order and direct the widening and extension of the Coney Island Plank Road in Kings County, or any part thereof (but such widening not to exceed forty feet), in such manner as they shall judge expedient ; to fix a district or limit of assessment within which the property benefited shall be assessed to defray the expense of such improvement, and to cause a proper survey and map of such proposed improvement and assessment district to be made. Previous notice of the time and place of such meeting, stating therein the intention of the Commissioners to take action under this section, shall be published fourteen days, successively, in all of the daily newspapers printed and published in the city of Brooklyn; and they shall hear parties interested at the time and place specified, and at any subsequent time or times to which the meeting shall be adjourned, in relation to the subject, and such adjournments are hereby authorized.

Commissioners of Prospect Park may order widening of Plank road.

District of assessment.

Publication of notice of intention to take action.

§ 2. The said Commissioners shall cause application to be made to the Supreme Court of the Second Judicial District, and said Court may select and appoint three disinterested persons, who shall be residents of said county, to estimate and assess the expense of said improvement, and the amount of damages, including the value of land taken, and benefits to be sustained and derived therefrom, by the owners of such lands and buildings, as may be effected thereby, and by the Coney Island Plank Road Company ; which said persons, after being duly sworn before some officer authorized to administer oaths, faithfully to perform the duties devolved upon them, shall diligently proceed with the same ; and after the completion of such estimate and assessment, shall make a detailed report thereof. Said report shall be at all times subject to review and correction, until

Appointment of Commissioners of Estimate and Assessment.

Oaths of office and duties.

To make report.

Notice of review thereof.

the same shall be deposited with the said Commissioners of Prospect Park. Notice of the time and place of meeting for the purpose of hearing objections to said report, and for reviewing and correcting the same, shall be published fourteen days, successively, in all the daily newspapers printed and published in the city of Brooklyn; and they shall hear parties interested, at the time and place specified, and at any subsequent time or times, to which the meeting shall be adjourned, in relation to the subject, and such adjournments are hereby authorized. After hearing such objections and making such review, and the corrections, if any, of the said report, the same shall be deposited with the said Commissioners of Prospect Park, and not before.

Hearing of objections.

Notice of application for confirmation of report.

§ 3. Upon said report being so deposited, it shall be the duty of said Commissioners of Prospect Park to cause at least twenty days' previous notice to be given, by publication thereof, daily, in all the daily newspapers printed and published in the city of Brooklyn, that application will be made at a Special Term of the Supreme Court of the Second Judicial District, to be held in said County of Kings, at a time to be therein designated, to have the said report confirmed. Appeal may be taken from said report by service of notice on said Commissioners, at least six days before the time fixed for such application, setting forth the name of the objector, and a brief statement of the nature of the objections; and at the time of such application, such appeal shall be heard and decided by the Court, under such regulations as it shall prescribe for that purpose. The said Court shall have power to confirm, alter, amend or refer back the said report, as may be deemed proper, and to make any further order in the premises, until the final confirmation thereof.

Appeals to Supreme Court.

Powers of said Court.

Filing of report when confirmed.

§ 4. After the final confirmation of the report, the same shall be filed in the office of the Clerk of the County of Kings; and upon the payment of the awards to the parties entitled thereto, the said Commissioners of Prospect Park shall be authorized to cause such improvement to be made. Sixty days shall be allowed to owners of lands and premises within which to remove their fences and buildings and to widen and extend the said road on their respective premises; after which period the said Commissioners shall cause the said road to be widened and extended according to the plan adopted, in such parts thereof, where the same shall not already have been done.

Commissioners to widen road in case land owners fail to do so.

§ 5. The said Commissioners of Prospect Park shall

have power to appoint a collector of the assessment for such improvement, who shall give bonds for the faithful performance of his duties, and shall pay over the moneys, when collected, to said Commissioners, who, upon the final collection of such assessments, shall pay the awards to the persons entitled thereto; said Collector shall be entitled to a compensation of one per cent. on all sums that shall be paid to him, within four weeks after notice shall have been published in all of said newspapers of the time and place where such payments may be made, and at least one day in every week, for four successive weeks, after the completion of the publication of the said notice shall be designated for that purpose. After the expiration of the said four weeks he shall be entitled to a compensation of five per cent. on the money thereafter collected by him. Such compensation shall in either case be paid by the party assessed, over and above his assessment.

Collector of assessments.

His fees.

Notice of receiving assessments.

§ 6. The said Supreme Court shall have power to make such order as shall be found necessary in protecting the interests of minors and incompetent persons who may be interested in said proceedings.

Interests of minors, etc.; how protected.

§ 7. All assessments made and confirmed as aforesaid shall be a lien upon the lands and premises upon which the same shall have been laid, and such lands and premises shall be subject to sale therefor, if the same be not paid within sixty days from the time of such confirmation. The present existing provisions of law applicable to sales for assessments in the City of Brooklyn, to redemptions and leases therefor, and to the respective rights of the parties interested therein, shall apply to this Act, where not inconsistent therewith, except that where any duties are thereby imposed upon the Common Council of said City, they shall devolve upon the said Commissioners of Prospect Park, and where imposed upon subordinate officers of the City, they shall be performed by persons specially appointed therefor by said Commissioners.

Confirmed assessments to be a lien upon lands.

Sale of lands for non-payment.

Laws of the city of Brooklyn made applicable.

§ 8. The persons appointed under section two of this Act, to perform the duties therein specified, shall be severally entitled to three dollars per day, for the time they are actually employed, but not to exceed fifty days; and the said sum, with the surveyor's compensation, and a compensation to Counsel not to exceed two hundred and fifty dollars, for services in aid of the persons so appointed under section two (all of which shall be taxed by one of the Justices of the Supreme Court in the Second Judicial District, after a notice of the time and place of taxation, published for ten days succes-

Compensation of Commissioners.

Surveyor's and counsel fees; how taxed.

sively in said newspapers) shall form a part of the expense of the improvements.

§ 9. This act shall take effect immediately.

NOTE.—As to manner of collecting unpaid assessments levied under this act see Chap. 771, Laws 1873.

CHAPTER 700.

AN ACT to widen and improve Ninth Avenue and Fifteenth Street, in the City of Brooklyn.

Passed May 7, 1869, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Ninth avenue, in the City of Brooklyn, in the County of Kings, is hereby widened from its intersection with the plaza of Prospect Park southwesterly to its intersection with the circle at the westerly angle of said park, to the width of one hundred feet, adding twenty feet in width to the southeasterly side of said avenue, as now laid down on the Commissioners' map of said city. And Fifteenth street in said city is hereby also widened, from the intersection with the same circle southeasterly to its intersection with the Coney Island road, to the width of one hundred feet, and shall be so opened by adding twenty-five feet in width to the northeasterly side of said street and fifteen feet to the southwesterly side thereof, as now laid down on the said map.

Widening of
Ninth avenue.

Widening of
Fifteenth street.

§ 2 The Brooklyn Park Commissioners are hereby directed to take proceedings to open and otherwise improve the said street and avenue, widened as aforesaid. And, for the purpose of determining the amount to the owners of land and tenements, required to be taken therefor, they shall apply to the Supreme Court, in the Second Judicial District, at Special Term, upon notice of not less than ten days, to be inserted in two of the daily newspapers, printed and published in the city of Brooklyn, for the appointment of three commissioners to estimate the expense of said widening and opening and the amount of damages to be sustained by the owners of land and all other persons to be affected thereby, and to apportion and assess the same as hereinafter directed, and the Court shall thereupon proceed to make such appointment.

Brooklyn Park
Commissioners
to open and im-
prove same.

Commissioners
of Estimate and
Assessment to
be appointed.

§ 3. Before any assessment for such widening and opening is made, the said Park Commissioners shall, by resolution, fix a district of assessment beyond which the assessment to liquidate and defray the expenses and damages incident to said widening and opening, and the subsequent improvement thereof, shall not extend.

District of
assessment to
be fixed.

Assessment of expenses.

§ 4. The Commissioners so to be appointed by the Court shall estimate the expenses and damages occasioned by the said improvement, and, after their report thereon shall have been confirmed, they shall apportion and assess the same as they shall deem just and equitable, upon the lands and premises in their judgment benefited by the improvement within the district of assessment so to be limited by the Park Commissioners. And in making the assessment for widening and improving Ninth avenue, they shall apportion and assess three-fifths of the said expense and damage upon lands lying southeast of said avenue, and the remaining two-fifths thereof upon land lying northwest of said avenue.

Assessment for Ninth avenue improvement.

City laws relative to widening and opening streets; how far applicable.

§ 5 All laws now in force relative to the widening and opening of streets and avenues in the city of Brooklyn, subsequent to the appointment of Commissioners of Estimate, and the proceedings thereon, and the duties of the several persons to be employed therein, substituting the said Park Commissioners in place of the Common Council and Street Commissioners, substituting also the said Commissioners of Estimate and Assessment in place of the Board of Assessors, and the counsel of the said Park Commissioners in place of the Corporation Counsel of said city, so far as relates to the widening and opening of said streets and avenues including also payment for the work, and the levy and collection of the assessments for such improvements and the lien thereof, so far as the said laws are not inconsistent with the provisions of this act, shall apply to and regulate all proceedings that may be had or taken under this act; but all such proceedings shall continue under the direction of the said Park Commissioners, who shall stand in the place of and act when required, as the Common Council or Street Commissioner would be required to act in the premises, and they shall employ an attorney, clerk and surveyor, and such other agents as may be required for the purposes of this act.

Proceedings to be under direction of Park Commissioners.

May employ officers and agents.

Street and avenue; how laid out.

Width of sidewalks.

Paving and guttering of street and avenue.

§ 6. The said widened street and avenue shall be laid out according to a plan to be devised or adopted by the said Park Commissioners, the sidewalks thereof which are contiguous to the said park shall be thirty feet wide, and the opposite sidewalk shall be twenty feet wide, and seven feet in width of said opposite sidewalk adjoining the lots facing on said street and avenue may be used or court yards or areas, within which to erect porches or stoops to houses, provided the occupants will inclose such court yards or areas with good and sufficient iron or picket fences not exceeding five feet high. The said street and avenue shall also be paved, curbed and guttered in such manner as the said Park Commissioners

shall direct, and the said Commissioners may plant the same with suitable shade trees on both sides thereof, and construct such carriageways and walks, and make use of such materials of construction or pavements as they shall deem best. (a)

Shade trees and walks.

§ 7. All expenses incident to the improvement specified in the last preceding section of this act shall, after the completion of the same be duly certified by the said Park Commissioners to the Board of Assessors of the city of Brooklyn, and shall by said board be apportioned and assessed upon the lands within the district of assessment, so to be fixed by the Park Commissioners in the same manner as other local improvements, and by law directed to be apportioned and assessed, except that three-fifths of the said assessment shall be laid upon the sides of said street and avenue contiguous to the park, and two-fifths thereof on the opposite side. And the said assessments when laid, shall, after confirmation, constitute liens upon the several pieces of property to be charged therewith, and shall be levied and collected in the same manner as other local assessments are levied and collected in said city.

Expenses of sidewalks, paving, trees, etc., to be apportioned by assessors.

Assessments contiguous to park; how made.

§ 8. This act shall take effect immediately.

(a) Section 6 amended by § 1, Chapter 546, Laws 1875.

NOTE.—See Supplementary and Amendatory Act, Chap. 618, Laws 1886, transferring the further improvement of Ninth avenue and Fifteenth Street to care of Common Council. See Chap. 406, Laws 1886, in relation to payment of money expended and advanced by the Brooklyn Park Commissioners.

CHAPTER 801.

AN ACT to widen and improve Franklin avenue, in the town of Flatbush.

Passed May 10th, 1869, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :

Widening of
Franklin
avenue.

Description
ereof.

How laid down
on map.

Improvement
of avenue by
Park Commis-
sioners.

SECTION 1. Franklin avenue, in the town of Flatbush, in the county of Kings, is hereby widened from the Flatbush turnpike road westerly towards Coney Island plank road, so as to embrace all the land lying between a line on one side of said avenue, which commences at a point on the westerly side of said Flatbush turnpike road, distant eighty-five feet and thirty-two one hundredths of a foot southerly on the line of said turnpike road from the present southerly boundary of Prospect Park, where said boundary meets the said turnpike road; and running thence westerly parallel to said boundary to a point in a line drawn at right angles to said boundary, and commencing at the southwesterly intersection of the boundary lines of said park and of lands now or late of the estate of Garret L. Martense, deceased, which point is distant one hundred feet southerly from said intersection; and running thence westward to a point in the circumference of the circle which is at the southwesterly angle of said park, which point is in a line drawn at right angles to said southerly boundary and extended westward, and is distant sixty-eight feet and sixteen one hundredths of a foot from said extended line; and another line on the other line of said avenue which runs from the said circle eastward to said Flatbush turnpike road parallel with the new line of Franklin avenue above described, and distant eighty feet and eighty-four one hundredths of a foot northerly therefrom. And from and after the passage of this act the land constituting Franklin avenue as above widened and described shall be transferred to and form part of the city of Brooklyn, and shall be so laid down on the Commissioners' Map of said city.

§ 2. The Brooklyn Park Commissioners are hereby directed to take proceedings to open, grade and otherwise improve the said avenue, widened as aforesaid, and for the purpose of determining the amount to be paid to the owners of land and tenements required to be taken therefor; they shall apply to the Supreme Court in the second judicial district, at special term, upon notice of not less than ten days, to be inserted in two of

the daily newspapers printed and published in the city of Brooklyn, for the appointment of three Commissioners to estimate the expense of said widening and opening, and the amount of damage to be sustained by the owners of land and all other persons to be affected thereby, and to apportion and assess the same as hereinafter directed, and the Court shall thereupon proceed to make such appointment.

Appointment of
Commissioner
of Estimate.

§ 3. Before any assessment for such widening and opening is made, the said Park Commissioners shall fix a district of assessment beyond which the assessment to liquidate and defray the expenses and damages incident to the said widening and opening, and the subsequent improvement thereof shall not extend.

District of as-
sessment.

§ 4. The Commissioners so to be appointed by the Court shall estimate the expenses and damages occasioned by the said improvement, and after their report thereon shall have been confirmed, they shall apportion and assess the same as they shall deem just and equitable, upon the lands and premises in their judgment benefited by the improvement, within the district of assessment so to be limited by the Park Commissioners.

Estimate of
damages and
expenses.

Assessment
thereof.

§ 5. All laws now in force relative to the opening, widening and extending of streets and avenues in the city of Brooklyn, subsequent to the appointment of commissioners of estimate, the proceedings thereon, and the duties of the several persons to be employed therein, substituting the said Park Commissioners in place of the Common Council and Street Commissioner; substituting also the said Commissioners of Estimate and Assessment in place of the Board of Assessors, and the Counsel of the said Park Commissioners in place of the Corporation Counsel of the said city, so far as relates to the opening and widening of streets and avenues, including also the levy and collection of the assessments for such improvements, and all other laws relative to the levy and collection of assessments in the County of Kings, and the lien thereof, so far as said several laws are not inconsistent with the provisions of this act, shall apply to and regulate all proceedings that may be had or taken under this act; but all such proceedings shall continue under the direction of the said Park Commissioners, who shall employ an attorney, clerk and surveyor, and such other agents as may be required for the purposes of this Act.

Brooklyn laws,
how applicable
to avenue im-
provement.

§ 6. The said avenue so widened shall be laid out according to a plan to be devised or adopted by the said Park Commissioners. Its northerly sidewalk shall be

Avenue; now
laid out.

Sidewalks.

thirty feet wide, and its southerly sidewalk shall be twenty feet wide, and six feet adjoining the premises facing on said southerly walk may be used for court yards or areas within which to erect porches or stoops to houses, provided the occupants will inclose such court yards with good and sufficient iron or picket fences, not exceeding five feet high. It shall also be graded, paved, curbed and guttered in such manner as the said Park Commissioners shall direct, and the said Commissioners may plant the said avenue with suitable shade trees on both sides thereof, and construct such roads and walks thereon and make use of such materials of construction therefor as they shall deem best.

Grading, paving, guttering, etc.

Shade trees.

Assessment by Brooklyn city assessors.

§ 7. All expenses incident to the improvements specified in the last preceding section of this Act, after having been duly ratified by the said Park Commissioners to the Board of Assessors of the city of Brooklyn, shall be by said board apportioned and assessed within the district of assessment so to be fixed by the Park Commissioners, in the same manner as other local improvements are by law directed to be apportioned and assessed in said city. And the said assessment shall constitute liens upon the several pieces of property chargeable therewith, whether such parcels be in the city of Brooklyn or elsewhere in the County of Kings, and shall be levied and collected in the same manner as other local assessments are by law levied and collected; and so far as relates to assessments chargeable upon property lying south of said avenue, whether for the opening or for the improvement of said avenue, they shall be collected in the same manner as other local assessments are collected in the county of Kings.

Assessment to be a lien upon lands.

How levied and collected.

§ 8. This act shall take effect immediately.

NOTE.—See Supplementary Act, Chap. 78c, Laws 1871.

CHAPTER 828.

AN ACT in relation to the widening of the Coney Island Plank Road, in the County of Kings.

Passed May 11, 1869; three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Brooklyn Park Commissioners are hereby authorized to alter and amend in such manner as they shall by resolution direct, the boundary lines for the widening of the Coney Island Plank Road, in the county of Kings, as well as the district of assessment therefor, which were heretofore made and laid out by them in pursuance of the provisions of an act entitled, "An act to provide for widening the Coney Island Plank Road, in the county of Kings, and for the subsequent management thereof," passed May fifteenth, eighteen hundred and sixty-eight.

Alteration of
of boundary
lines for widen-
ing Plank road.

§ 2. The Commissioners of Estimate and Assessment, who were heretofore appointed by the Supreme Court in pursuance of the act, mentioned in the preceding section of this act, are hereby discharged from the performance of any further duties under the said act, and the said Park Commissioners are directed to apply to the said Court, at special term, upon a notice to be inserted ten days successively in two newspapers printed and published in the city of Brooklyn, for the appointment of three Commissioners of Estimate and Assessment, who shall perform the duties required by the said act to be performed by the Commissioners of Estimate and Assessment, whose offices are hereby vacated. (a)

Present Com-
missioners of
Estimate dis-
charged.

Park Commis-
sioners to apply
for appoint-
ment of new
commissioners.

§ 3. The said road so to be widened shall not exceed one hundred feet in width, and shall embrace a sidewalk not exceeding twenty feet in width on each side thereof; and the owners or occupants of land facing thereon may occupy six feet thereof in width adjoining their premises for court yards or areas within which to erect porches or stoops to their houses, provided they will enclose

Width of road
sidewalks.

Court yards.

(a) Section 2, amended by § 1, Chap. 562, Laws 1870.

such courtyards or areas with good and sufficient iron or picket fences, not exceeding five feet in height. (a)

§ 4. This act shall take effect immediately.

(a) Section 3, amended by § 1, Chap. 772, Laws 1873.

NOTE.—See § 2, Chap. 562, Laws 1870, in reference to the Coney Island Plank Road Company.

CHAPTER 861.

AN ACT to lay out and improve a public highway or avenue from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings.

Passed May 11, 1869; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Brooklyn Park Commissioners are hereby authorized and directed to lay out a public highway or avenue not more than two hundred and ten feet wide. Commencing on the circle at the Southwestern angle of Prospect Park, in the city of Brooklyn, and running thence westerly not exceeding two thousand feet, in the discretion of the said Commissioners, in the general direction of Franklin avenue, in the town of Flatbush, extended westerly, thence again southerly by such route as the said Commissioners shall consider most direct and eligible, through the towns of Flatbush, New Utrecht and Gravesend, at least six hundred and fifty feet west of the Coney Island plank road to the road leading from Flatbush to New Utrecht, adjoining the land of the Prospect Park Fair Grounds Association; and to that end they and their agents are authorized to enter upon any lands which may be required for the purpose, and cause a proper survey and map of the said avenue as well of the district of assessment therefor to be made, provided nevertheless, before such avenue shall be laid out in the town of Gravesend, a majority of the owners of that portion thereof lying in the town of Gravesend shall by an instrument in writing, duly signed and acknowledged by them, assent thereto, which assent shall be filed with the said Park Commissioners. (a)

Park Commissioners to lay out avenues.

May enter lands and make survey and map.

Assent of land owners requisite before laying out avenue in Gravesend.

§ 2. No buildings or other erections except porches, piazzas, fences, fountains and statuary, shall remain or be at any time placed upon the said avenue, within thirty feet from the outside lines thereof; which space on each side of the said avenue, shall be used for court yards only and may be planted with trees and shrubbery and otherwise ornamented at the discretion of the respective owners or occupants thereof. (b)

Erection of buildings along avenue.

Court yards, shade trees, etc.

(a) Section 1, amended by § 1, Chap. 726, Laws 1872.

(b) Section 2, amended by § 2, Chap. 726, Laws 1872.

Opening, grading and improving of avenue.

District of Assessment to be fixed.

Notice thereof.

§ 3. The said Commissioners are hereby also directed to open, grade and otherwise improve the said avenue, and in order to determine the amount to be paid to the owners of the lands and tenements required to be taken for the purposes of this act, and for the improvement thereof, the said Commissioners shall first fix a district of assessment within which the property to be benefited shall be assessed to defray the expenses of such taking as well as of the improvement thereof. Notice of the time and place of fixing the said district, and of hearing the parties interested therein, shall be published for ten days successively, in at least two daily newspapers printed and published in the county of Kings.

Appointment of Commissioners of Estimate and Assessment.

Of vacancies; how filled.

§ 4. After fixing the said district of assessment the said Commissioners shall apply to the Supreme Court, at a special term to be held in the second judicial district upon a similar notice for the appointment of three Commissioners, who shall be freeholders and residents of the said county, to estimate the value of the lands and premises required to be taken for said avenue, and the damages to be sustained by any person interested therein, as well by the taking of the land as by the creation of the restriction or easement thereon, specified in the second section of this act, together with the expenses of said opening, and of the improvement thereof; and also to apportion and assess the same, both for taking and improving in such manner as they shall deem just and equitable upon the property to be benefited within the district of assessment so to be fixed by the said Park Commissioners, and the said Court, at special term, shall thereupon proceed to make such appointment. In case of the death or refusal to act, or other disability of the Commissioners so to be appointed, or either of them, at any time before the several objects of their appointment shall have been accomplished, the said Court, at special term, may fill the vacancy.

Oaths of office of Commissioners.

To make and report estimates and assessments.

Notice of review thereof.

Delivery of reports to Park Commissioners.

§ 5. The Commissioners so to be appointed by the Court, after having been duly sworn faithfully to perform the duties hereby devolved upon them, shall proceed to make the estimates and assessments referred to in the last preceding section of this act; in such and so many separate reports as may from time to time be required, each of said reports shall at all times before confirmation be subject to review and correction, and ten days' notice of the time and place of hearing objections thereto, and of reviewing and correcting the same, shall be published in the newspapers above referred to. After hearing such objections and making the corrections, if any shall be required, the said reports shall be delivered to the said Park Commissioner.

§ 6. Upon receiving the said reports, or either of them, the said Park Commissioners shall give ten days' notice in the said newspapers that application will be made to the said Court, at a Special Term, at a time and place to be therein designated, to have the same confirmed. Appeals may be taken from said reports, or any of them, by giving written notice to the attorney of the said Commissioners at least six days before the time fixed for the application to confirm the same, with a specification of the nature of the objection; and the Court shall have power to confirm, amend or refer back the said reports, or either of them, as it may deem proper, and to make any further order in the premises until the final confirmation thereof.

Park Commissioners to apply for confirmation.

Appeals.

Power of Court thereupon.

§ 7. After the reports of estimate and assessment for taking and opening the said avenue shall have been confirmed, they shall, together with the map hereinbefore referred to, be filed in the office of the Clerk of the County of Kings; and the said Park Commissioners shall be thereupon authorized to improve the said avenue according to a plan to be devised or adopted by them; and for that purpose they may cause the same to be graded, paved, curbed and guttered, and shade trees planted thereon, and may lay out and construct such carriage ways, sidewalks and areas as they may deem expedient, and such improvements may be made in sections, and from time to time, if they shall so elect. All expenses incident to such improvements, or either or any of them, after having been duly certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by them apportioned and assessed upon the property in their judgment benefited thereby within the district of assessment to be previously fixed by the said Park Commissioners; and their reports thereon shall be subject to objection and appeal and to confirmation in the same manner as their said former assessment report.

Filing of confirmed reports and map.

Park Commissioners to make improvement.

Apportionment of assessment of expenses.

§ 8. The said Park Commissioners may contract in writing for the making of any or all of the said improvements, and may from time to time, as the work progresses, issue to the contractors, in the name and upon the authority of the said Commissioners, assessment bonds bearing interest to the extent of seventy-five per cent. of the work completed by said contractors according to their contracts, which bonds shall be payable out of the assessments therefor, when collected, and the said several assessments shall include a sum sufficient to cover interest upon the amount so advanced to contractors up to the time of the confirmation of such assessment reports. (a)

Park Commissioners may contract for improvements.

Issue of assessment bonds.

How payable.

(a) Section 8, amended by § 4, Chap. 726, Laws 1872.

Confirmed assessments to be lien.

Lands may be sold for non-payment of assessments.

Brooklyn city laws relating to such sales, how far applicable.

§ 9. All assessments made and confirmed in pursuance of this act shall be liens upon the lands and premises upon which they shall have been laid, and such lands and premises shall be subject to be sold therefor, if such assessments are not paid within sixty days after the confirmation thereof. The present existing provisions of law applicable to sales for assessments in the city of Brooklyn to redemptions and leases therefor, and to the respective rights of the parties interested therein, including the rate of interest to be paid by the parties in default, shall apply to this act, whenever they are not inconsistent therewith; and when any duties are by said laws imposed upon the Common Council of said city, they shall devolve upon the said Park Commissioners, and where imposed upon subordinate officers of the city, they shall be performed by persons to be specially appointed by the said Park Commissioners. (a)

Appointment of collectors of assessment.

To execute official bonds.

Notice of receiving assessments.

Collection fees.

§ 10 The said Park Commissioners may appoint one or more collectors of all assessments to be laid under this act, who shall severally give bonds for the faithful performance of their duties, and for the prompt payment of all the moneys to be collected by them. The collector of any assessment shall be entitled to receive a compensation of one per cent. on all moneys paid to him within two weeks, after he shall have published notice in said newspapers twice a week, for four weeks, of the time and place where he will attend to receive payment. After the expiration of six weeks from the first publication of the said notice, the collector shall be entitled to five per cent. on all moneys thereafter to be collected by him, and in either case his compensation shall be paid by the party assessed, over and above his assessment and as part thereof, and the lien of the assessment shall extend to such compensation. Upon the final collection of any assessment to be made under this act it shall be paid over by the said Park Commissioners to the several persons entitled to receive the same. (b)

Avenue to be in charge of Park Commissioners.

§ 11. After the said avenue shall have been opened it shall be under the exclusive charge and management of the said Park Commissioners, and they shall make and enforce proper rules and regulations for the public use thereof; and after it shall have been improved as hereinbefore directed, its subsequent maintenance shall

(a) Section 9, amended by § 5, Chap. 726, Laws 1872, and by § 1, Chap. 307, Laws 1876.

(b) As to further provisions respecting the collection of "unpaid assessments" laid under this act, see Chap. 789, Laws 1873.

be a charge upon the city of Brooklyn and upon the several towns through which it shall pass in just proportions, to be fixed by the said Commissioners, and such amounts as they shall, from time to time, by resolution, determine to be necessary for the purpose shall be annually raised by the Board of Supervisors of the County of Kings, and collected in the taxes of the then current year and paid over to the said Park Commissioners. (a)

Tax for maintenance; how raised.

§ 12. The said Commissioners of Estimate and Assessment shall be severally entitled to receive three dollars a day for each and every day necessarily employed in the discharge of their duties; and their compensation, with room hire, stationery and other necessary expenses, together with the compensation of the surveyor, counsel and other persons to be necessarily employed under the foregoing provisions of this act (and who are hereby directed to be employed by the said Park Commissioners), shall be included in the general expenses to be incurred therein.

Compensation of Commissioners of Estimate.

Surveyors and counsel fees and contingencies.

§ 13. This act shall take effect immediately.

(a) Section 11, amended by § 6, Chap. 726, Laws 1872.

NOTE.—See Ocean Parkway Extension Act, Chap. 583, Laws 1874.

CHAPTER 373.

AN ACT to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn.

Passed April 23, 1870, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Park Commissioners may sell part of park grounds.

SECTION 1. The Brooklyn Park Commissioners are hereby authorized, for and in behalf of the city of Brooklyn, to contract and sell at public auction, at such times and on such terms and conditions as they shall deem expedient, all or any part of the land within said park which is bounded westerly by Flatbush avenue, northerly by Vanderbilt avenue, easterly by Warren street and Washington avenue, and southerly by the town of Flatbush, excepting and reserving therefrom such lands around the reservoir and along the line of Flatbush avenue, southeasterly from said reservoir, not less than two hundred and fifty feet in width, as shall, in the judgment of the said Commissioners, be considered desirable to be retained for public use. (a)

Commissioners may receive bond and mortgage of purchaser, in part payment.

Conveyances; how executed.

Delivery thereof.

Deeds to vest absolute title.

Avails from sales to be paid to sinking fund Commissioners.

§ 2. For any lands which the said Commissioners shall sell they may receive in part payment the bonds of the purchasers for such portion of the purchase money secured by mortgage on the land sold, as they may deem expedient. And, whenever any such sales shall have been made, the Mayor, Comptroller and Clerk of the city of Brooklyn shall, at the request of the said Commissioners, affix the corporate seal to good and sufficient deeds of conveyance, with or without covenants of warranty and such other covenants as the said Commissioners shall from time to time require and prepare, and the said Commissioners shall cause the said deeds to be delivered to the respective purchasers upon the receipt of the consideration stipulated to be paid therefor. The deeds so to be delivered shall vest in the grantees therein named, their heirs and assigns, an absolute title in fee simple to the land therein described. (b)

§ 3. All moneys that shall be received upon such sales, after deducting the expenses of sale and conveyancing, with the amount hereinafter authorized to be borrowed, with interest, shall be forthwith paid over by the said

(a) Section 1, amended by § 1, Chap. 795, Laws 1873.

(b) Section 2, amended by § 2, Chap. 231, Laws 1871.

Park Commissioners to the Commissioners of the Sinking Fund of the said city, to be by them held as part of the general fund created and to be created for the redemption, according to their legal priorities, of all bonds issued for the payment of lands taken for Prospect Park. And within four years after the passage of this act the said Park Commissioners shall hand over to the said Commissioners of the Sinking Fund all proceeds of sales, with all bonds, mortgages and other papers and documents appertaining thereto. (a)

How set apart.

§ 4. After the consummation of the said sales by the execution and delivery of deeds, as hereinbefore directed, all liens, rights and claims, by way of easement or otherwise, into, over or upon the lands described in the first section of this act, arising out of or founded upon an act passed May second, eighteen hundred and sixty-one, entitled, "An Act to amend an act to lay out a public park and parade ground for the city of Brooklyn, and to alter the Commissioners' map of said city," passed April seventeen, eighteen hundred and sixty, or of any other act amendatory thereof, shall be terminated and extinguished. (b)

Extinguishment of certain liens, rights and claims upon sales.

§ 5. Preparatory to the making of the said sales, the said Park Commissioners are authorized to regulate, drain and grade the lands proposed to be sold, and to lay out streets or avenues over or upon the same, of such width and in such direction, and with such carriage ways, sidewalks or areas as they may deem expedient; they may also grade, pave, curb and gutter any of the streets or avenues which they shall so lay out, and plant shade trees thereon, in their discretion; but the expenses of such measures shall not exceed in the aggregate the sum of one hundred thousand dollars. And after they shall have laid out the said streets and avenues, they shall cause a suitable map thereof to be made and filed in the office of the Street Commissioner of the said city, and the Commissioner's map of the said city shall thereupon be altered to correspond therewith, and the said Park Commissioners may borrow from time to time such sums of money, not exceeding one hundred thousand dollars in amount, as they may deem necessary to put the said land in proper condition for sale, and to regulate and improve the said streets as above specified, and shall repay the same, with interest, out of the proceeds of the said sales. (c)

Commissioners to drain and grade lands before sale.

May lay out streets and grade and pave same.

May plant shade trees.

Expense of improvement limited.

Map of streets to be filed.

Commissioners may borrow money for improvement.

How repaid.

§ 6. This act shall take effect immediately.

- (a) Section 3, amended by § 2, Chap. 795, Laws 1873.
 (b) Section 4, repealed; see § 2, Chap. 231, Laws 1871.
 (c) Section 5, amended by § 3, Chap. 795, Laws 1873.

CHAPTER 376.

AN ACT to widen and improve a portion of Washington Avenue, in the City of Brooklyn, and extend the same into the town of Flatbush.

Passed April 23, 1870, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Widening of Washington avenue.

Extension of avenue into town of Flatbush.

Extension by name of Washington place,

Pieces of land added to avenue.

SECTION 1. Washington avenue, in the city of Brooklyn, is hereby widened so as to be eighty feet wide from Atlantic avenue southerly to the city line of Brooklyn, and shall be opened to that width by adding ten feet in width to the westerly side thereof, as the same is now laid down on the Commissioners' map of the city of Brooklyn. And the said avenue so widened is hereby extended southerly, in a direct line, into the town of Flatbush, until the easterly side thereof intersects a line drawn at right angles to East New York avenue, from a point on the northerly side of said avenue, which point is distant nine hundred and eighty feet westerly from the northwest corner of Perry avenue and East New York avenue, as said avenues are designated by a stone monument, and thence along said right-angled line to the northerly side of said East New York avenue, and which said right-angled line forms the easterly side of the said extended avenue. And the said avenue is hereby further extended by the name of Washington place, from said avenue westerly to Flatbush avenue, which last extension shall be seventy feet wide, and its northerly side shall begin at a point on the westerly side of said Washington avenue, at a point which is five hundred and ninety-five feet southerly from a point on the westerly side of Washington avenue, formed by extending the southerly line of Montgomery street westerly, and running thence westerly, at right angles to Flatbush avenue, until it reaches said Flatbush avenue; and all those two triangular pieces of land at or near the junction of Washington and Underhill avenues, lying between Atlantic avenue and Pacific street, and between the westerly side of Underhill avenue and a line drawn parallel with and one hundred and seventy-four feet easterly therefrom, are hereby added to said Washington avenue, and shall form part thereof, and be so laid down on the Commissioners' map of the city of Brooklyn.

§ 2. The Brooklyn Park Commissioners are hereby

directed to open, grade and otherwise improve the said avenue so widened and the said extension thereof. And, for the purpose of determining the amount to be paid to the owners of the lands and tenements required to be taken for the purposes of this act, and the expenses thereof, they shall first fix a district of assessment, within which the property to be benefited by the improvements shall be assessed to defray the said damages and expenses, and shall then cause application to be made to the Supreme Court, at a Special Term thereof, to be held in the Second District, upon a notice to be published not less than ten days consecutively in two daily newspapers printed in the city of Brooklyn, for the appointment of three Commissioners of Estimate and Assessment.

Park Commissioners to open and improve avenue extension.

District of assessment.

Application for appointment of Commissioners of Estimate.

§ 3. The Commissioners so to be appointed shall, after being duly sworn, estimate the expenses of the said widening and extension, and the damages to be sustained by the owners of land, and all other persons to be affected thereby; and, after their report thereon shall have been confirmed, they shall apportion and assess the same as they shall deem just and equitable upon any lands and premises to be benefited by the said improvement within the district of assessment so to be fixed by the said Park Commissioners.

Duty of Commissioners.

To assess damages and expense of work.

§ 4. After the apportionment* of the said Commissioners, all laws now in force relative to the opening, widening and extending of streets and avenues in the city of Brooklyn, and the proceedings thereon, and duties of the several persons to be employed therein, substituting the said Park Commissioners in the place of the Common Council of said city, and the said Commissioners of Estimate and Assessment in place of the Board of Assessors in relation to the opening of streets; including, also, payment for the work to be done, the lien of assessments for the opening of streets, as well as for the improvement thereof, and the levy and collection of the same, so far as they are not inconsistent with the provisions of this act, shall apply to, regulate and govern all proceedings which may be had or taken under this act. And the Park Commissioners shall employ an attorney and counsel, and all such clerks, surveyors and other agents as may be required for the purposes of this act. (a)

Laws applicable after appointment.

Attorney, surveyor, etc.

§ 5. The said avenue so widened, and the said extension thereof, shall be laid out according to a plan to be

Plan for widening and extending avenue.

* *Error.* So in original law.

(a) Section 4, amended by § 1, Chap. 20, Laws 1872.

devised or adopted by the said Park Commissioners, and shall be graded, paved, curbed and guttered, and shade trees planted thereon, as they shall direct. And the Park Commissioners may construct such carriage ways, sidewalks and areas, and make use of such materials of construction or pavements as they shall deem best, and may make all necessary contracts for carrying out the said improvements. And all such contracts, with all other expenses incident to the improvement of the said widened avenue, or the extension thereof, shall be certified by the said Park Commissioners to the Board of Assessors of the city of Brooklyn, and shall be by said Board apportioned and assessed as other local assessments are by law directed to be apportioned and assessed in said city, within the district of assessment so to be fixed by the said Park Commissioners for the said opening.

Grading, paving and ornamenting.

Contract for material.

Contract and expenses; how certified.

Apportionment and assessment.

Assessments to be a lien.

§ 6. All assessments to be laid under this act, whether they relate to the opening of the said avenue, or of the extension thereof, or the improvement of the same, shall constitute liens upon the several pieces or parcels of property to be charged therewith, whether such parcels are in the city of Brooklyn or elsewhere in the county of Kings; and so far as they relate to property lying within the said city, they shall be levied and collected in the same manner as other local assessments are, by law, levied and collected in said city; and, so far as they relate to property outside of said city, they shall be collected in the manner hereinafter specified.

How levied and collected.

Park Commissioners may appoint collector of assessment for Flatbush.

§ 7. The said Park Commissioners are hereby authorized and directed to appoint a collector of all such assessments to be laid under this act as are chargeable upon property lying outside of the said city and within the town of Flatbush. The said collector shall give bonds to the said Commissioners for the faithful discharge of his duties, and the prompt payment to the Comptroller of the city of Brooklyn of all moneys to be collected by him, and shall be entitled to receive five per cent. for all moneys so to be collected and paid over by him. Upon the receipt of such moneys by the Comptroller, he shall forthwith pay them to the several persons entitled to receive the same.

His fees.

Comptroller to disburse moneys collected.

Collector to give notice of receiving assessments.

§ 8. Immediately after the appointment of the said collector, he shall give ten days' notice of a time and place where he will attend to receive payment of the said assessments, which notice shall be posted in at least four conspicuous places in the town of Flatbush, and also at the City Hall, in the city of Brooklyn; and, if the said assessments shall remain unpaid for twenty

days after the expiration of the said ten days, he shall proceed to sell such of the said several parcels of lands upon which the said assessments shall remain unpaid at public auction, for the lowest term of years for which any person will take the same, and pay the amount remaining due, with ten per cent. interest added thereto, the said collector first giving thirty days' notice of the time and place of sale, by affixing the same in at least four conspicuous places in the town of Flatbush, and also at the City Hall, in the city of Brooklyn.

Sale of lands for unpaid assessments.

Notice thereof.

§ 9. Upon such sale being made, the said collector shall give certificates of sale to the purchasers, and shall also execute and deliver conveyances of the lands so purchased, unless the same shall have been redeemed within two years from the time of sale, by the payment to the purchaser or to the said Comptroller, for his use, of the sum paid by him, with interest at the rate of twelve per cent. per annum.

Collector to give certificates to purchasers.

To execute conveyances if lands are not redeemed.

§ 10. This act shall take effect immediately. (a)

(a) Section 10, amended by Chap. 265, Laws 1875.

CHAPTER 498.

AN ACT to amend an act entitled, "An Act for the further extension of Prospect Park, in the city of Brooklyn," passed April twenty-fourth, eighteen hundred and sixty-eight.

Passed April 28, 1870, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section 4 of an act entitled, "An Act for the further extension of Prospect Park, in the city of Brooklyn," passed April twenty-fourth, eighteen hundred and sixty-eight, is hereby amended so as to read as follows :

Commissioners of Assessment to estimate value of lands taken.

Apportionment of awards, etc., after confirmation of report.

How apportioned.

Assessment to run twenty years.

Tax therefor to be collected annually.

Proceeds; how paid over and applied.

§ 4. The Commissioners so to be appointed shall estimate the value of the lands and premises taken by this act, and the loss and damage to be sustained by the owners, or other persons interested therein in consequence of their relinquishing the same to the city ; and after their report thereon shall have been confirmed by the said court, they shall apportion such part thereof, together with such part of the whole amount of awards and expenses heretofore reported to and confirmed by the said court, for all lands heretofore taken and now constituting Prospect Park, as they may deem just and proper, upon any lands outside of the said park which they shall deem to be benefited by the opening of the said park, in proportion to such benefit. Of the amount thus apportioned, only one-twentieth part shall be annually assessed in each and every year, for twenty successive years, and be a lien, from the time of such annual assessment, upon the lands respectively charged therewith, together with interest from the time of the confirmation of the report on assessment, to be computed from year to year upon the respective amounts remaining unpaid at the time of making such annual assessment, which interest shall be added to said annual assessment and form part thereof. And the said assessments and interest shall be annually included in the taxes to be levied upon such lands, and shall be levied and collected in the same manner as other taxes upon real estate, annually for twenty successive years.

The proceeds of such collections shall, immediately after their receipt, be paid over to the Commissioners of the Sinking Fund in the city of Brooklyn, to be applied

to the redemption of all city bonds issued and to be issued for the payment of the purchase and improvement of lands taken for said park. But any person interested in the said lands, or any of them, may at any time pay to the said Commissioners of the Sinking Fund the amount so to be assessed thereon, with interest to the time of payment, and thereupon his said lands shall be discharged from the said assessment.

Payments by interested parties to sinking fund Commissioners.

§ 2. This act shall take effect immediately.

CHAPTER 562.

AN ACT to amend an act entitled, "An Act in relation to the Coney Island plank road, in the County of Kings," passed May eleventh, eighteen hundred and sixty-nine.

Passed May 2, 1870 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The second section of the act entitled, "An Act in relation to the Coney Island plank road, in the County of Kings," passed May eleventh, eighteen hundred and sixty-nine, is hereby amended by adding after the word "vacated," in the last line of the said section, the following words: "The Commissioners appointed under this section shall be severally entitled to receive four dollars a day for each day necessarily employed in the discharge of their duties ; and their compensation, with stationery and other necessary expenses, and the compensation of the surveyor, counsel and other persons to be employed under the foregoing sections of this act, or of the act hereinbefore referred to, shall, when properly taxed by one of the Justices of the Supreme Court, form part of the general expenses of the said improvement."

Compensation of Commissioners, and how paid.

Stationery, surveyors and counsel fees to be included.

No assessment to be made upon Plank Road Company for cost of improvement.

Company may extend gates across road as widened.

§ 2. Nothing in the said act, or the act passed May fifteenth, eighteen hundred and sixty-eight, entitled, "An Act to provide for widening the Coney Island plank road, in the County of Kings, and for the subsequent management thereof," shall be construed to authorize the assessment of any portion of the cost or expenses of the improvements authorized to be made by the last mentioned act upon the franchise, rights or privileges of the Coney Island Plank Road Company. The said company may extend and maintain its gates across said road as widened.

§ 3. This act shall take effect immediately.

CHAPTER 566.

AN ACT to provide for the further improvement of Prospect, Tompkins and Washington Parks, in the city of Brooklyn.

Passed May 2, 1870, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. In order to provide for the further improvement of Prospect Park in the city of Brooklyn, the Mayor, Comptroller and City Clerk of that city are hereby authorized and required to make and issue, at such times and in such amounts as the Brooklyn Park Commissioners shall by resolution direct, the bonds of the said city payable within fifty years from the date thereof, and bearing an interest not exceeding seven per cent. per annum, payable semi-annually, which bonds shall not exceed two millions of dollars in amount, and not more than five hundred thousand dollars of said amount shall be issued during the year eighteen hundred and seventy, nor more than five hundred thousand dollars in any one year thereafter.

Issue of additional City bonds for Park improvement.

Rate of interest, and when payable.

§ 2. The bonds so to be issued shall be sold by or under the direction of the Comptroller, at not less than par, either at public or private sale; and the moneys to arise therefrom shall form part of the Brooklyn park improvement fund now provided by law, and be forthwith paid over to the Brooklyn Park Commissioners. All the provisions of the act passed May two, eighteen hundred and sixty-one, entitled, "An act to lay out a public park and parade ground for the city of Brooklyn and to alter the Commissioners' map of said city," passed April seventeen, eighteen hundred and sixty, which relate to the redemption of bonds authorized by that act, and the creation and management of a sinking fund applicable thereto, shall apply to and regulate all bonds that may be issued for the purposes of this act; and for the payment of all such bonds with interest to accrue thereon, all lands within the boundaries of the said park, lying west of Flatbush avenue, are hereby specifically pledged.

Sale of bonds by Comptroller.

Disposition of moneys therefrom.

Acts applicable to issue and payment of bonds.

Park lands pledged therefor.

§ 3. The Brooklyn Park Commissioners are hereby authorized and directed to improve Tompkins Park in a style corresponding with the other city parks, but at an

Improvement of Tompkin's Park.

Erection of
vault in Wash-
ington Park.

Tax; how
raised.

expense not exceeding twenty-five thousand dollars, and to erect a vault in Washington Park for the reception of the remains of the prison-ship martyrs, at an expense not exceeding seven thousand five hundred dollars, to be raised, by general tax, in the same manner as the expense of improving the parks of said city is provided for by the act, entitled, "An act in relation to parks in the city of Brooklyn," passed May ninth, eighteen hundred and sixty-seven.

§ 4. This act shall take effect immediately.

CHAPTER 613.

AN ACT to lay out, open and improve a street in the Plaza of Prospect Park, in the city of Brooklyn.

Passed May 3, 1870 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION I. The Brooklyn Park Commissioners are hereby authorized and directed to lay out a public street, eighty feet wide, within the Plaza of Prospect Park, in the city of Brooklyn, commencing at the westerly corner of Ninth avenue, at its junction with the said Plaza, and running thence northerly, easterly, and again southerly, around the circumference of the said Plaza, and terminating at the junction of the said Plaza with Flatbush avenue; and the street so described shall be laid down upon and form part of the Commissioners' map of the city of Brooklyn.

Park Commissioners to lay out street.

Width and description thereof.

§ 2. No building shall at any time be erected upon any lot of land facing on the said Plaza street, unless it be constructed with brick, stone, or iron, at least forty feet high from sidewalk to cornice, with metallic or slate roof; nor shall there be at any time erected or carried on upon any of said lots, any slaughter-house, tallow-chandlery, furnace, foundry, nail or other factory, or any manufactory for making starch, glue, varnish, vitriol, oil or gas, or for tanning, dressing, repairing or keeping hides or leather, or any distillery, brewery, or sugar-bakery, lime-kiln, railway or other stable or depot, or any manufactory, trade or business which may be in any wise dangerous, noxious, or offensive to the neighboring inhabitants. And the said street shall include a sidewalk, twenty-five feet wide, to be laid out adjoining the houses to be built thereon, ten feet in width, of which shall be allowed to the owners or occupants of said houses adjoining their premises for court-yards or areas, within which to erect porches or stoops to their houses, provided they will enclose such court-yards or areas with good and sufficient iron fences, not exceeding five feet high, and of a pattern to be approved of by said Commissioners.

Style of buildings to be erected along new street.

Certain manufacturing and other pursuits, prohibited, adjacent thereto.

Sidewalks and court-yards.

Pattern of fences to be approved.

§ 3. The said Park Commissioners are hereby also directed to take proceedings within sixty days after the passage of this act, to open, grade, and otherwise im-

Opening, grading and improving of street.

District of Assessment to be fixed.

Application for appointment of Commissioners of Estimate.

prove the said street; and, in order to determine the amount to be paid to the owners of the lands and tenements required to be taken for the purposes of this act, they shall first fix a district of assessment, beyond which the property to be benefited by the said opening, as well as the subsequent improvement thereof, shall not be assessed to defray the expenses thereof; they shall then apply to the Supreme Court, at a special term thereof, to be held in the Second Judicial District, upon a notice to be published ten days consecutively in two newspapers, printed and published in the said city, for the appointment of three Commissioners to estimate the expense of such opening and the damages to be sustained by any person interested therein, as well by reason of the said taking as by the creation of the restriction or easement upon the land specified in the second section of this act, and to apportion and assess the same upon the property to be in their judgment benefited by the said improvement within the district of assessment so to be fixed by the said Park Commissioners, and the Court shall thereupon proceed to make such appointment.

To make estimate and assessment.

Park Commissioners to make improvements and report expense to Assessors.

Assessors to apportion same.

§ 4. Upon the appointment of such Commissioners, they shall, after having been duly sworn, proceed to make the said estimate and assessment; and after their report thereon shall have been confirmed by the said Court, the said Park Commissioners shall cause the said street to be graded, paved, curbed and guttered, and shade trees planted thereon, using such pavements and materials of construction as they shall deem best, and shall certify the costs and expenses thereof to the Board of Assessors of the city of Brooklyn. The said Board of Assessors shall thereupon apportion and assess the said costs and expenses upon the property to be benefited thereby, within the district of assessment so to be fixed by the said Park Commissioners.

Acts applicable after appointment of Commissioners of Estimate.

§ 5. After the appointment of Commissioners of Estimate and Assessment, all the provisions of the act entitled, "An Act to open and widen portions of Sackett, Douglass and President streets, and otherwise alter the Commissioners' map of the city of Brooklyn," passed May sixth, eighteen hundred and sixty-eight, and of the acts herein referred to which relate to the duties and emoluments of Commissioners of Estimate and Assessment to be appointed under that act, and the confirmation of their reports by the Supreme Court, or which relate to and prescribe the powers and duties of the said Park Commissioners in reference to the subject-matters of that act, and to the levy and collection of all assessments and the lien thereof, and to the payment for improvements and work done thereon, or which relate to and

prescribe the duties of the said Board of Assessors; and all other provisions of laws referred to in that act, so far as they are not inconsistent with the provisions of this act, shall apply to regulate and govern all the powers, duties and proceedings of all persons, officers and Boards of Commissioners or Assessors who shall or may be employed or appointed under this act, or who are designated or referred to in this act.

§ 6. This act shall take effect immediately. (a)

(a) Section 6, amended by § 1, Chapter 623, Laws 1886.

N. B.—This act is also amended by adding Sections 7 and 8. See Chapter 623, Laws 1886.

CHAPTER 231.

AN ACT to amend an act entitled, "An Act to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn," passed April twenty-third, eighteen hundred and seventy.

Passed March 31, 1871 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The second section of an act entitled, "An Act to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn," passed April twenty-third, eighteen hundred and seventy, is hereby amended so as to read as follows :

Commissioners
may receive
bonds and
mortgage in
part payment.

Conveyances;
how executed
and delivered.

§ 2. For any lands which the said Commissioners shall sell they may receive in part payment the bonds of the purchasers for such portion of the purchase money secured by mortgage on the land sold as they may deem expedient. And whenever any such sales shall have been made, the Mayor, Comptroller and Clerk of the City of Brooklyn shall, at the request of the said Commissioners, affix the corporate seal to good and sufficient deeds of conveyance, with or without covenants of warranty, and such other covenants as the said Commissioners shall from time to time require and prepare; and the said Commissioners shall cause the said deeds to be delivered to the respective purchasers upon the receipt of the consideration stipulated to be paid therefor.

Repeal.

§ 2. The fourth section of said act is hereby repealed.

§ 3. This act shall take effect immediately.

CHAPTER 609.

AN ACT to regulate the construction and protection of railway crossings in the county of Kings.

Passed April 19, 1871.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. No railway upon which locomotive steam shall be used, or is or shall be authorized or intended to be used as a motive power, hereafter constructed across Flatbush avenue, Ocean avenue, Coney Island plank road, Coney Island boulevard, Franklin avenue boulevard, the Second, Third, Fourth and Fifth avenues, in any of the towns in the county of Kings, shall be constructed on the same grade with any of such roads or avenues, but the grade of every such railway shall be constructed either under such roads or avenues or above the same by a sufficient bridge or viaduct, and when constructed above any such road or avenue, the length of such bridge or viaduct shall be the full width of the graded surface of such road or avenue, and shall be elevated so that there shall be an open space of at least twelve feet in the clear above the grade thereof.

Railroads to cross certain avenues, under or above the same.

Length of bridge when constructed over road.

Elevation over grade.

§ 2. It shall be the duty of the State Engineer and Surveyor, on the application of any railway corporation, and upon proof of the due service of written notice of such application on the Highway Commissioners of the town in which any of the said roads or avenues shall be located, and other public officers or persons interested therein, to hear the parties relative thereto, and to ascertain and determine the practicability of constructing such railway in the manner prescribed by the first section of this act, and to establish the proper place for such crossing, and the manner in which the same shall be made, whether above or below such road or avenue, and the plans and specifications for the construction thereof, and shall cause proper maps and drawings thereof respectively to be made, approved and signed by him, one copy of which shall be filed in the office of said State Engineer and Surveyor in the city of Albany, and one other copy thereof shall be filed in the office of the Clerk of the County of Kings; and thereupon such road or avenue and railway shall be filed in the office of the Clerk of the County of Kings; and thereupon such road or avenue and railway shall be constructed

State Engineer to establish place and manner of crossing on application.

Maps thereof; how filed.

Railway to be constructed according thereto.

by such railroad corporation at its own costs and charges with the respective grades, and according to the plans and specifications so to be approved and established, and within the period of time to be specified in writing by the State Engineer and Surveyor, who may, however, from time to time, extend the same, but not beyond one year from the date fixed in said certificate.

State Engineer to fix time for construction.

Work; how done, if rail-ways neglect.

§ 3. If such railway corporation shall refuse or neglect to reform such road or avenue, in accordance with the plans and specifications that shall be approved and established by the State Engineer and Surveyor in manner aforesaid, within the time for that purpose limited by the said State Engineer and Surveyor, then it shall be the duty of the Highway Commissioners of the town in which such crossing shall be located, or the special Commissioners appointed by law for the construction of such highway, if any, or the person or persons interested in such road or avenue, to perform the work of reforming such road or avenue in accordance with such plans and specifications, and all the cost and expenses (including the fees and expenses of the State Engineer and Surveyor) he or they shall be put to on account thereof, may be recovered by an action against such railway corporation in any court of this State.

§ 4. It shall be the duty of every railway corporation operating a railway by steam power, in the county of Kings, to station a flagman by day or signal man by night at all places where such railway crosses a public highway, on the same grade thereof, whenever so required by the Supervisor and Highway Commissioners, or a majority of them, of the town where such crossing is located. And in case of the neglect or refusal of said railway corporation to station a flagman or signal man at any crossing within ten days after such requisition, it shall be the duty of such Highway Commissioners to appoint such flagman or signal man; and the wages of such flagman or signal man so appointed by said Commissioners, not exceeding three dollars per day, may be recovered from said railway corporation in an action brought by such supervisor, or his successor in office, or by such flagman or signal man, in any court of this state.

§ 5. This act shall take effect immediately.

CHAPTER 660.

AN ACT to facilitate mortgage loans on land authorized to be sold, forming a portion of Prospect Park, in the city of Brooklyn.

Passed April 21, 1871.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. It shall be lawful for the several savings banks, insurance and trust companies of this State to make mortgage loans upon such portions of Prospect Park, in the city of Brooklyn, as the Brooklyn Park Commissioners are authorized to sell, notwithstanding any lien of bonds issued by said city, for the purchase and improvement of said park; provided, however, that the lands so to be mortgaged are otherwise unencumbered, and that the loans so to be made shall not exceed the amounts which such institutions are now authorized by law to loan on real estate.

Loans by savings banks, insurance and trust companies, authorized.

§ 2. This act shall take effect immediately.

CHAPTER 780.

AN ACT supplementary to an act entitled, "An Act to widen and improve Franklin avenue, in the town of Flatbush," passed May tenth, eighteen hundred and sixty-nine.

Passed April 27, 1871, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Width of
avenue.

SECTION 1. Franklin avenue, in the town of Flatbush, in the county of Kings, is hereby widened to the width of one hundred feet from the Flatbush turnpike road, westerly to the circle at the south-westerly angle of Prospect Park, and shall be opened to that width throughout its whole length by adding nineteen feet and sixteen one-hundredths of a foot in width to the northerly side of the said avenue, as the same was widened by an act entitled, "An Act to widen and improve Franklin avenue, in the town of Flatbush," passed May tenth, eighteen hundred and sixty-nine. And for the purpose of police and repair, the northerly sidewalk of said widened avenue shall be and remain under the exclusive charge and management of the Brooklyn Park Commissioners.

Northerly side-
walk.

Three Commis-
sioners to be
appointed to
assess amount
to be paid for
land.

§ 2. For the purpose of determining the amount to be paid to the owners and others interested in the land required to be taken for the said widening, the said Brooklyn Park Commissioners shall apply to the Supreme Court at a special term thereof to be held in the Second Judicial District, upon a motion of not less than ten days, to be published in two daily newspapers, printed in the city of Brooklyn, for the appointment of three Commissioners of Estimate and Assessment, which Commissioners, after having been duly sworn, shall estimate the expenses of the widening hereby directed to be made, and the damages that may be sustained by the owners of land and other persons to be affected thereby, and shall also apportion and assess the same, together with the expenses of the subsequent improvement thereof, as they shall deem just and equitable, upon any lands or premises to be benefited by the said improvements within a district of assessment to be fixed by the said Park Commissioners previous to the laying of the said assessment; and they shall receive four dollars a day for each day necessarily spent in the discharge of their duties.

Commissioners
to be sworn.

Their fees.

§ 3. After the appointment of such Commissioners and the fixing of the said district of assessment, all the provisions of the fifth, sixth and seventh sections of the act specified in the first section of this act, and of the laws therein referred to, so far as they are not inconsistent with the provisions of this act, except that the duties required of the Board of Assessors, as specified in the said seventh section, are now hereby required to be performed by the said Commissioners of Estimate and Assessment, instead of by the said Board of Assessors, shall apply to regulate and govern the duties and authority of the Park Commissioners in relation to the opening of the avenue hereby widened and the improvement thereof as well as the proceedings and duties of the said Commissioners of Estimate and Assessment, and the confirmation of all reports which they or either of them shall make thereupon, and also the laying of all assessments for the said opening and the subsequent improvement thereof, and the lien thereon; and the carriage-way of the said widened avenue shall be laid out fifty feet wide, anything to the contrary in the act above referred to notwithstanding.

After assessment powers to be vested in Park Commissioners.

§ 4. The said Brooklyn Park Commissioners are hereby authorized to appoint a collector of all assessments to be laid under this act, as well as of all assessments heretofore laid, under the act specified in the first section of this act. And the said collector shall give bonds, if required, to the said Park Commissioners, for the faithful performance of his duties, and shall pay all moneys when collected to said Park Commissioners, who, upon the collection of such assessments, shall pay them over to the several persons entitled to receive the same. He shall be entitled to a compensation of one per cent. on all sums that shall be paid to him within thirty days after the first publication of the notice next hereinafter referred to, after which time he shall be entitled to a compensation of five per cent. on the moneys thereafter to be collected by him, and in either case, such compensation shall be paid by the party assessed over and above his assessment. The amount assessed against the city of Brooklyn, under this act mentioned in the first section of this act, shall be levied and collected as a tax upon said city in the same manner as the annual taxes in said city are levied and collected, and shall be paid over to the said Park Commissioners.

Collector of assessments to be appointed. To give bond if required.

His compensation.

Amount assessed against the city of Brooklyn to be raised by tax.

§ 5. Immediately after the appointment of the said collector, he shall give ten days' notice of a time and place where he will attend to receive payment of the said assessment, which notice shall be inserted twice a week for two weeks, in two newspapers published in the

Collector to give notice when and where payments to be made.

Lands to be
sold if assess-
ment not paid.

city of Brooklyn, and shall also be posted in at least four public places in the town of Flatbush. And if said assessments shall remain unpaid for twenty days after the expiration of the said ten days, he shall proceed to sell such of the several parcels of land upon which they shall so remain unpaid, at public auction, for the lowest term of years for which any person will take the same, and pay the amount remaining unpaid with ten per cent. interest from the time when payable added thereto, the said collector first giving thirty days' notice of the time and place of such sale, by affixing the same in at least four public places in the said town, and publishing the said notice twice a week for three weeks, in two newspapers published in the said city of Brooklyn.

Purchasers
to receive
certificates.

§ 6. Upon such sale being made, the said collector shall give certificates of sale to the purchasers, and shall also execute and deliver conveyances of the lands so purchased, unless the same shall have been redeemed within two years from the time of sale by the payment to the purchaser, or to the said Park Commissioners, for his use of the sum so paid by him, with interest at the rate of twelve per cent. per annum.

Repeal.

§ 7. So much and such parts of the said act, to which this act is supplementary, as are inconsistent with the provisions of this act, are hereby repealed.

§ 8. This act shall take effect immediately.

NOTE.—See Chap. 609, Laws 1871, and Chap. 466, Laws 1879, in relation to Railroads upon Franklin avenue.

CHAPTER 926.

AN ACT to lay out and improve a public highway in the town of Flatbush, on the easterly side of Prospect Park.

Passed May 12, 1871; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Brooklyn Park Commissioners are hereby authorized and directed to lay out a public road or highway, one hundred feet wide, on the easterly side of Prospect Park, commencing on the northerly side of Franklin avenue, in the town of Flatbush, in the county of Kings, and running northerly along the easterly side of Prospect Park two thousand feet ; thence northerly and again easterly by such route, as the said Commissioners shall deem to be most direct and eligible, to Flatbush avenue, at or near the intersection of the westerly side of said avenue with the southerly line of Prospect Park, including also as a part thereof a triangular piece of land commencing at a point on the northerly side of said Franklin avenue, distant one hundred and seventy-six feet and thirty-eight hundredths of a foot easterly from the southeasterly angle of Prospect Park ; thence westerly, on the circumference of a circle whose radius is one hundred and fifty feet, and whose center is at the intersection of the center line of said avenue with a line drawn parallel to and distant fifty feet from the easterly boundary of said park, to a point where the circumference of said circle meets a line drawn parallel to and distant one foot from said easterly boundary of said park ; thence southerly along said line to its intersection with the northerly side of said avenue ; thence easterly along said northerly line of said avenue to the place of beginning. Twenty feet in width on the easterly side of said road and thirty feet on the westerly side thereof shall be appropriated for sidewalks ; and for all purposes of police and repairs the said westerly sidewalk shall be and remain under the exclusive charge and management of the said Commissioners.

Park Commissioners to lay out public highway.

Boundaries of highway.

Width of sidewalks.

§ 2. The said Park Commissioners are hereby directed to take proceedings to open, grade and otherwise improve the said road or highway, and to that end, and for the purpose of determining the amount to be paid to the owners of the lands and tenements required to

May apply to Supreme Court for appointment of Commissioners to estimate expense of opening.

Notice.

be taken for said highway, they shall apply to the Supreme Court, at Special Term, in the Second Judicial District, upon a notice of not less than ten days, to be inserted in two of the daily newspapers printed in the city of Brooklyn, for the appointment of three commissioners to estimate the expense of said opening and the amount of damages to be sustained by the owners of land, and all other persons to be affected thereby, and to apportion and assess the same, as well as the expenses of the subsequent improvement of the said road, as hereinafter directed, and the court shall thereupon proceed to make such appointment.

To estimate and assess expense.

District of assessment to be fixed by Park Commissioners.

Salary of Commissioners of Estimate.

§ 3. The Commissioners so to be appointed shall estimate the expense and damages above referred to, and shall apportion and assess the same, as they shall deem just and equitable, upon any lands or premises to be, in their judgment, benefited by the said opening, within a district of assessment beyond which such assessment shall not extend. The said district of assessment shall be fixed by the said Park Commissioners at some time previous to the laying of the said assessment, and shall embrace an equal extent of land on each side of said proposed road, and the amount assessed, both for the opening of the road and the first improvements thereof, as hereinafter mentioned, shall be laid equally on both sides of said road, except that the amount awarded for the triangular piece of land described in the first section of this act shall be assessed on the westerly side of the said road only. The said Commissioners of Estimate and Assessment shall be entitled to receive four dollars a day for each day necessarily spent in the discharge of their duties.

Brooklyn city laws relative to opening streets, to be applicable when not inconsistent with this act.

§ 4. After the appointment of Commissioners of Estimate and Assessment, and the fixing of the said district of assessment, all laws now in force relative to the opening of streets and avenues in the city of Brooklyn, and the subsequent improvement thereof, and the assessment therefor, the proceedings thereon, and the duties of the several persons to be employed therein, including the levy and collection of assessments, so far as they are not inconsistent with the provisions of this act, shall apply to and regulate all proceedings that may be had or taken under this act, except that where any duties are thereby imposed upon the Common Council of said city, they shall devolve upon the said Park Commissioners, and where imposed upon subordinate officers of the city they shall be performed by persons to be specially appointed therefor by the said Park Commissioners.

§ 5. After the final confirmation of the report of the Commissioners of Estimate and Assessment, it shall be filed in the office of Clerk of the County of Kings, and the said Park Commissioners shall be thereupon authorized to improve the said road according to a plan to be devised or adopted by them ; and for that purpose they may cause the said road to be graded, graveled, curbed, guttered, and planted with shade trees, or otherwise improved in their discretion ; and the sidewalk of the road adjacent to said park shall, for all purposes of police and improvement, thenceforth be and remain under the exclusive charge and management of the said Park Commissioners. All expenses incident to the first improvement of the said road, after having been certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by them apportioned and assessed equally upon the land on both sides of the said road fixed by the Park Commissioners for said opening. And the said assessments after having been duly confirmed by an order of the said Court at special term, made upon an application therefor, of which ten days' notice shall have been given in two newspapers published in said city of Brooklyn, shall constitute liens upon the several parcels of land to be charged therewith, and shall be collected as hereinafter specified.

Report of Commissioners to be filed in County Clerk's office.

Park Commissioners to improve said road.

Expense to be assessed equally.

Assessments to constitute liens upon lands.

§ 6. The said Park Commissioners* may contract in writing for the making of all or any of the said improvements, and may from time to time as the work progresses, issue to the contractors certificates of indebtedness bearing interest to the extent of eighty-five per cent. of the work completed by said contractors, payable out of the assessments therefor when collected, and the said assessments shall include a sum sufficient to cover interest upon the amount so certified up to the time of the confirmation of such assessment reports.

Park Commissioners may contract for making all improvements and certificates of indebtedness.

§ 7. The said Park Commissioners are hereby authorized to appoint a collector of all assessments to be laid under this act, who shall give bonds for the faithful performance of his duties. They shall issue a warrant of collection to him, directing him to collect the said assessments, or in case of awards and assessments affecting the lands of the same owner, then to collect the excess of assessments over awards; and said warrant shall be made returnable in four months after its issue. He shall pay all moneys when collected to the said Park Commissioners, who, upon the collection of such assessments shall pay them over to the several persons entitled to receive the same. He shall be entitled to a compensation of one per cent. on all sums that shall be paid to him within thirty days after the first publication of the notice next

May appoint a Collector of Assessments.

Collector's duties.

Money collected to whom paid.

Collector's compensation.

Assessments to be collected as city taxes.

hereinafter specified, after which time he shall be entitled to a compensation of five per cent. on the money thereafter to be collected by him, and in such latter case compensation shall be paid by the party assessed, over and above his assessment. The amount to be assessed upon the property of the city of Brooklyn lying on the westerly side of the said road shall be levied and collected as a tax upon said city in the same manner as the annual taxes in said city are levied and collected, and shall be paid over to the said Commissioners.

Collector to give notice.

Proceeding upon unpaid assessments.

§ 8. Immediately after the delivery of the said warrant to the said collector, he shall give ten days' notice of a time and place where he will attend to receive payment of the said assessments, which notice shall be inserted twice a week for two weeks in two newspapers published in the city of Brooklyn, and shall also be posted in at least six public places in the town of Flatbush; and if said assessments, or any or either of them, shall remain unpaid for sixty days after the first publication of said notice, he shall proceed to sell such of the several parcels of land upon which they shall so remain unpaid, at public auction, for the lowest term of years for which any person will take the same, and pay the amount remaining unpaid, with interest at the rate of ten per cent. per annum from the date of the warrant of collection, and five per cent. thereon for his fees, together with a proportional part of the expenses of the publication of sale, the said collector first giving thirty days' notice of the time and place of such sale, by affixing the same in at least four public places in the said town, and publishing the said notice twice a week for three weeks in two newspapers published in the said city of Brooklyn.

Collector may give certificates of sale to purchasers.

Land sold may be redeemed.

§ 9. Upon such sale being made, the said collector shall give certificates of sale to the purchasers, and shall also execute and deliver conveyances of the lands so purchased, unless the same shall have been redeemed within two years from the time of sale by the payment to the purchaser, or to the said Park Commissioners for his use, of the sum so paid by him, with interest at the rate of twelve per cent. per annum.

Repeal.

§ 10. So much and such parts of chapter six hundred and twenty-four of the laws of eighteen hundred and sixty-nine, as relate to that part of the road or avenue directed to be laid out by said chapter along the east side of Prospect Park, are hereby repealed.

§ 11. This act shall take effect immediately.

See Chapter 466, Laws 1879, as to Railroads upon said Highway.

CHAPTER 20.

AN ACT to amend an act entitled, "An Act to widen and improve a portion of Washington Avenue, in the city of Brooklyn, and extend the same into the town of Flatbush," passed April twenty-three, eighteen hundred and seventy.

Passed February 7, 1872; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The fourth section of chapter three hundred and seventy-six of the laws of eighteen hundred and seventy, being an act entitled, "An Act to widen and improve a portion of Washington avenue, in the city of Brooklyn, and extend the same into the town of Flatbush," passed April twenty-three, eighteen hundred and seventy, is hereby amended by striking out the word "apportionment" from the first line of said section and inserting the word "appointment" in place thereof.

Section four of
Chapter 376,
Laws of 1870,
amended.

§ 2. This act shall take effect immediately.

CHAPTER 493.

AN ACT to provide for the improvement of a portion of the Coney Island plank road, as recently widened.

Passed May 3, 1872; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Park Commissioners authorize to grade, etc., Coney Island Plank road.

Expenses; how and upon what property assessed.

Certificates of indebtedness.

Commissioners of Estimate and Assessment.

SECTION 1. The Brooklyn Park Commissioners are hereby authorized to grade, gravel, curb and gutter that portion of Coney Island plank road as recently widened, lying between the Brooklyn city line and Church lane, in Flatbush, according to a plan to be devised and adopted by them. All expenses incident to said improvement, after having been duly certified by the said Park Commissioners to the Commissioners of Estimate and Assessment appointed as hereinafter directed, shall be by them apportioned and assessed upon the property in their judgment benefited thereby, within a district of assessment between the said city line and Church lane, to be fixed by the said Park Commissioners; and the assessments specified in their report, when filed in the said clerk's office, and duly confirmed by an order of the Supreme Court, at Special Term, upon an application therefor of which ten days' notice shall have been given in two newspapers printed in the city of Brooklyn, shall constitute liens upon the several parcels of lands and premises upon which they shall have been laid, and shall be collected in the manner hereinafter directed. The said Park Commissioners may also contract in writing for the making of said improvement, and may from time to time, as the work progresses, issue to the contractors, in the name and upon the authority of the said Commissioners, certificates of indebtedness to the extent of eighty per cent. of the work completed by said contractors, payable out of the assessments therefor when collected. The Supreme Court, in the Second Judicial District, at a Special Term thereof, shall, upon application of said Park Commissioners, on notice of ten days, to be published in two papers in the city of Brooklyn, appoint three Commissioners of Estimate and Assessment, who shall be residents of the town of Flatbush, who shall have the powers and duties of the Commissioners of Estimate and Assessment who acted in estimating the damages incident to the widening and opening of the said road in regard to the por-

tion of said road between the Brooklyn city line and Church lane. (a)

§ 2. The said Park Commissioners may appoint a collector of the assessments authorized by this act, who shall give bonds for the faithful performance of his duties, and shall pay over the moneys, when collected, to the said Park Commissioners, who, upon the collection of the assessments, shall pay the amounts due contractors and other persons entitled to receive the same. The said collector shall be entitled to a compensation of one per cent. on all sums that shall be paid to him within thirty days after notice shall have been published twice a week, for three weeks, in two daily newspapers printed in the city of Brooklyn, of the time and place where such payments may be made; and if such assessments shall remain unpaid after the expiration of the said last mentioned thirty days, the said collector shall be entitled to a compensation of five per cent. on all moneys collected by him, and his compensation shall, in either case, be paid by the party assessed over and above his assessment.

Collector of assessments.

Percentage.

§ 3. The said Commissioners of Estimate and Assessment shall each be entitled to four dollars per day for their services under this act, for each day necessarily occupied by them in the performance of their duties.

Compensation of Commissioners of Assessment.

§ 4. This act shall take effect immediately.

(a) Section 2, amended by § 1, Chap. 572, Laws 1874.

CHAPTER 710.

AN ACT to amend an act entitled, "An Act to open and widen portions of Sackett, Douglass and President streets, and otherwise alter the Commissioners' map of the city of Brooklyn," passed May sixth, eighteen hundred and sixty-eight.

Passed May 14, 1872, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The ninth section of the act entitled, "An Act to open and widen portions of Sackett, Douglass and President streets, and otherwise alter the Commissioners' map of the city of Brooklyn," passed May sixth, eighteen hundred and sixty-eight, is hereby amended so as to read as follows:

Sackett, Douglas and Degraw streets; how to be laid out, etc.

§ 9. Sackett, Douglass and Degraw streets shall be laid out according to a plan to be devised or adopted by the said Park Commissioners, and shall be graded, paved, curbed and guttered in such manner as they shall direct, and may be renamed and planted with suitable shade trees, and otherwise improved, in their discretion. And the said Commissioners may construct, or cause to be constructed, such roads and walks thereon, and make use of such pavements and materials of construction therefor, as they shall deem best.

§ 2. The tenth section of said act is hereby amended so as to read as follows:

Expenses of improvement; how and upon what property to be assessed.

§ 10. All expenses incident to the improvements specified in the last preceding section of this act, after having been duly certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by said last mentioned Commissioners apportioned and assessed in such manner as they shall deem just and equitable upon property to be, in their judgment, benefited thereby; but such assessments shall be laid within a district of assessment to be fixed by a resolution of the said Park Commissioners. Such assessment shall constitute liens upon the several parcels of property to be charged therewith, and shall be assessed, levied and collected, with interest from the confirmation of the report of the said Commissioners of Assessment thereupon, in the same manner as other

Assessments to be liens.

local assessments are levied and collected in the said city; provided, however, and it is hereby directed, that one-tenth part of said assessment shall be levied and collected annually for ten successive years after the confirmation of the said report.

§ 3. This act shall take effect immediately.

CHAPTER 711.

AN ACT to provide for the collection of assessments against Prospect Park, and the parade grounds, in the County of Kings.

Passed May 14, 1872, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Park Commissioners to present annually to joint Board of Common Council and Supervisors statement of amount of money assessed, or to be assessed, by opening of Prospect Park, etc., and which is required to be raised by tax.

SECTION 1. The Brooklyn Park Commissioners are hereby authorized and required to present annually, on or before the first Monday of July, to the joint Board of Common Council and Supervisors of the city of Brooklyn, a statement in writing, of the amount of money, with interest, assessed or to be assessed upon so much of the land benefited by the opening of Prospect Park as lies within the boundaries of the said city, and which amount is required to be raised by tax, for the then current year, under the provisions of the fourth section of an act entitled, "An act for the further extension of Prospect Park, in the city of Brooklyn," passed April twenty-fourth, eighteen hundred and sixty-eight, including the amount required to be raised for the maintenance of the Brooklyn parks for the year thence next ensuing, but not exceeding one hundred and twenty-five thousand dollars in any one year, with any deficiency of maintenance which may not have been raised within the two years last past, not exceeding seventeen thousand dollars, together with all such assessments for opening, widening, sewerage or otherwise improving streets, avenues or highways now charged or hereafter to be charged upon any of the said parks or against the city as representing the said parks. And the said joint Board shall thereupon cause the said several amounts to be raised and levied, as part of the annual city tax, in the same manner as other taxes are raised and levied by said joint Board. So much thereof as relates to the assessment for park benefit shall be levied upon the particular parcels of property, chargeable therewith under the provisions of the above mentioned act, and the residue of said amount shall be raised and levied as a general tax upon the said city. And the said several amounts, when collected, shall be paid over to the said Commissioners, except so much thereof as relates to assessment for park benefit, which shall be paid to the Commissioners of the sinking fund of the city of Brooklyn, to be

Such joint Board to cause amount to be raised as part of the annual City Tax.

Upon what property to be assessed.

used in the redemption of city bonds issued for the purchase of park lands.

§ 2. The said Park Commissioners shall also in like manner present to the Board of Supervisors of the County of Kings a statement of the amount of money, with interest, assessed or to be assessed, upon so much of the land benefited by the opening of the said park as lies outside of the boundaries of the said city, and which amount is required to be raised by tax for the then current year under the provisions of the same act, including the amount required for the maintenance of the Kings County parade ground, together with all such assessments for opening, widening and improving streets, avenues or highways now charged or hereafter to be charged against the said parade ground by virtue of any proceeding placed or to be placed under the direction of the said Park Commissioners. And the said Board of Supervisors shall thereupon cause the said several amounts to be raised and levied as part of the annual county tax in the same manner as other county taxes are raised and levied. So much thereof as relates to the assessment for park benefit shall be levied upon the particular parcels of property chargeable therewith under the provisions of the said act, and the residue of said amount shall be raised and levied as a general tax in the said county. And the said several amounts when collected shall be paid over to the said Commissioners, except so much thereof as relates to assessment for park benefit, which shall be paid to the Commissioners of the sinking fund of the city of Brooklyn to be used in the redemption of city bonds issued for the purchase of park lands.

Statement as to amount assessed, or to be assessed, upon property benefited, lying outside of city.

Board of Supervisors to cause the amount to be raised as part of County Tax.

Upon what property to be assessed.

§ 3. For the purposes of this act the said Park Commissioners, as well as the said Board of Supervisors and the said joint Board of Common Council and Supervisors of said city, are hereby exempted from the operation of the act entitled, "An act in relation to the taxes to be annually raised in the city of Brooklyn and County of Kings," passed April nineteenth, eighteen hundred and seventy-one.

§ 4. This act shall take effect immediately.

CHAPTER 715.

AN ACT to amend an act entitled, "An act for the further extension of Prospect Park, in the city of Brooklyn," passed April twenty-fourth, one thousand eight hundred and sixty-eight.

Passed May 14, 1872, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section four of an act entitled, "An act for the further extension of Prospect Park, in the city of Brooklyn," passed April twenty-fourth, eighteen hundred and sixty-eight, is hereby amended so as to read as follows :

Commissioners to estimate value of lands taken and the loss and damage sustained by owners, and, after their report is confirmed, shall apportion and assess not exceeding fifty per cent of whole amount of awards upon lands benefited outside of said Park.

§ 4. The Commissioners so to be appointed shall estimate the value of the lands and premises taken by this act, and the loss and damage to be sustained by the owners or other persons interested therein in consequence of their relinquishing the same to the city. And after their report thereon shall have been confirmed by the said court, they shall apportion and assess not exceeding fifty per cent. thereof, together with not exceeding fifty per cent. of the whole amount of awards and expenses heretofore reported to and confirmed by the said court for all lands heretofore taken and now constituting Prospect Park, upon any lands outside of said Park which they shall deem to be benefited by the opening of the said Park in proportion to such benefit. But the land so to be assessed shall include all lands on the east side of Flatbush avenue taken for the said park. And the several amounts awarded or to be awarded to the city upon the widening of streets and avenues adjacent to said Park for lands taken from said park before making such apportionment, together with the cost of the land so taken east of Flatbush avenue shall be deducted from the whole amount of awards and expenses above referred to before making the said apportionment no error, or irregularity or want of power in regard to any portion of said apportionment and assessment shall invalidate the residue thereof. Of the amount thus to be apportioned only the one-twentieth part shall be annually assessed in each and every year, commencing with the year eighteen hundred and seventy-three, for twenty successive years, and be a lien from the time of such annual assessments upon the lands respectively charged

Only one-twentieth of amount shall be annually assessed.

therewith, together with interest from the time of the confirmation of the report or assessment to be computed from year to year upon the respective amounts remaining unpaid at the time of making such annual assessments, which interest shall be added to said assessment and form part thereof. And the said assessments and interest shall be annually included in the taxes to be levied upon the lands so to be assessed, and shall be levied and collected in the same manner as other taxes upon real estate, annually, for twenty successive years. The proceeds of such collections shall immediately after their receipt be paid over to the Commissioners of the Sinking Fund, in the city of Brooklyn, be applied to the redemption of all city bonds issued and to be issued for the payment of the purchase and improvement of lands taken for said park. But any person interested in the said lands or any of them, may at any time pay to the said Commissioners of the Sinking Fund the amount so to be assessed thereon, with interest, to the time of payment, and thereupon his said lands shall be discharged from the said assessment.

Assessment and interest to be annually included in taxes upon such lands.

Proceeds; how applied.

Persons interested may at any time pay amount to Commissioners of Sinking Fund.

NOTE.—See Chapter 791, Laws 1873.

CHAPTER 726.

AN ACT to amend an act passed May eleventh, eighteen hundred and sixty-nine, entitled, "An Act to lay out and improve a public highway or avenue from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings."

Passed May 14, 1872; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The first section of the act entitled, "An Act to lay out and improve a public highway or avenue from Prospect Park, in the city of Brooklyn, towards Coney Island, in the county of Kings," passed May the eleventh, eighteen hundred and sixty-nine, is hereby amended so as to read as follows:

Park Commissioners to lay out avenues.

Route.

May enter upon lands, and cause survey and map to be made.

§ 1. The Brooklyn Park Commissioners are hereby authorized and directed to lay out a public highway or avenue not more than two hundred and ten feet wide, exclusive of the court-yards hereinafter provided for, commencing on the circle at the southwestern angle of Prospect Park, in the city of Brooklyn, and running thence westerly, not exceeding two thousand feet, in the discretion of the said Commissioners, in the general direction of Franklin avenue, in the town of Flatbush, extending westerly; thence again southerly, by such route as the said Commissioners shall consider most direct and eligible, through the towns of Flatbush, New Utrecht and Gravesend, at least six hundred and fifty feet west of the Coney Island plank road, to the road leading from Flatbush to New Utrecht, adjoining the lands of the Prospect Park Fair Grounds Association; and to that end they and their agents are authorized to enter upon any lands which may be required for the purpose, and cause a proper survey and map of the said avenue, as well as of the district of assessment therefor, to be made.

§ 2. The second section of the said act is hereby amended so as to read as follows:

No building to be erected within thirty feet of outside line of said avenue.

§ 2. No buildings or other erections, except porches, piazzas, fences, fountains and statuary shall remain or be at any time placed upon the said avenue within thirty feet from the outside lines thereof; which space

on each side of the said avenue, and in addition thereto, shall be used for court-yards only, and may be planted with trees and shrubbery, and otherwise ornamented, at the discretion of the respective owners or occupants thereof ; but such use and ornamentation shall be under the direction of the said Park Commissioners.

§ 3. The seventh section of the said act is hereby amended so as to read as follows:

§ 7. After the reports of estimate and assessment for taking and opening the said avenue shall have been confirmed, they shall, together with the maps hereinbefore referred to, be filed in the office of the Clerk of the County of Kings, and the said Park Commissioners shall be thereupon authorized to improve the said avenue according to a plan to be devised or adopted by them, and for that purpose they may cause the same to be graded, paved, curbed and guttered, and shade trees planted thereon, and may lay out and construct such carriageways, sidewalks and areas as they may deem expedient, and such improvements may be made in sections, and from time to time, if they shall so elect. The said Park Commissioners may, in their discretion, purchase or lease one or more gravel pits, for the purpose of its improvement and subsequent maintenance, and pay for the same out of any funds in their hands applicable to the construction of Prospect Park. All expenses incident to such improvements, or either or any of them, after having been duly certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by them apportioned and assessed upon the property in their judgment benefited thereby, within the district of assessment so to be filed by the said Park Commissioners, and their reports thereon shall be subject to objection and appeal, and to confirmation in the same manner as their said former assessment reports.

After reports of estimate and assessment are confirmed and filed, the Park Commissioners may improve said avenue.

Commissioners may purchase or lease gravel pits.

Expenses to be apportioned and assessed by Commissioners of Estimate.

§ 4. The eighth section of said act is hereby amended so as to read as follows :

§ 8. The said Park Commissioners may contract in writing for the making of all or any of the said improvements, after inviting proposals for doing the work and furnishing the materials, by publication for one week in said two daily newspapers, filing a copy of each of said contracts in the office of the Treasurer of the County of Kings, within ten days after the making of the same. And they may from time to time as the work progresses, but not oftener than once a month issue to the contractors certificates of the amount of work and materials done and

Park Commissioners may contract for making any or all of said improvements.

Contractors when to be paid.

furnished under such contracts. The said Treasurer is hereby authorized and directed to pay seventy-five per cent. of such amounts to said contractors or their assigns, and upon the final completion of their said contracts, and upon filing a certificate thereof in the office of the said Treasurer, he shall pay to the said contractors or their assigns the balance of the several amounts due under their contracts. The said Treasurer shall also pay

When surveyors, Commissioners, and Counsel to be paid.

to the surveyor, commissioners, counsel, and other persons to be employed upon the said work, and upon the laying of the said improvement assessment, such amounts for services and necessary disbursements as shall be specified in the assessment reports after they shall have been duly confirmed by the court. For the purpose of furnishing the money required to make such payments the County of Kings is authorized and the proper officers thereof are hereby directed to issue certificates of indebtedness to the necessary amount not exceeding three hundred thousand dollars, bearing interest at seven per cent. per annum, payable on or before the expiration of ten years from the date thereof, interest thereon to be payable semi-annually and to sell the same for not less than the par value thereof. The Board of Supervisors of the County of Kings shall annually make provision by tax for the payment of interest to accrue on such certificates, and levy the same on the several parcels of property assessed as part of the general tax ; and in the year preceding the maturity of said certificates, the amount of any assessment remaining unpaid, with the interest and default if any accrued thereon, shall form part of and be levied and assessed upon the property chargeable with said assessment, as part of the general tax upon said lands for the general expenses of the said county. And in case there shall be separate interests divided or undivided, arising from a transfer of the assessed property or any part thereof, at or at any time previous to the making of said levy or a sale therefor, and the same shall be made to appear to the satisfaction of the said Park Commissioners, they may apportion the amount assessed thereon between the owners of the respective parts thereof, and all provisions of law applicable to the redemption of lands from sales for taxes shall apply to the several interests and amounts so apportioned.

Certificates of indebtedness to be issued.

Tax to pay interest and principal.

And in case there shall be separate interests divided or undivided, arising from a transfer of the assessed property or any part thereof, at or at any time previous to the making of said levy or a sale therefor, and the same shall be made to appear to the satisfaction of the said Park Commissioners, they may apportion the amount assessed thereon between the owners of the respective parts thereof, and all provisions of law applicable to the redemption of lands from sales for taxes shall apply to the several interests and amounts so apportioned.

In case of transfer of part of property assessed, the said Commissioners may apportion amount assessed between owners.

§ 5. The ninth section of the said act is hereby amended so as to read as follows :

Assessments to be liens.

§ 9. All assessments made and confirmed in pursuance of this act shall be liens upon the lands and premises upon which they shall have been laid, and such lands and premises shall be subject to be sold for the assessments referred to in the fifth and sixth sections of this

act if such assessments are not paid within ninety days after the confirmation thereof. The present existing provisions of law applicable to sales for taxes and assessments in the city of Brooklyn, to redemptions and leases therefor, and to the respective rights of parties interested therein, including the rate of interest to be paid by the parties in default, shall apply to all assessments to be laid under this act, whenever they are not inconsistent therewith. And when any duties are by said laws imposed upon the Common Council of said city, they shall devolve upon the said Park Commissioners, and where imposed upon subordinate officers of the city, they shall be performed by persons to be specially appointed by the said Park Commissioners.

Existing provisions of law applicable to sales for taxes and assessments, etc., to apply to assessments under this act.

§ 6. The eleventh section of the said act is hereby amended so as to read as follows :

§ 11. After the said avenue shall have been opened the said avenue, together with the court-yards fronting thereon, shall be under the exclusive charge and management of the said Park Commissioners, and they shall make and enforce rules and regulations for the proper use thereof; and after the said avenue shall have been improved as hereinbefore directed, its subsequent maintenance shall be a charge upon the city of Brooklyn, and such amounts as the said Park Commissioners shall, from time to time by resolution, determine to be necessary for the purpose, shall be annually raised by the joint Board of Common Council and Supervisors of the city of Brooklyn, and collected in the taxes of the then current year, and paid over to the said Park Commissioners.

Avenue to be under exclusive charge of Park Commissioners.

Subsequent maintenance to be charged on city.

§ 7. This act shall take effect immediately.

CHAPTER 592.

AN ACT supplementary to an act entitled, "An Act to open and widen portions of Sackett, Douglass and President streets, and otherwise alter the Commissioners' Map of the city of Brooklyn," passed May sixth, eighteen hundred and sixty-eight.

Passed May 22, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Park Commissioners to improve certain streets.

SECTION 1. The Brooklyn Park Commissioners are hereby authorized and directed to improve so much of Sackett street, in the city of Brooklyn, as lies eastward from Washington avenue, and west of the City line; also so much of Douglass and Degraw streets as lie eastward from New York avenue; and for that purpose may cause the said streets to be graded, paved, curbed and guttered according to a plan adopted or to be adopted by them, and may re-name the said streets, and plant shade trees thereon, and may lay out and construct such carriage ways, sidewalks and areas thereon as they may think proper; and all contracts made or to be made by them in relation to such improvement shall be filed in the office of the Comptroller of the city of Brooklyn.

To issue certificates to contractors for work done.

§ 2. The said Commissioners may from time to time, as the work progresses on said streets, but not oftener than once a month, issue to the contractors certificates of the amount of work done and materials furnished under the said contracts. The said Comptroller shall thereupon pay to such contractors, or to their assigns, eighty per cent. of the several amounts so certified; and, upon the final completion of their contracts, and the filing of proper certificates thereof with said Comptroller, he shall, within thirty days thereafter, pay to them or their assigns the balances due to them respectively under their said contracts. He shall also pay to the Surveyor, Commissioners of Assessment, Counsel and other persons to be employed upon the said work and upon the laying of the assessment hereinafter referred to, such amounts for services and disbursements as shall be specified in the assessment report of the said Commissioners, after it shall have been duly confirmed by the Supreme Court; and the city of Brooklyn is hereby authorized to collect by assessment, as hereinafter provided, all amounts expended and to be expended under such contracts.

Comptroller to pay eighty per cent. of amounts certified.

Payments to Surveyor, etc.

§ 3. All expenses incident to the said improvements after having been duly certified by the said Park Commissioners to three Commissioners of Assessment, who shall be appointed for the purpose by the Supreme Court, at a special term, to be held in the Second Judicial Department, shall be by said last-mentioned Commissioners apportioned and assessed, in such manner as they shall deem just and equitable upon property to be in their judgment benefited thereby within a district of assessment, to be fixed by the said Park Commissioners. Such assessments, after the report of the said Commissioners shall have been confirmed by the said Court, upon a notice of presenting the same to said Court for confirmation, published ten days in two daily newspapers printed in the said city, shall constitute liens upon the several pieces of property to be charged therewith, and shall be levied and collected with interest from the confirmation of the said report in the manner hereinafter directed.

Expenses to be apportioned by Commissioners to be appointed by the Court.

Assessments; when to be and become liens.

§ 4. For the purpose of raising money which may be required to make the payments referred to in the second section of this act, as well as to meet at their maturity the three-year assessment bonds, which have already been issued by the city for grading the said streets, with the interest paid and to be paid by the city on said bonds, the Mayor, Comptroller and Clerk of the said city are hereby authorized and directed to make and issue city bonds to such an amount as may be necessary, bearing an interest of seven per cent. per annum, payable on or before the expiration of ten years from the date thereof, said bonds to be sold in the manner now provided by law for the sale of Brooklyn city bonds. The joint Board of Supervisors and Common Council of the said city shall annually levy and collect, as a part of the general tax for the expenses of said city, one-tenth part of the amount specified in the said assessment report, with the interest from the time of its confirmation to be computed from year to year upon the respective amounts remaining unpaid thereon. The said assessments with interest shall be levied and collected upon the several pieces of property chargeable therewith as specified in the said assessment report, and shall, when collected, be paid over to the Commissioners of the Sinking Fund of said city for the redemption of the bonds directed to be issued under this act, and for the payment of interest thereon. (a)

Mayor, Comptroller and Clerk to issue bonds.

Tax to be annually levied and collected.

§ 5. In case there shall be separate interests, divided or undivided, arising from a transfer of portions of the assessed property at any time previous to the making of

In case of separate interests arising from transfers of property, Commissioners to apportion amount assessed.

(a) Section 4, amended by § 3, Chapter 588, Laws 1874.

the levy above referred to, or of a sale therefor, and the same shall be made to appear to the satisfaction of said Assessment Commissioners, they may apportion the amount assessed thereon between the owners of the respective parts thereof; and all provisions of law applicable to the redemption of lands from sales for taxes and assessment shall apply to the several interests and amounts so apportioned. And if any person interested in the property so assessed or any part thereof so to be apportioned, shall pay to the said Comptroller, for the use of the sinking fund, the balance of assessment remaining due thereon, with interest to the time of payment, the lien of the assessment on that particular portion of property shall cease. And upon the production of the Comptroller's receipts therefor, any person in charge of the assessment roll shall note such facts in the margin thereof, and the property shall thenceforth be exempt from levy and sale for such assessment. (a)

This Act not to confer police authority over streets.

§ 6. Nothing contained in this act, or in any other act which confers authority upon said Park Commissioners, shall be so construed so as to confer any police authority upon them over any street specified in this act, but the said streets shall be and remain under the jurisdiction of the municipal authorities of the said city.

§ 7. This act shall take effect immediately.

(a) Section 5, amended by §4, Chapter 588, Laws 1874.

NOTE.—See Chap. 631, Laws 1868, and Chap. 588, Laws 1874.

CHAPTER 771.

AN ACT to provide for the collection of unpaid assessments which have been laid under an act entitled, "An Act to provide for widening the Coney Island plank road, in the county of Kings, and for the subsequent management thereof," passed May fifteenth, eighteen hundred and sixty-eight.

Passed June 14, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. It shall be lawful for any collector of assessments appointed, or to be appointed by the Brooklyn Park Commissioners, under the provisions of an act entitled, "An Act to provide for widening the Coney Island plank road, in the county of Kings, and for the subsequent management thereof," passed May 15, eighteen hundred and sixty-eight, to proceed to sell the several parcels of property upon which assessments for opening or improving the said road shall remain unpaid after the expiration of the term limited for payment by the terms of the said act at public auction for the lowest term of years for which any person will take the same, and pay the amount so remaining unpaid, with interest, from the time of the confirmation of the assessment report, together with five per cent. for collector's fees, and three per cent. in addition for the expenses of advertising and sale, the said collector first giving thirty days' notice of the time and place of sale by publishing the same in two daily newspapers printed in the city of Brooklyn, twice a week, for three weeks. Upon a sale being made the said collector shall give certificates of sale to purchasers, and shall also execute and deliver conveyances of the land so purchased unless the same shall have been redeemed by an owner, lessee or mortgagee thereof within two years from the time of sale by paying to the purchaser, or to the said Brooklyn Park Commissioners for his use, the amount paid by him, with interest at the rate of fifteen per cent. per annum. The said certificates of sale shall be recorded by the purchasers in the office of the register in and for the county of Kings, and shall constitute liens upon the premises therein described after the same shall have been so recorded, and shall take pre-

Collector may proceed to sell property upon which assessments remain unpaid.

Notice to be given.

Certificates of sale.

To be recorded, etc.

cedence of all other liens, except for unpaid taxes or assessments. And all interest to be collected at the said sale shall be credited and paid *pro rata* among all parties entitled to receive awards upon the said opening.

§ 2. This act shall take effect immediately.

CHAPTER 772.

AN ACT to amend an act entitled, "An act in relation to the widening of the Coney Island plank-road, in the county of Kings," passed May eleven, eighteen hundred and sixty-nine.

Passed June 14, 1873.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The third section of the act entitled, "An act in relation to the widening of the Coney Island plank-road, in the county of Kings," passed May eleventh, eighteen hundred and sixty-nine, is hereby amended so as to read as follows :

§ 3. The said road, so to be widened, shall not exceed one hundred feet in width, and shall embrace a sidewalk not exceeding twenty feet in width on each side thereof, except on the easterly side, between the city line and the circle at the south-westerly angle of Prospect Park, where the sidewalk shall be thirty feet in width, and the owners or occupants of land facing on said road, except the city of Brooklyn, may occupy six feet in width adjoining their premises, for court yards or areas, within which to erect porches or stoops to their houses, provided they will inclose the same with good and sufficient iron or picket fences, not exceeding five feet in height.

Width of
road, etc.

§ 2. This act shall take effect immediately.

CHAPTER 789.

AN ACT to provide for the collection of the unpaid assessments which have been laid under an act entitled, "An act to lay out and improve a public highway or avenue from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings," passed May eleventh, eighteen hundred and sixty-nine.

Passed June 18, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Collector may sell property upon which assessments remain unpaid.

SECTION 1. It shall be lawful for any collector of assessments, appointed or to be appointed by the Brooklyn Park Commissioners, under the provisions of an act entitled, "An act to lay out and improve a public highway or avenue from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings," passed April eleventh, eighteen hundred and sixty-nine, to proceed to sell the several parcels of property upon which the assessments for opening said avenue shall remain unpaid after the expiration of the time limited for payment by the ninth section of the said act, at public auction, for the lowest term of years for which any person will take the same and pay the amount so remaining unpaid, with interest from the time of the confirmation of the assessment report, together with five per cent. for collector's fees, and three per cent. in addition for the expenses of advertising and sale, the said collector first giving thirty days' notice of the time and place of sale, by publishing the same in two daily newspapers printed in the city of Brooklyn twice a week for three weeks. Upon a sale being made, the said collector shall give certificates of sale to purchasers, and shall also execute and deliver conveyances of the lands so purchased, unless the same shall have been redeemed by an owner, lessee or mortgagee thereof within two years from the time of sale, by paying to the purchaser, or to the said Brooklyn Park Commissioners, for his use, the amount paid by him, with interest at the rate of fifteen per cent. per annum. The said certificates of sale shall be recorded by the purchasers in the office of the register of deeds in and for the county of Kings, and shall constitute liens upon the premises therein described, after the same shall have been so recorded, and shall take precedence of all other

Notice of sale.

Certificates of sale.

To be recorded.

liens, except for unpaid taxes or assessments. And all interest to be collected at the said sale shall be credited and paid pro rata among all parties entitled to receive awards upon the said opening.

§ 2. This act shall take effect immediately.

CHAPTER 791.

AN ACT to amend an act passed April twenty-four, eighteen hundred and sixty-eight, entitled, "An Act for the further extension of Prospect Park, in the city of Brooklyn."

Passed June 18, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Proviso as to
time of pay-
ment of assess-
ments.

SECTION 1. The act passed April twenty-four, eighteen hundred and sixty-eight, entitled, "An Act for the further extension of Prospect Park, in the city of Brooklyn," is hereby amended by adding to the fourth section thereof the following provisions, viz.: Provided, nevertheless, that all amounts not exceeding the sum of twenty dollars apportioned upon any lot, piece or parcel of land, as hereinbefore provided, shall be assessed in one assessment upon the lands charged therewith, and shall be included in the taxes to be levied upon such lands respectively, in the tax levy, immediately succeeding the confirmation of the said report, and levied and collected with such taxes; and provided, further, that in all amounts exceeding the sum of twenty dollars, apportioned upon any lot, piece or parcel of land as hereinbefore provided, there shall be assessed annually in each and every year, commencing with the tax levy immediately succeeding the confirmation of the said report, upon the lands charged therewith, not less than five dollars, and interest as hereinbefore provided, except in the last year, in cases where the balance remaining unpaid shall not amount to that sum, when such balance and interest only shall be assessed, and the sums so assessed shall be included in the taxes of said years respectively, and levied and collected therewith.

§ 2. This act shall take effect immediately.

NOTE.—See Chap. 244. Laws 1878.

CHAPTER 795.

AN ACT to amend an act passed April twenty-third, eighteen hundred and seventy, entitled, "An Act to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn."

Passed June 18, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The first section of the act entitled, "An Act to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn," passed April twenty-third, eighteen hundred and seventy, is hereby amended so as to read as follows :

§ 1. The Brooklyn Park Commissioners are hereby authorized and directed to contract and sell at public auction, for and on account of the city of Brooklyn, at such times and on such terms and conditions as they shall deem expedient, all or any part of the land within Prospect Park, which is bounded westerly by Flatbush avenue, northerly by Vanderbilt avenue and the plaza, easterly by Warren street and Washington avenue, and southerly by the town of Flatbush, excepting and reserving therefrom so much of said park land as lies outside of the reservoir grounds and adjacent thereto, and is bounded and described as follows : Beginning at a point on the north-easterly side of Flatbush avenue, where it is intersected by a line drawn parallel with and seven feet three inches easterly from the westerly side of Underhill avenue, as said avenue was formerly laid down on the Commissioners' map of the city of Brooklyn ; thence northerly along said line until it intersects the south-westerly line of the Eastern Parkway as laid out by said Park Commissioners in accordance with a plan now on file in the office of the Board of Public Works of the said city ; running thence easterly along the said south-westerly line of said parkway until it intersects the easterly line of Grand avenue, as said avenue was formerly laid down on said Commissioners' map ; running thence southerly along said easterly line of Grand avenue about three hundred and eighty-six feet ; thence westerly on a line drawn at right angles to Flatbush avenue, until it intersects the centre of President street, as said street was formerly laid down on said Commissioners' map ; thence westerly along said centre line of

Commissioners
to sell at public
auction part of
Park.

Description.

Value of land reserved; how to be determined.

President street until it intersects the north-easterly line of Flatbush avenue, and thence north-westerly along said easterly side of Flatbush avenue to the place of beginning. Excepting and reserving also, so much of said land lying along the line of Flatbush avenue and fronting thereon, running southerly from the Prospect Hill Reservoir to the town of Flatbush, not less than two hundred and fifty feet in width, as shall in the judgment of the said Commissioners be proper for the city to retain for public uses. And for the purpose of determining the value of the land so reserved for the purposes of the said reservoir, the said Park Commissioners and the Board of Public Works of said city shall, within three months after the passage of this act, or within such further time as shall be agreed upon by them, come to an agreement with respect to the amount to be paid by said city for the land so to be reserved for reservoir purposes; and if they disagree, then each of the said parties shall select a disinterested person, and the two so selected shall choose a third, and the decision of the three referees so chosen, or a majority of them, shall be final and conclusive as to the amount so to be paid. The amount so agreed upon shall be paid to the Commissioners of the Sinking Fund of said city, to be applied in the redemption of bonds issued for the purchase of park lands.

§ 2. The third section of the said act is hereby amended so as to read as follows :

Moneys received on such sales; how to be disposed of.

§ 3. All moneys that shall be received by the said Commissioners upon such sales, after deducting the necessary expenses of sale and conveyancing, including engineering and surveying, and the amount hereinafter authorized to be borrowed with interest, together with such assessments as may be liens upon the land at the time of sale, shall be paid over to the Commissioners of the Sinking Fund of the city of Brooklyn, to be by them held and used as part of the general fund for the redemption of city bonds heretofore issued for the payment of lands taken for the said park.

§ 3. The fifth section of the said act is hereby amended so as to read as follows :

Commissioners may drain and grade lands, etc., before sale.

§ 5. Preparatory to the making of the sales referred to in the first section of this act, the said Park Commissioners may regulate, drain and grade the said lands, and may lay out streets, avenues or parkways over or upon the same, of such width and in such direction with such carriage ways, sidewalks and areas as they may deem expedient. They may also, in their discretion,

grade, pave and gutter any of the streets, avenues or parkways which they shall so lay out, and may plant shade trees thereon; but the expense of the improvements hereby authorized shall not exceed the sum of two hundred thousand dollars. After they shall have laid out such streets, avenues and parkways, they shall cause a suitable map thereof to be made and filed in the office of the said Board of Public Works, and the Commissioners' map of said city shall be thereupon altered to correspond therewith; and for the purpose of carrying out the provisions of this act, the said Park Commissioners may borrow from time to time, as may be required, such sums of money not exceeding the amount above limited as they may deem necessary, and shall repay the same with interest, out of the proceeds of sales to be made as aforesaid.

§ 4. This act shall take effect immediately.

CHAPTER 863.

AN ACT to amend the charter of the city of Brooklyn and the various amendments thereof.

Passed June 28, 1873, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

TITLE XV.

DEPARTMENT OF PARKS.

Of whom to consist.

SECTION 1. At the first meeting of the Board of Aldermen in January, in the year eighteen hundred and seventy-five, and every two years thereafter, the Mayor shall nominate, and with the consent of the Board of Aldermen appoint a proper person to be President of the Department of Parks, and two Commissioners, who, together with the President, shall constitute the Commissioners of Parks. Their term of office shall commence on the first day of January, eighteen hundred and seventy-five, as soon thereafter as they have qualified. The President shall receive an annual salary of five thousand dollars, and each of said Commissioners an annual salary of two thousand dollars.

Present board to account for and pay over moneys and transfer books, etc.

§ 2. When the said Commissioners of Parks shall have been appointed and qualified, the present Board of Park Commissioners shall, forthwith, under oath, account for and pay over to the Treasurer of the city all moneys in their hands belonging to the city, and transfer to the said Commissioners all books, maps, papers and property of every kind that may be then in their possession or under their control, and thereupon the office and duties of the present Board of Park Commissioners shall cease.

Parks, etc.; control of.

§ 3. All the parks, plazas, squares and public places of the city shall be under the control, management and supervision of the said Commissioners, subject, however, to the direction of the Common Council.

Reports to Common Council.

§ 4. They shall report to the Common Council, from time to time, as may be necessary in their judgment as they may be directed by the Common Council, the conditions, repairs, improvements, expenses of keeping or improving the public property under their charge, and all matters relating to this department.

§ 5. The present Park Commissioners shall continue in office until the first day of January, one thousand, eight hundred and seventy-five, and serve without compensation ; and all appointments to fill vacancies occurring in the said department shall be made by the Mayor, with the consent of the Board of Aldermen. The said present Commissioners shall have and exercise all the powers now conferred upon them by existing laws until the first day of January, one thousand, eight hundred and seventy-five, and until their successors shall have qualified.

Present Commissioners to continue in office until January 1st, 1875.

NOTE.—Title XV is amended by Chapter 354, Laws 1877, and by Chapter 319, Laws 1880.

CHAPTER 572.

AN ACT to amend an act entitled, "An Act to provide for the improvement of the Coney Island plank road, as recently widened, passed May three, eighteen hundred and seventy-two."

Passed May 25, 1874, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of the act entitled, "An Act to provide for the improvement of the Coney Island plank road, as recently widened, passed May three, eighteen hundred and seventy-two," is hereby amended so as to read as follows:

Park Commissioners may grade, etc., part of Coney Island Plank road.

Expenses; how assessed.

Liens.

Certificates of indebtedness.

§ 1. The Brooklyn Park Commissioners are hereby authorized to grade, gravel, curb and gutter that portion of the Coney Island plank road, as recently widened, lying between the circle at the southwesterly angle of Prospect Park and Church lane, and said Church lane from said road to Ocean Parkway, according to a plan to be devised and adopted by them. All expenses incident to said improvements, after having been duly certified by the said Park Commissioners to the Commissioners of Estimate and Assessment appointed as hereinafter directed, shall be by them apportioned and assessed upon the property in their judgment benefited thereby, within a district of assessment to be fixed by the said Park Commissioners; but no district of assessment shall extend beyond the termini of the improvements provided for in this Act, and the assessments specified in their report, when filed in the office of the Clerk of the County of Kings, and duly confirmed by an order of the Supreme Court at Special Term, upon an application therefor, of which ten days' notice shall have been given in two newspapers printed in the city of Brooklyn, shall constitute liens upon the several parcels of lands and premises upon which they shall have been laid, and shall be collected in the manner herein-after directed. The said Park Commissioners may also contract in writing for the making of the said improvement, and may from time to time, as the work progresses, issue to the contractors, in the name and upon the authority of the said Commissioners, certificates of indebtedness, bearing interest to the extent of eighty per cent. of the work completed by said contractors,

payable out of the assessments therefor, when collected. The Supreme Court, in the Second Judicial District, at a Special Term thereof, shall, upon application of said Park Commissioners, on notice of ten days, to be published in two papers in the city of Brooklyn, appoint three Commissioners of Estimate and Assessment, who shall be residents of the town of Flatbush, who shall have the powers and perform the duties of the Commissioners of Estimate and Assessment who acted in estimating the damages incident to the widening and opening of the said road. All the provisions of chapter seven hundred and seventy-one of the laws of eighteen hundred and seventy-three, so far as relates to the collection of the assessments herein provided for, and the sale for the non-payment of the same, and the lien thereof, shall apply to and become part of this act, except that no fees for collecting shall be charged against any property belonging to the city of Brooklyn or to the county of Kings.

Commissioners
of Estimate
and Assess-
ments; how ap-
pointed, etc.

Collection of
assessments.

Fees.

§ 2. This act shall take effect immediately.

CHAPTER 583.

AN ACT to lay out and improve a public highway or avenue and concourse, in continuation of a public highway or avenue heretofore laid out from Prospect Park in the city of Brooklyn toward Coney Island in the county of Kings.

Passed May 25, 1874, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Avenue, etc.,
Park Commis-
sioners, lay out
and improve.

Route.

Route to be laid
out.

Route.

Concourse or
shore road.

SECTION 1. The Brooklyn Park Commissioners are hereby authorized and directed to lay out and improve a public highway or avenue, not more than two hundred and ten feet wide, exclusive of the court-yards hereinafter provided for, commencing on the northerly side of the King's highway, so called, at the point of termination of the public highway or avenue, from Prospect Park in the city of Brooklyn toward Coney Island in the county of Kings, as the same is laid out pursuant to the provisions of chapter eight hundred and sixty-one, of the laws of eighteen hundred and sixty-nine, and the several Acts amending the same, running thence in a general southerly direction through the town of Gravesend, and on and across Coney Island to the Atlantic Ocean. They shall also lay out a road or highway, one hundred feet wide, through and along the northerly and easterly side of the lands of the Prospect Park Fair Grounds Association, and the lands adjoining the same on the north and east, commencing where the said proposed road will intersect the said Ocean Parkway, at the northerly side of lands of said association, and terminating at the said continuation of the said Ocean Parkway on the southerly side of said lands. They shall also lay out and open and improve such concourse or shore road at the southerly terminus of said highway, hereby extended, as in their judgment shall be wise and proper, not exceeding three thousand feet in length on each side along the beach, and five hundred feet in width, exclusive of such accretions or additions which may be caused by the action of the elements or otherwise, on the southerly side thereof, which accretions, if any, shall attach thereto and be under the same control and care of the Brooklyn Park Commissioners, as the said concourse or shore road shall or may be. And for this purpose they may enter upon any lands that may be necessary, and cause a proper survey and map of the said avenue, as

well as of the district of assessment therefor to be made. (a) Survey, etc.

§ 2. No buildings or other erections, except porches, piazzas, fences, fountains and statuary shall remain or be at any time placed upon said avenue within thirty feet from the outside lines thereof, which space on each side of the said avenue, and in addition thereto, shall be used for the court-yards only, and may be planted with trees and shrubbery, and otherwise ornamented, at the discretion of the respective owners or occupants thereof; but such use and ornamentation shall be under the direction of the said Park Commissioners. Location of buildings on avenue.

§ 3. The said Commissioners are hereby also directed to grade and otherwise improve said concourse, lateral, branch or shore road at the ocean beach, the said one hundred feet road, and also so much of the said avenue as lies south of the lands of the said association, and also so much of said avenue as lies between the present termination of Ocean Parkway and the point where said one hundred feet road commences; and in order to determine the amount to be paid to the owners of the lands and tenements required to be taken for the purposes of this Act and for the improvement thereof, the said Commissioners shall first fix a district of assessment for the opening and improvement of the said continued parkway, and another district of assessment for the opening and improvement of said one hundred feet road, within which several districts the property to be benefited shall be assessed to defray the expenses of such several takings, as well as of the improvement thereof. Notice of the time and place of fixing the said districts, and of hearing the parties interested therein, shall be published for ten days successively in at least two daily newspapers printed and published in the county of Kings. Grading, etc.

Districts of Assessment; Commissioners to fix.

Assessment to defray expenses.

Notice.

§ 4. After fixing the said districts of assessment the said Commissioners shall apply to the Supreme Court, at a Special Term to be held in the Second Judicial District, upon a similar notice, for the appointment of three Commissioners, who shall be freeholders and residents of the said county, to estimate the value of the lands and premises required to be taken for the purposes of this act, and the damages to be sustained by any person interested therein, as well by the taking of the land as by the creation of the restriction or easement thereon, specified in the second section of this Act, or for the relinquishment of any easement now existing thereon. Commissioners of Estimate, etc.; appointment of.

(a) The second sub-division of Section 1, amended by § 3, Chapter 489, Laws 1875.

Vacancy; how filled.

or attaching thereto, together with the expenses of said opening and of the improvement thereof, and also to apportion and assess the same, both for taking and improving, in such manner as they shall deem just and equitable, upon the property to be benefited within the districts of assessment so to be fixed by the said Park Commissioners; and the said Court, at Special Term, shall thereupon proceed to make such appointment. In case of the death or refusal to act, or other disability of the Commissioners so to be appointed, or either of them, at any time before the several objects of their appointment shall have been accomplished, the said Court, at Special Term, may fill the vacancy.

Estimates and assessments; how made.

§ 5. The Commissioners so to be appointed by the Court, after having been duly sworn faithfully to perform the duties hereby devolved upon them, shall proceed to make the estimates and assessments referred to in the last preceding sections of this Act. And in laying the assessment for improvement, the expense of improving the said one hundred feet road shall be charged upon the lands of the said Prospect Park Fair Grounds Association. Each of the said reports shall, at all times, before confirmation, be subject to review and correction, and ten days' notice of the time and place of hearing objections thereto, and of reviewing and correcting the same, shall be published in the newspapers above referred to. After hearing such objections and making the corrections, if any be required, the said reports shall be delivered to the said Park Commissioners.

Reports to be subject to review.

Application for confirmation of reports.

§ 6. Upon receiving the said reports, or either of them, the said Park Commissioners shall give ten days' notice in the said newspapers that application will be made to the said Court, at a Special Term, at a time and place to be therein designated, to have the same confirmed. Appeals may be taken from said reports, or any of them, by giving written notice to the attorney of the said Commissioners at least six days before the time fixed for the application to confirm the same, with a specification of the nature of the objections; and the Court shall have power to confirm, amend or refer back the said reports, or either of them, as it may deem proper, and to make any further order in the premises, until the final confirmation thereof.

Appeal; how taken.

Title; when it shall vest in the county.

§ 7. After the reports of estimate and assessment for taking and opening the said avenue and one hundred feet road, and said concourse or lateral branch or shore road at the ocean beach, shall have been confirmed, the title to the concourse or lateral branch or shore road shall vest in the county of Kings in fee simple absolute;

and said reports, together with the maps hereinbefore referred to, shall be filed in the office of the Clerk of the County of Kings, and the said Park Commissioners shall be thereupon authorized to improve the said avenue and one hundred feet road and said concourse, lateral branch or shore road at the ocean beach, according to a plan to be devised or adopted by them; and for that purpose they may cause the same to be graded, paved, curbed, guttered and bridged, and shade trees planted thereon, and may lay out and construct such carriage-ways, sidewalks and areas, with such terraces, drives or concourses on the ocean beach as they may deem expedient, and such improvements may be made in sections, and from time to time, if they shall so elect. (a)

Reports and maps to be filed.

§ 8. All expenses incident to such improvements, or either or any of them, after having been duly certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by them apportioned and assessed upon the property in their judgment benefited thereby within the several districts of assessment so to be fixed by the said Park Commissioners. The expense of constructing the drive and concourse on the ocean beach, as well as of such bridges as may be required for such parkway, not exceeding the sum of fifteen thousand dollars, shall be a charge on the county of Kings, and of the expense of constructing the said parkway south of a point which is distant fifteen hundred feet southerly from the Neck road, so called, not exceeding one-half shall be charged and assessed against the property, in the judgment of the Commissioners, benefited by said improvement; and so much thereof as shall be charged and assessed against the county of Kings, either for the opening or improvement thereof, the Supervisors of the said county are hereby directed to raise by tax upon the requisition of the Park Commissioners, and the County Treasurer to pay the proceeds thereof to the persons entitled to receive the same upon like requisition. And the reports of the Commissioners of Assessment shall be subject to objection and appeal and to confirmation in the same manner as their said former assessment reports; but the expenses of no portion of said parkway shall be a charge upon the county of Kings. (b)

Expres.

§ 9. All assessments made and confirmed in pursuance of this Act shall be liens upon the lands and premises upon which they shall have been laid, and such

Assessments made and confirmed to be liens, etc.

(a) Section 7, amended by § 1, Chap. 352, Laws 1876.

(b) Section 8, amended by § 1, Chap. 489, Laws 1875.

Existing provisions of law applied.

Duties of Park Commissioners.

Collectors to be appointed.

Compensation of collectors.

Lien.

Sale; when and by whom made.

Notice thereof.

Certificates to be recorded.

lands and premises shall be subject to be sold for the assessments referred to in the fifth and sixth sections of this act, if such assessments are not paid within ninety days after the confirmation thereof. The present existing provisions of law applicable to sales for taxes and assessments in the city of Brooklyn, to redemptions and leases therefor, and to the respective rights of the parties interested therein, including the rate of interest to be paid by the parties in default, shall apply to all assessments to be laid under this Act whenever they are not inconsistent therewith. And when any duties are by said laws imposed upon the Common Council of said city, they shall devolve upon the said Park Commissioners, and where imposed upon subordinate officers of the city, they shall be performed by persons to be specially appointed by the said Park Commissioners.

§ 10. The said Park Commissioners may appoint one or more collectors of all assessments to be laid under this Act, who shall severally give bonds for the faithful performance of their duties, and for the prompt payment of all the moneys to be collected by them. The collector of any assessment shall be entitled to receive a compensation of one per cent. on all moneys paid to him, within two weeks after he shall have published notice in said newspapers twice a week, for four weeks, of the time and place where he will attend to receive payment. After the expiration of six weeks from the first publication of the said notice, the collector shall be entitled to three per cent. on all moneys thereafter to be collected by him, and in either case his compensation shall be paid by the party assessed, over and above his assessment and as part thereof; and the lien of the assessment shall extend to such compensation, except that no fees shall be allowed for the collection of the amount assessed against the county of Kings. In case any assessment shall remain unpaid after the expiration of the time above specified, the collector shall proceed to sell at public auction, for the lowest term of years for which any person will take the same and pay the amount so remaining unpaid, with interest from the time of the confirmation of the Assessment report, together with two per cent. for collector's fees, and three dollars on each parcel in addition for the expenses of advertising and sale, and said collector first giving thirty days' notice of the time and place of sale, by publishing the same in two daily newspapers printed in the county of Kings twice a week for three weeks. Upon a sale being made, the said collector shall give certificates of sale to purchasers, and shall also execute and deliver conveyances of the lands so purchased, unless the same shall have been redeemed by an owner, lessee or mortgagee thereof, within two years

from the time of sale, by paying to the purchaser, or to the said Brooklyn Park Commissioners, for his use, the amount paid by him with interest at the rate of twelve per cent. per annum. The said certificates of sale shall be recorded by the purchasers, in the office of the Register of Deeds in and for the county of Kings, and shall constitute liens upon the premises therein described, after the same shall have been so recorded, and shall take precedence of all other liens except for unpaid taxes or assessments. And all interest to be collected at the said sale, shall be credited and paid *pro rata* among all parties entitled to receive awards upon the said opening. Upon the final collection of any assessment to be made under this act, it shall be paid over by the said Park Commissioners, to the several persons entitled to receive the same.

To be liens.

§ 11. After the said avenue shall have been opened, the said avenue, and the concourse lateral branch or shore road, at the ocean beach, shall be under the exclusive charge and management of the said Park Commissioners, and they shall make and enforce rules and regulations for the proper use thereof. And after the said avenue and shore road shall have been improved as hereinbefore directed, its subsequent maintenance shall be a charge upon the city of Brooklyn; and such amounts as the said Park Commissioners shall, from time to time, by resolution, determine to be necessary for the purpose, shall be annually raised by the Board of Supervisors of the county of Kings, and collected in the taxes of the then current year, and paid over to the said Park Commissioners.

Avenue, etc., to be under the charge of Park Commissioners.

Maintenance and charge upon the city.

§ 12. The said Commissioners of Estimate and Assessment shall be severally entitled to receive three dollars a day for each and every day necessarily employed in the discharge of their duties, and their compensation, with room-hire, stationery, and other necessary expenses, together with the compensation of the surveyor, counsel, and other persons to be necessarily employed under the foregoing provisions of this Act (and who are hereby directed to be employed by the said Park Commissioners), shall be included in the general expenses to be incurred herein.

Compensation of Commissioners of Estimate.

§ 13. This act shall take effect immediately.

NOTE.—This act is amended by adding Sections 13 and 14. See Chapter 489, Laws 1875. Also amended by adding Section 15. See Chapter 352, Laws 1876.

CHAPTER 588.

AN ACT to provide for the completion and improvement of Sackett, Douglass and Degraw streets, in the city of Brooklyn, and also for the collection and payment of all moneys expended or indebtedness incurred by said city on account of the improvement of such streets by the Brooklyn Park Commissioners.

Passed June 1, 1874, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Re-enactment.

SECTION 1. Sections four, seven, nine and ten of an Act of the Legislature entitled, "An act to widen portions of Sackett, Douglass and President streets, and otherwise to alter the Commissioners' map of the city of Brooklyn," passed May sixth, eighteen hundred and sixty-eight, as amended, extended or enlarged by the acts amendatory of or supplemental to, or said to be amendatory of or supplemental to such act are hereby (except as hereinafter amended) expressly re-enacted, and the powers granted, or purported, or stated to be granted by such sections and acts are hereby expressly conferred upon the Brooklyn Park Commissioners and other officers and agents as therein set forth.

Moneys to be assessed, levied and collected.

§ 2. All sums of moneys heretofore at any time paid or advanced to said Park Commissioners by said city, for or on account of the improvements mentioned in said sections of the act passed May sixth, eighteen hundred and sixty-eight, and the said amendatory and supplemental acts, together with all sums hereafter to be advanced under the authority of this act, with all interest paid by said city at the time of such assessment on account of bonds issued to obtain the money so advanced, shall be assessed, levied and collected in the manner provided in and by this act, it being the true intent and meaning of this act to make the sums heretofore expended for such improvement a charge on the same district, and assessable and collectable in the same manner as though such sums had been expended after the passage of this act.

§ 3. Section four of the act passed May twenty-second, eighteen hundred and seventy-three, supplemental to the aforesaid act, passed May sixth, eighteen hundred and sixty-eight, is hereby amended by substituting the words

“the Board of Supervisors of Kings County” for the words “the Joint Board of Supervisors and Common Council of said city,” in such section, it being the true intent and meaning of this section to cause the assessment therein referred to be levied by the said Board of Supervisors instead of by the Joint Board therein referred to, and the said section is hereby further so amended that the tax or charge therein referred to shall not be collected by said Joint Board, but shall be collected by the officers of said city authorized to collect taxes therein.

Board of Super-
visors to levy
assessments.

§ 4. Section five of the act last above referred to is so amended that payments therein allowed to be made to the Comptroller shall be made to the Collector of Taxes and Assessments of said city.

Payments to be
made to col-
lectors.

§ 5. This act shall take effect immediately.

NOTE.—This act amends Chapter 631, Laws 1868, and Chapter 592, Laws 1873.

CHAPTER 265.

AN ACT to amend an act entitled, "An Act to widen and improve a portion of Washington Avenue, in the city of Brooklyn, and extend the same into the town of Flatbush," passed April twenty-third, eighteen hundred and seventy.

Passed May 12, 1875, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Chapter three hundred and seventy-six of the laws of eighteen hundred and seventy, entitled, "An Act to widen and improve a portion of Washington Avenue, in the city of Brooklyn, and extend the same into the town of Flatbush," passed April 23, 1870, is hereby amended by adding the following section at the end thereof :

Payment of contract; assessment bonds to be issued for.

§ 10. For the purpose of paying the contractors and other persons employed in the improvement of so much of said avenue as lies within the city of Brooklyn, the usual assessment bonds of the city of Brooklyn shall be issued and sold by the proper officers of said city to an amount necessary to pay the same, provided nothing herein contained shall authorize the issue of assessment bonds beyond the sum already limited by law. And the said Park Commissioners are hereby authorized to issue to the contractors, and other persons employed in making said improvement within the town of Flatbush and outside of the city of Brooklyn, certificates of indebtedness not exceeding the amount due said contractors and other persons employed in said work, bearing interest to a period three months after the date of the confirmation of the assessment report, to be paid out of the moneys collected for assessments on property within said town, which shall be levied and collected within a district of assessment to be fixed by said Park Commissioners on property within the town of Flatbush. All interest heretofore collected by reason of default in payment of the assessment for opening of that part of said avenue lying within the town of Flatbush shall be credited to the interest account of said improvement, and all interest to be collected by reason of default in payment of any assessments under the provisions of this Act, within said town, shall be paid to the

Certificates of indebtedness; Park Commissioners may issue.

How levied and collected.

Interest.

contractor or other parties to whom payments are due by reason of such default, in proportion to the amount of their respective claims.

§ 2. This act shall take effect immediately.

CHAPTER 480.

AN ACT to amend chapter five hundred and eighty-three of the laws of eighteen hundred and seventy-four, entitled, "An Act to lay out and improve a public highway or avenue and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings."

Passed June 5, 1875, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section eight of chapter five hundred and eighty-three of the laws of eighteen hundred and seventy-four, entitled, "An Act to lay out and improve a public highway or avenue and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings," is hereby amended so as to read as follows:

Expenses; assessment of.

§ 8. All expenses incident to said improvements, or either or any of them, after having been duly certified by the said Park Commissioners to the said Commissioners of Estimate and Assessment, shall be by them apportioned and assessed upon the property in their judgment benefited thereby within the several districts of assessment so to be fixed by the said Park Commissioners. The expense of constructing the drive and concourse on the ocean beach, as well as of such bridges as may be required for such Parkway, shall be a charge on the county of Kings, and of the expense of constructing the said Parkway south of a point which is distant fifteen hundred feet southerly from the Neck road, so called, not exceeding one-half shall be charged and assessed against the property, in the judgment of the Commissioners, benefited by said improvement, and so much thereof as shall be charged and assessed against the county of Kings, either for the opening or improvement thereof, shall be paid thereof by the County Treasurer to the persons entitled to receive the same, upon the certificate of the Brooklyn Park Commissioners. And the reports of the Commissioners of Assessment shall be subject to objection and appeal and to confirmation, in the same manner as their said former assessment reports.

Drive and concourse on ocean beach; expense of, a county charge.

County Treasurer; payment by.

Appeal.

§ 2. Said act is amended by adding at the end thereof the following sections:

§ 13. The said Park Commissioners may contract in writing for the making of all or any of the said improvements, after inviting proposals for doing the work and furnishing the materials, by publication for one week in said two daily newspapers, printed and published in the County of Kings, and filing a copy of each of said contracts in the office of the Treasurer of the County of Kings within ten days after the making of the same. And they may from time to time as the work progresses, but not oftener than once a month, issue to the contractors certificates of the amount of work and materials done and furnished under such contracts. The said Treasurer is hereby authorized and directed to pay seventy-five per cent. of such amounts to said contractors or their assigns, and upon the final completion of their said contracts, and upon filing a certificate thereof in the office of the said Treasurer, he shall pay to the said contractors or their assigns the balance of the several amounts due under their contracts. The said Treasurer shall also pay to the Surveyor, Commissioners, Counsel and other persons to be employed upon the said work, and upon the laying of said improvement, such amounts for services and necessary disbursements as shall be specified in the assessment reports after they shall have been duly confirmed by the Court. For the purpose of furnishing the money required to make all such payments, and for the payment of so much thereof as may be charged or assessed to the county, including the amount expended for the improvement of said concourse, the County of Kings is authorized, and the proper officers thereof are hereby directed, to issue certificates of indebtedness to the necessary amount, not exceeding two hundred thousand dollars, bearing interest at seven per cent. per annum, payable on or before the expiration of ten years from the date thereof, interest thereon to be payable semi-annually, and to sell the same for not less than the par value thereof, and pay contractors and other persons entitled to receive the same on the certificates of the Brooklyn Park Commissioners. (a)

Contracts for improvements.

Certificates.

Payment to contractors.

Payment to surveyor, commissioners, counsel, and others.

Certificates of indebtedness.

§ 14. The Board of Supervisors of the County of Kings shall annually make provision by tax for the payment of interest accrued, and to accrue, on such certificates; and so much thereof as is chargeable against the several parcels of property assessed shall be levied on the same as part of the general tax for the improvement; and in the year preceding the maturity

Tax for payment of certificates of indebtedness.

(a) Section 13, amended by § 1, Chapter 288, Laws 1877.

Separate interests from transfer of assessed property; apportionment of assessment.

of said certificates, the amount of any assessment remaining unpaid, with interest, if any, accrued thereon, shall form a part of and be levied and assessed upon the property chargeable with said assessment, as part of the general tax upon said lands for the general expenses of the said county; and in case there shall be separate interests divided, or undivided, arising from a transfer of the assessed property, or any part thereof, at or at any time previous to the making of said levy or sale therefor, and the same shall be made to appear to the satisfaction of the said Park Commissioners, they may apportion the amount assessed thereon between the owners of the respective parts thereof, and all provisions of law applicable to the redemption of lands from sales for taxes shall apply to the several interests and amounts so apportioned.

Concourse, or shore road; improvement of.

§ 3. The second sub-division of section one of said act is amended so as to read as follows :

They shall also lay out and open and improve such concourse or shore road at the southerly terminus of said highway hereby extended as in their judgment shall be wise and proper, not exceeding three thousand feet in length on each side along the beach, and not exceeding one thousand feet in width, exclusive of such accretions or additions which may be caused by the action of the elements, or otherwise, on the southerly side thereof, which accretions, if any, shall attach thereto and be under the same control and care of the Brooklyn Park Commissioners as the said concourse or shore road shall or may be ; and for this purpose they may enter upon any lands that may be necessary, and cause a proper survey and map of the said avenue, as well as of the district of assessment therefor to be made.

§ 4. This act shall take effect immediately.

CHAPTER 546.

AN ACT to amend an act entitled, "An act to widen and improve Ninth Avenue and Fifteenth Street, in the city of Brooklyn."

Passed June 8, 1875, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section six of chapter seven hundred of the laws of eighteen hundred and sixty-nine, entitled, "An Act to widen and improve Ninth avenue and Fifteenth street, is hereby amended so as to read as follows:

§ 6. The said widened street and avenue shall be laid out according to a plan to be devised or adopted by the said Park Commissioners; the sidewalks thereof, which are contiguous to the said Park, shall be thirty feet wide, and the opposite sidewalk shall be twenty feet wide, and seven feet in width of said opposite sidewalk adjoining the lots facing on said street and avenue may be used for court yards or areas within which to erect porches or stoops to houses, provided the occupants will inclose such court yards or areas with good and sufficient iron or picket fences, not exceeding five feet high. The said street and avenue shall also be paved, curbed and guttered in such manner as the said Park Commissioners shall direct, and the said Commissioners may plant the same with suitable shade trees on both sides thereof, and construct such carriage ways and walks, and make use of such material of construction or pavements as they shall deem best; and for the purpose of paying the contractors and other persons employed in the improvement of said avenue and street, including the amount already expended and advanced on said work by the Brooklyn Park Commissioners, the usual assessment bonds of the city of Brooklyn shall be issued and sold by the proper officers of the city to an amount necessary to pay the same, provided that no assessment bonds be issued to pay for any work to be done on said street or avenue unless the consent of the Common Council be first obtained thereto; and also provided that nothing herein contained shall authorize the issue of assessment bonds beyond the sum now limited by law, and out of the proceeds of the sale of the

How laid out.

Width of sidewalk.

Paving, etc.

Assessment bonds.

CHAPTER 336.

AN ACT to provide for the payment of an award due from the city of Brooklyn to the Brooklyn Park Commissioners for lands taken from Prospect Park for reservoir purposes.

Passed May 15, 1876, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Sale of bonds.

SECTION 1. The Mayor, Comptroller and City Clerk of the city of Brooklyn are hereby authorized and directed to make, issue and sell the bonds of said city, of the class issued for the city water loan of said city, to an amount necessary, and pay from the proceeds of the sale of such bonds the amount of the award made for lands taken about the Prospect Hill Reservoir by the referee's report on file in the office of the Comptroller of said city, date June twentieth, eighteen hundred and seventy-four, and amounting to two hundred and fifteen thousand, three hundred and sixty-five dollars, and interest on the same from the date of said report.

Expenditure of funds.

§ 2. The Brooklyn Park Commissioners are hereby authorized and directed to expend said moneys so received in liquidating any indebtedness due, or for moneys borrowed, to improve the Park lands of said city authorized to be sold.

§ 3. This act shall take effect immediately.

CHAPTER 352.

AN ACT to amend chapter five hundred and eighty-three of the Laws of eighteen hundred and seventy-four, entitled, "An Act to lay out and improve a public highway or avenue and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings."

Passed May 16, 1876, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section seven of chapter five hundred and eighty-three of the Laws of eighteen hundred and seventy-four, entitled, "An act to lay out and improve a public highway or avenue and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings," is hereby amended so as to read as follows :

§ 7. After the reports of estimate and assessment for taking and opening the said avenue, and said concourse or lateral branch or shore road at the ocean beach, shall have been confirmed, the title to the concourse or lateral branch or shore road shall vest in county of Kings in fee simple, absolute, and said reports, together with the maps hereinbefore referred to, shall be filed in the office of the Clerk of the county of Kings, and the said Brooklyn Park Commissioners shall be thereupon authorized to improve the said avenue and said concourse, lateral branch or shore road at the ocean beach, according to plans devised and adopted or to be devised and adopted by them; and for that purpose they may cause the same to be graded, paved, curbed, guttered and bridged, and shade trees planted thereon, and may lay out and construct such carriageways, sidewalks and areas with such terraces, drives or concourses on the ocean beach as they may deem expedient, and such improvements may be made in sections, and from time to time if they shall so elect. They shall have full and exclusive power to govern and manage the Ocean Parkway from the circle at the southwesterly angle of Prospect Park to the ocean, and direct the public use thereof, as also the circle and concourse at either terminus, and of such parts of the several roads, streets or avenues as run through or inter-

Title to vest in Kings County.

Improvement of avenue.

Park Commissioners to have control.

sect the same, and to pass and enforce laws and ordinances for the proper use, regulation and government thereof, and for all the purposes of such government, management and direction of public use, such parts of said roads or avenues as pass through or intersect said circles, shall be deemed to be a part of Prospect Park, and it shall be under like control and management as said parkway. (a)

§ 2. Said act is hereby amended by adding at the end thereof, the following section :

May expend
\$10,000 without
contract, etc.

§ 15. The said Brooklyn Park Commissioners are hereby authorized to expend a sum not exceeding ten thousand dollars without contract, in the payment of laborers' wages, and in the purchase of such lands and materials as may be necessary for the construction of said avenue and concourse, to be paid out of any moneys they are authorized to expend for said improvements and upon their certificate; but nothing herein contained shall be construed to authorize any expenditure in excess of the amount now fixed by law.

§ 3. This act shall take effect immediately.

(a) See Chapter 601, Laws 1886, exempting Concourse from railroads.

CHAPTER 288.

AN ACT to amend chapter five hundred and eighty-three of the laws of eighteen hundred and seventy-four, entitled, "An Act to lay out and improve a public highway or avenue and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings, as amended by chapter four hundred and eighty-nine of the laws of eighteen hundred and seventy-five."

Passed May 19, 1877, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section thirteen of chapter five hundred and eighty-three of the laws of eighteen hundred and seventy-four, entitled, "An Act to lay out and improve a public highway or avenue, and concourse in continuation of a public highway or avenue heretofore laid out from Prospect Park, in the city of Brooklyn, toward Coney Island, in the county of Kings, as amended by chapter four hundred and eighty-nine of the laws of eighteen hundred and seventy-five," is hereby amended so as to read as follows :

Laws of 1874,
Chap. 583,
amended.

§ 13. The said Park Commissioners may contract, in writing, for the making of all or any of the said improvements, after inviting proposals for doing the work and furnishing the materials, by publication for one week in said two daily newspapers, printed and published in the county of Kings, and filing a copy of each of said contracts in the office of the Treasurer of the county of Kings within ten days after the making of the same. And they may from time to time, as the work progresses, but not oftener than once a month, issue to the contractors certificates of the amount of work and materials done and furnished under such contracts. The said treasurer is hereby authorized and directed to pay seventy-five per cent. of such amounts to said contractors or their assigns, and upon the final completion of their said contracts, and upon filing a certificate thereof in the office of the said treasurer, he shall pay to the said contractors or their assigns the balance of the several amounts due under their contracts. The said treasurer shall also pay to the surveyor, commissioners, counsel and other persons to be employed upon

Commissioners
may contract
for improve-
ments, etc.

Certificates.

Payments on.

Pay of survey-
ors, etc.

the said work, and upon the laying of said improvement, such amounts for services and necessary disbursements as shall be specified in the assessment reports, after they shall have been duly confirmed by the court. For the purpose of furnishing the money required to make all such payments, and for the payment of so much thereof as may be charged or assessed to the county, including the amount expended for the improvement of said concourse, the county of Kings is authorized, and the proper officers thereof are hereby directed, to issue certificates of indebtedness to the necessary amount, not exceeding two hundred in number, and in sums of one thousand dollars each, bearing interest at seven per cent. per annum, payable on or before the expiration of ten years from the date thereof, interest thereon to be payable semi-annually, and to sell the same for not less than the par value thereof, and pay the proceeds of such issue and sale to the contractors and other persons entitled to receive the same on the certificates of the Brooklyn Park Commissioners.

Certificates of
indebtedness;
issuing of.

Sale.

Application of
proceeds.

§ 2. This act shall take effect immediately.

CHAPTER 354.

AN ACT to amend chapter eight hundred and sixty-three of the laws of eighteen hundred and seventy-three, entitled, "An Act to amend the charter of the city of Brooklyn, and the various amendments thereof."

Passed June 1, 1877, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Title fifteen of chapter eight hundred and sixty-three of the laws of eighteen hundred and seventy-three, entitled, "An Act to amend the charter of the city of Brooklyn, and the various amendments thereof," is hereby amended so as to read as follows :

Laws of 1873,
Chap. 863,
amended.

TITLE XV.

DEPARTMENT OF PARKS.

SECTION 1. The present Brooklyn Park Commissioners shall be the Department of Parks, and they shall continue in office until the first day of January, eighteen hundred and eighty, and they shall serve without compensation; and at the first meeting of the Common Council in eighteen hundred and eighty, and every two years thereafter, the Mayor shall nominate, and, with the consent of the Common Council, appoint a successor to each of said Commissioners.

Park Commissioners to be the Department of Parks.

Successors ;
appointment of.

§ 2. The powers heretofore exercised by the Brooklyn Park Commissioners are hereby transferred and vested in the said Department of Parks, subject in all things to the direction of the Common Council.

Powers.

§ 3. All moneys received by said department shall forthwith be paid into the city treasury, and all expenditures for or by the said department shall be provided for by the Common Council, and shall be paid from the city treasury as the same shall be needed, on the certificate of the Auditor, under the same rules and regulations governing the expenditures of other departments provided for herein.

Moneys received to be paid City Treasurer.

Expenditures;
by payment of.

§ 2. This act shall take effect immediately.

CHAPTER 458.

AN ACT to enable the city of Brooklyn to raise further means for the improvement and sale of certain portions of Prospect Park in said city.

Passed June 16, 1877, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Authorized to raise \$200,000.

Issuing of bonds.

How payable.

SECTION 1. The Common Council of the city of Brooklyn are hereby authorized to raise a further sum, not exceeding two hundred thousand dollars, for grading, draining, regulating and otherwise improving the lands of Prospect Park, pursuant to chapter three hundred and seventy-three of the Laws of eighteen hundred and seventy, entitled, "An Act to authorize the improvement and sale of certain portions of Prospect Park, in the city of Brooklyn, and the acts amendatory thereof," and to make provision for the expenditure of the amount raised ; and for the purposes of this act the bonds of the city, known as Park Bonds, and payable out of the sale of park lands authorized to be sold may be issued in such form and payable at such times and in such manner as the said Common Council may direct.

CHAPTER 244.

AN ACT relating to the Assessment for Prospect Park, in the city of Brooklyn.

Passed May 11, 1878 ; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Immediately after the passage of this act, the Comptroller of the city of Brooklyn shall ascertain and determine the average number of years which the bonds issued by the city of Brooklyn for the purchase or taking of the lands taken for Prospect Park have to run, and that portion of the assessment laid for benefit from said park upon lands in the city of Brooklyn, (which said assessment is more fully shown in and by the final report made by Teunis G. Bergen and others as Commissioners, and on file in the office of the Clerk of the county of Kings), which has not been paid, together with all arrearages of interest upon the several annual installments of the same which have been heretofore imposed, instead of being assessed, levied and collected as heretofore provided by law, shall not be deemed to have been assessed, or to be payable, except in and by the equal annual installments to be *levied as herein directed, which installments shall be equal in number to the average number of years, ascertained as hereinbefore provided, and shall be charged against, and on the same lands as are now chargeable or charged with said assessment, and in the same proportions as such lands are now so charged or made chargeable, and shall be payable on the first day of December annually hereafter ; the Board of Assessors of said city shall immediately ascertain and state the sum which is hereby made chargeable in and by each of said equal annual installments on the several pieces of land affected thereby, and before the first day of December in each year, said Board shall levy one of said equal installments, and shall transmit a proper record of such levy to the collector of taxes and assessments of said city, which record shall be to him a full and proper warrant for collecting the installment so levied.

Duty of Comptroller.

Certain assessments; how assessed and when payable.

Levy of installments by assessors.

§ 2. Such installments shall be liens on the respective

* So in the original.

When install-
ments liens.

pieces or parcels of land affected thereby only from the time they are respectively levied; and the said assessment shall not be, or be deemed to be, a charge or lien against such lands, or in any manner cause any charge or lien against the same, except in and by the said equal installments, with interest on each of such installments from the time it shall be levied, at the rate provided by law. But nothing herein contained shall prevent the said city of Brooklyn from annually assessing and levying upon, and collecting from the several parcels of land so assessed as hereinbefore stated, each annual installment as the same shall become payable under section one of this act, together with interest upon such installment from the time it shall have been levied at the rate provided by law, until all the installments directed by section one of this act shall have been levied as therein provided.

Act not to pre-
vent annual
assessment,
etc., of install-
ments and
interest.

Repeal.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 4. This act shall take effect immediately.

CHAPTER 362.

AN ACT to transfer the care and control of Bedford avenue, in the city of Brooklyn, to the Park Commissioners of said city.

Passed May 24, 1878, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. From and after the first day of January, eighteen hundred and seventy-nine, the care and management of Bedford avenue, in the city of Brooklyn, throughout its entire length, including the repairs of the existing pavement thereon and cleaning thereof, are hereby vested in the Park Commissioners of said city; and said Commissioners are authorized and directed from and after said date to keep the same clean and in good repair, and to make such needful rules and regulations in respect to said avenue, the preservation of its walks and roadway, and the public use thereof, as they may deem proper to maintain the same as a public drive or parkway; and the powers heretofore vested in or exercised by other city officers or boards in said city, in respect to said avenue, are hereby transferred to said Park Commissioners, provided that no expense herein authorized shall be met by the issue of Park bonds.

Care and control of avenue vested in Park Commissioners.

§ 2. This act shall take effect immediately.

NOTE.—This act repealed by Chapter 479, Laws 1883.

CHAPTER 466.

AN ACT in relation to parts of Ocean avenue and Franklin avenue, in the town of Flatbush.

Passed June 4, 1879.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. No railroad constructed or to be constructed on Ocean avenue or on Franklin avenue westerly of the westerly limit of or upon or across the circle at the angle of Prospect Park (said avenues being respectively the easterly and southerly boundaries of said park) shall at any time be used or operated with any other motive power than horses.

§ 2. This act shall take effect immediately.

CHAPTER 319.

AN ACT to amend chapter eight hundred and sixty-three of the laws of eighteen hundred and seventy-three, entitled, "An Act to amend the charter of the city of Brooklyn and the various amendments thereof."

Passed May 18, 1880, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Title fifteen of chapter eight hundred and sixty-three of the laws of eighteen hundred and seventy-three, entitled, "An Act to amend the charter of the city of Brooklyn and the various amendments thereof," is hereby amended so as to read as follows:

Title XV., Chap.
863, Laws of
1873, amended.

TITLE XV.

DEPARTMENT OF PARKS.

SECTION 1. The Brooklyn Park Commissioners now in office shall continue in office for two years after the passage of this act, and until others are appointed in their places, and in addition to the duties now devolved upon them by law, shall be and serve as the Department of Parks; and without compensation, and at the expiration of the term of office of said department, and every two years thereafter, they shall be appointed by the same authorities and in the same manner as other departments of the city are or may be appointed. (a)

Commissioners
to remain in
office two years.

Successors;
how to be ap-
pointed.

(a) See following extract from Chap. 377, Laws 1880, as to appointment of Park Commissioners subsequent to 1882:

"§ 6. After the first day of January, eighteen hundred and eighty-two, the Mayor of the city of Brooklyn shall have sole and exclusive power to appoint the successor of any Commissioner or other head of Department (except the Department of Finance and the Department of Audit), or of any Assessor or member of the Board of Education of said city, when the terms of such officers shall respectively expire, or as by law may then or thereafter be required to be appointed; and the term of office of such appointees and their successors, except Assessors, whose term shall be for four years, shall be for two years; provided, however, that if the Mayor shall refuse or neglect, for a period of thirty days after the expiration of the term of any officer, to make an appointment to office authorized to be made pursuant to this section, then and in that case such refusal or neglect shall be adjudged and deemed to be in all respects equivalent to and taken as an express appointment of the Commissioner or other officer who may at the time be holding such office."

To have control
of parks, etc.

§ 2. The said Commissioners shall have the government, management and control of all the parks, squares, parkways and public places of the city, subject, however, to the laws of the State and to the powers of the Common Council in relation thereto. (a)

Moneys re-
ceived to be
paid into City
Treasury.

§ 3. All moneys received by said department shall be forthwith paid into the city treasury, and all expenditures relating to the several parks, squares, parkways and public places of the city shall be provided for in the same manner as the expenditures of other departments are provided for, and shall be paid from the city treasury when required, under the same rules and regulations governing the expenditures of other departments.

§ 2. This act shall take effect immediately.

(a) As to the right of surface railroads to pass in tunnels through public parks, see Section 17, Chapter 252, Laws 1884.

NOTE.—As to removal of persons appointed by the Mayor, see Chapter 457, Laws of 1881.

CHAPTER 560.

AN ACT to provide for a further appropriation of moneys for the maintenance of the public parks of the city of Brooklyn and Bedford avenue.

Passed June 15, 1880, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Comptroller of the city of Brooklyn is hereby authorized and directed to place to the credit of the account of maintenance of public parks of said city a sum not exceeding twenty thousand dollars, to be used for maintenance and repairs of roads, paths and grounds in Prospect Park, and also the sum of eight thousand dollars for the repair of Bedford avenue, and pay the same as it shall be needed, on the usual vouchers, out of any moneys in the city treasury, and include said amount in the estimates for the support of the city government for the year eighteen hundred and eighty-one.

Amount to be credited to maintenance of public parks.

§ 2. This act shall take effect immediately.

CHAPTER 335.

AN ACT to fix and limit the amount to be expended by the Brooklyn Park Commissioners for maintenance and improvement of the several parks and park-ways which are a charge on the city of Brooklyn.

Passed May 21, 1881, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Amounts for
parks and park-
ways limited to
\$132,000.

SECTION 1. The Board of Estimate for the city of Brooklyn and the Common Council of said city shall annually include in the general tax to be levied in said city, such amounts of money as said Brooklyn Park Commissioners shall from time to time determine to be necessary for the proper maintenance, improvement and ornamentation of the several public parks and park-ways now a charge on the city of Brooklyn; but such amounts so included shall not exceed one hundred thousand dollars for the maintenance of the public parks; five thousand dollars for the maintenance of Eastern park-way; twelve thousand five hundred dollars for the maintenance of Ocean park-way; five thousand dollars for cleaning and repairing Bedford avenue, and also the sum of ten thousand dollars to be levied and raised in each and every year for five years for the construction of erections and improvements in Prospect Park, said several sums to be paid for the purposes aforesaid as the same shall be needed and on the usual vouchers. (a)

\$20,000 for re-
pairs, etc., of
roads, etc., of
Prospect Park.

§ 2. The Comptroller of the city of Brooklyn is hereby authorized and directed to place to the credit of the account of the maintenance of public parks of said city a sum not exceeding twenty thousand dollars to be used for the maintenance and repairs of roads, paths and grounds in Prospect Park for the year eighteen hundred and eighty-one, and pay the same as it shall be needed on the usual vouchers out of any moneys in the City Treasury, and include said amount in the estimates for the support of the city government for the year eighteen hundred and eighty-two.

§ 3. This act shall take effect immediately.

(a) Section 1, amended by Chapter 254, Laws 1884, and by § 1, Chapter 621, Laws 1886.

CHAPTER 519.

AN ACT to regulate the construction and protection of railway crossings in the county of Kings.

Passed June 15, 1881, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. No railway upon which steam or compressed air shall be used or is, or shall be or intended to be used as a motive power, hereafter constructed across Ocean Parkway in any of the towns in the county of Kings, shall be constructed on the same grade with said Ocean Parkway, but the grade of every such railway shall be constructed either under said Ocean Parkway or above the same by a sufficient bridge or viaduct; and when constructed above said Ocean Parkway the length of such bridge shall be the full width of the graded surface of said parkway, and shall be elevated so that there shall be an open space of at least fifteen feet in the clear above the grade thereof; nor shall any railway upon which steam or compressed air shall be used, or is or shall be authorized or intended to be used as a motive power, be constructed or operated over or upon the concourse at the southerly terminus of said Ocean Parkway; nor shall any horse railroad be constructed upon, along or across said Ocean Parkway or the concourse, except by permission of the Board of Brooklyn Park Commissioners; and in addition to the powers now possessed by said Board, in relation to said Ocean Parkway and Concourse, they may also by ordinance regulate the use of engines so that no steam shall be used so as to be allowed to escape therefrom on or over said parkway, and may by ordinance prevent or regulate the blowing of whistles or ringing of bells by any locomotive or other engine at or adjacent to said parkway or concourse by any railroad corporation.

Grade of steam railways.

Consent of Park Commissioners.

§ 2. It shall be the duty of the Board of Brooklyn Park Commissioners, on the application of any railroad corporation, to hear the parties relative thereto, and to ascertain and determine the practicability of constructing such railway in the manner prescribed by the first section of this act, and to establish the proper place for such crossing, and the manner in which the same shall be made, whether above or below said Ocean Parkway, and the plans and specifications for the construction

Hearing before Commissioners.

thereof; and shall cause proper maps and drawings thereof, respectively, to be made, approved and signed by them, a copy of which shall be filed in the office of the Register of the County of Kings; and thereupon said parkway and railway shall be constructed by such railroad corporation, at its own costs and charges, with the respective grades, and according to the plans and specifications so to be approved and established, and within the period of time to be specified in writing by the Board of Brooklyn Park Commissioners, who may, however, from time to time, extend the same, but no, beyond one year from the date fixed in said certificate.

Duty of Commissioners in case railway corporations refuse to reform parkway.

§ 3. If such railway corporation shall refuse or neglect to reform such parkway, in accordance with the plan and specifications that shall be approved and established by the Board of Brooklyn Park Commissioners in the manner aforesaid, within the time for that purpose limited by the said Board of Brooklyn Park Commissioners, then it shall be the duty of the said Board of Brooklyn Park Commissioners to perform the work of reforming such road or avenue in accordance with such plans and specifications; and all the cost and expense they shall be put to on account thereof may be recovered by an action by said Board of Brooklyn Park Commissioners against such railway corporation in any court of this State; and said Board of Brooklyn Park Commissioners may require, before any such corporation enters upon said parkway to give a bond, with sufficient responsible sureties, to restore said parkway according to the plans made, and to comply with all its conditions as to such crossing, to be enforced as *hereinafter* provided, which bond, in case of default made, may be prosecuted by the said Board of Brooklyn Park Commissioners.

Not to affect crossing over Ocean Parkway.

§ 4. This act shall not affect any crossing over said Ocean Parkway by a railroad in any case where the right to make such crossing has been found and adjudicated by a court of record, nor any such crossing by a railroad now being actually operated, nor the construction and use of any bridge which has been actually in good faith commenced prior to the first day of April, 1881, for the purposes of a railroad crossing on or over said Ocean Parkway.

§ 5. This act shall take effect immediately.

CHAPTER 247.

AN ACT in relation to a highway or avenue in the county of Kings, known as Ocean Parkway, and the continuation thereof laid out and improved pursuant to chapter eight hundred and sixty-one of the laws of eighteen hundred and sixty-nine, as amended by chapter seven hundred and twenty-six of the laws of eighteen hundred and seventy-two, and pursuant to chapter five hundred and eighty-three of the laws of eighteen hundred and seventy-four, as amended by chapter four hundred and eighty-nine of the laws of eighteen hundred and seventy-five, and by chapter three hundred and fifty-two of the laws of eighteen hundred and seventy-six, and chapter two hundred and eighty-eight of the laws of eighteen hundred and seventy-seven.

Passed May 31, 1882, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Two-thirds of the cost of the improvement of the public highway or avenue in Kings County known as Ocean Parkway, and the continuation thereof laid out and improved pursuant to chapter eight hundred and sixty-one of the laws of eighteen hundred and sixty-nine as amended by chapter seven hundred and twenty-six of the laws of eighteen hundred and seventy-two, and pursuant to chapter five hundred and eighty-three of the Laws of eighteen hundred and seventy-four, as amended by chapter four hundred and eighty-nine of the laws of eighteen hundred and seventy-five, and by chapter three hundred and fifty-two of the laws of eighteen hundred and seventy-six, and chapter two hundred and eighty-eight of the laws of eighteen hundred and seventy-seven, is hereby made a charge upon the county of Kings, and one-third of the amount of the assessment on each piece or parcel of land within the district of assessment, fixed in pursuance of said acts, is hereby made a charge upon each piece or parcel of land respectively, and the lien of the assessment now on said property, and every part thereof, is hereby canceled and discharged, and the land assessed relieved therefrom except to the extent of one-third thereof hereby made payable by the owner or owners thereof, and no more; the lien of said assessment of one-third shall continue as

Two-thirds expenses of improvements to be charged county and one-third on lands.

fully and completely as the original assessment would remain if this act had not passed, upon the payment by the owners of said one-third the lands and every part thereof heretofore specifically assessed for said improvements under and by virtue of said acts are hereby relieved and discharged from said assessments.

Park Commissioners to report cost to Board of Supervisors, etc.

§ 2. The Brooklyn Park Commissioners shall, within thirty days from the passage of this act, report to the Board of Supervisors and to the Treasurer of said county the total cost of said improvement, including interest at the rate of six per centum, together with a statement showing the amount due upon each parcel of land respectively under and in pursuance of the provisions of this act. Within thirty days from the receipt of said report the County Treasurer shall cause by advertisement, for ten days, in two daily newspapers printed in the city of Brooklyn, and by personal notice, so far as possible, each owner of any piece or parcel of land effected by the provisions of this act to be notified of the amount due and payable thereon by said owner.

Payments; when to be made.

§ 3. The owner or owners of any piece or parcel of land within the said district of assessment may, if they so elect, pay the whole amount with which said owner or owners is and are hereby made chargeable, namely: one-third of the whole amount of such assessment as aforesaid in one payment to the County Treasurer within sixty days from notification by the said Treasurer of the amount thereof, which shall be in full discharge of said land from the assessment now thereon. If the owner or owners of the land aforesaid otherwise elect, the payments thereon shall be made to the County Treasurer as follows: One-third within sixty days from the date of the notification by the said Treasurer; one-third upon the first day of July, eighteen hundred and eighty-three, and the balance upon the first day of July, eighteen hundred and eighty-four. Where the owners elect to pay in installments, interest at the rate of six per centum shall be charged upon each installment from and after the date of notification, as aforesaid, until the same shall become due. All moneys received by the County Treasurer in pursuance of this section shall be used by him to retire, discharge and cancel one-third of any and all certificates of indebtedness, bonds or other evidences of debt heretofore issued by said County Treasurer, or other local authority, in payment of such assessment, or for the purpose of the improvement of said highway or avenue. (a)

(a) Section 3, amended by § 1, Chapter 337, Laws 1883.

§ 4. If the installments provided to be paid by section three of this act by the owner or owners of any piece or parcel of land, or any one of such installments is or are not paid when the same becomes due, as provided in section three of this act, and shall remain unpaid for thirty days thereafter, then the whole shall become due and payable, and it shall be lawful for the Treasurer of said county to proceed to sell the several parcels of property upon which the said installment or installments is or are due and not paid, at auction, for the lowest term of years for which any person will take the same and pay the amount remaining unpaid, with interest from the time of the passage of this act, together with five per centum for collection fees and three per centum in addition for the expense of advertising and sale; the said Treasurer first giving thirty days' notice of the time and place of sale by publishing the same in two daily newspapers printed in the city of Brooklyn. Upon a sale being made the said County Treasurer shall give certificates of sale to purchasers, and shall also execute and deliver conveyances of the land so purchased, unless the same shall have been redeemed within two years from the time of sale by paying to the purchaser or to the said treasurer, for the use of said county, the amount paid by said purchaser or treasurer with interest at the rate of twelve per centum. The said certificate of sale shall be recorded by the purchasers in the office of the Register in and for the county of Kings, and shall constitute a lien upon the premises therein described after the same shall have been so recorded, and shall take precedence of all other liens except for unpaid taxes and assessments.

When due.

Sale in case of non-payment.

Certificate of sale.

§ 5. The County Treasurer of Kings county is hereby authorized, directed and empowered to issue bonds of the county of Kings, bearing interest at a rate not exceeding that allowed by law, payable half yearly, redeemable at such times as said Treasurer shall deem proper and determine, to the amount remaining unpaid of the sum reported as aforesaid to the said Treasurer as the total cost of said improvement including interest as provided in section two of this act. Said bonds shall be issued and sold by said County Treasurer at not less than par whenever he shall deem it necessary to raise money to retire and cancel any certificates of indebtedness, bonds or other evidences of debt heretofore issued by said County Treasurer or other local authority in payment of such assessment, or for the purposes of the improvement of said highway or avenue; and the money received from the sale thereof shall be used to retire and cancel said certificates of indebtedness, bonds or other evidences of indebtedness issued as aforesaid.

Treasurer to issue bonds.

Tax levy.

§ 6. The Board of Supervisors of said county shall, from year to year, upon the application of the County Treasurer, include in the general tax levy of the county of Kings such sums of money as shall be reported to them by said County Treasurer as being necessary to retire at maturity the bonds directed to be issued by section five of this act, together with the amount of interest thereon reported to be necessary each year by said Treasurer; which amounts, both principal and interest, shall be assessed, levied and collected in the same manner as the other general taxes in said county.

Assessments returned as unpaid not to be credited county.

§ 7. No taxes or assessments levied or assessed or to be levied or assessed on said lands for the purposes of said acts, and returned or authorized to be returned to the Comptroller of the State by the County Treasurer of Kings County under the provisions of section nine of chapter eight hundred and sixty-one of the Laws of eighteen hundred and sixty-nine, as amended by section one of chapter three hundred and seven of the Laws of eighteen hundred and seventy-six, as remaining unpaid, and not heretofore credited by said Comptroller to the County Treasurer of Kings County shall ever be credited or allowed by said Comptroller to said County Treasurer.

§ 8. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 9. This act shall take effect immediately.

CHAPTER 337.

AN ACT to amend section three of chapter two hundred and forty-seven of the laws of eighteen hundred and eighty-two, in relation to a highway or avenue in the county of Kings, known as Ocean Parkway, and the continuation thereof.

Passed April 30, 1883, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section three of chapter two hundred and forty-seven of the laws of eighteen hundred and eighty-two is hereby amended to read as follows:

§ 3. The owner or owners of any piece or parcel of land within the said district of assessment may, if they so elect, pay the whole amount with which said owner or owners is and are hereby made chargeable, namely: one-third of the whole amount of such assessment as aforesaid in one payment to the County Treasurer, within sixty days from notification by the said Treasurer of the amount thereof, which shall be in full discharge of said land from the assessment now thereon. If the owner or owners of the land aforesaid otherwise elect, the payments thereon shall be made to the County Treasurer as follows: one-third within sixty days from the date of notification by the said Treasurer; one-third upon the first day of July, eighteen hundred and eighty-three, and the balance upon the first day of July, eighteen hundred and eighty-four. Where the owners elect to pay in installments, interest at the rate of six per centum shall be charged upon each installment from and after the date of notification as aforesaid, until the same shall become due. All moneys received by the County Treasurer in pursuance of this section shall be used by him to retire, discharge and cancel one-third of any and all certificates of indebtedness, bonds or other evidences of debt heretofore issued by said County Treasurer or other local authority in payment of such assessment, or for the purpose of the improvement of said highway or avenue. Except that all necessary expenses not exceeding in the aggregate the sum of five thousand dollars incidental to the collection of said moneys shall first be paid out of the funds collected, and the County Treasurer is hereby directed to make such payments.

How payments are made.

Moneys to be used to cancel indebtedness.

§ 2. This act shall take effect immediately.

CHAPTER 479.

AN ACT in relation to the care and control of Bedford avenue, in the city of Brooklyn.

Passed May 25, 1883, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Chap. 362, Laws
of 1878, re-
pealed.

SECTION 1. Chapter three hundred and sixty-two of the laws of eighteen hundred and seventy-eight, entitled, "An Act to transfer the care and control of Bedford avenue, in the city of Brooklyn, to the Park Commissioners of said city, passed May twenty-fourth, eighteen hundred and seventy-eight," is hereby repealed, and all the powers and authority by said act vested in said Park Commissioners are hereby transferred to and vested in the officers and departments of the said city of Brooklyn having authority and control over the streets of said city, with the same effect as if the act hereby repealed had never been passed.

§ 2. This act shall take effect immediately.

CHAPTER 254.

AN ACT to amend chapter three hundred and thirty-five of the laws of eighteen hundred and eighty-one, entitled, "An Act to fix and limit the amount to be expended by the Brooklyn Park Commissioners for maintenance and improvement of the several parks and parkways which are a charge on the city of Brooklyn."

Passed May 7, 1884, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section one of chapter three hundred and thirty-five of the laws of eighteen hundred and eighty-one, entitled, "An Act to fix and limit the amount to be expended by the Brooklyn Park Commissioners for maintenance and improvement of the several parks and parkways which are a charge on the city of Brooklyn," is hereby amended so as to read as follows:

§ 1. The Board of Estimate for the city of Brooklyn, and the Common Council of said city, shall annually include in the general tax to be levied in said city such amounts of money as said Brooklyn Park Commissioners shall from time to time determine to be necessary for the proper maintenance, improvement and ornamentation of the several public parks and parkways now a charge on the city of Brooklyn; but such amounts so included shall not exceed one hundred and thirty-five thousand dollars for the maintenance of the public parks, five thousand dollars for the maintenance of Eastern Parkway, twelve thousand five hundred dollars for the maintenance of Ocean Parkway, and also the sum of ten thousand dollars, to be levied and raised in each and every year, for five years, for the construction of erections and improvements in Prospect Park, said several sums to be paid for the purposes aforesaid as the same shall be needed, and on the usual vouchers. (a)

Amounts required for parks to be included in annual tax levy.

Limitation.

§ 2. This act shall take effect immediately.

(a) Section 1, amended by Chap. 621, Laws 1886.

CHAPTER 406.

AN ACT for the payment of a debt due for the improvement of Ninth avenue and Fifteenth street, in the city of Brooklyn.

Passed May 17, 1886, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. There shall be inserted in the annual tax levy of the city of Brooklyn for the year one thousand eight hundred and eighty-six, a sum sufficient to pay the amounts in fact expended by the Park Commissioners of said city for the improvement of Ninth avenue and Fifteenth street, for which a debt is now due the National City Bank of said city of fifty-three thousand nine hundred and forty-six dollars and thirty-eight cents with interest from January first, one thousand eight hundred and eighty-four, together with the interest which shall have accumulated thereon at time of payment, and the Mayor and Comptroller of said city are authorized and directed to pay the indebtedness created by said actual expenditure out of the moneys collected by said tax.

§ 2. This act shall take effect immediately.

CHAPTER 601.

AN ACT to amend chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled, "An Act to authorize the formation of railroad corporations, and to regulate the same."

Passed June 8, 1886, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section twenty-five of chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled, "An Act to authorize the formation of railroad corporations, and to regulate the same," is hereby amended so as to read as follows :

§ 25. The Commissioners of the Land Office shall have power to grant to any railroad company formed under this act any land belonging to the people of this State which may be required for the purposes of their road, on such terms as may be agreed on by them ; or such company may acquire title thereto by appraisal, as in the case of lands owned by individuals; and if any land belonging to a county or town is required by any company for the purposes of the road, the county or town officers having the charge of such land may grant such land to such company for such compensation as may be agreed upon. The land included in the State reservation at Niagara and the the* Concourse lands on Coney Island are expressly exempted from the provisions of this section.

Land for railroad purposes; how acquired from State, county or town officers.

Special exemptions.

§ 2. This act shall take effect immediately.

*So in the original.

CHAPTER 618.

AN ACT supplementary to and amendatory of an act entitled, "An act to widen and improve Ninth avenue and Fifteenth street, in the city of Brooklyn," passed May seventh, eighteen hundred and sixty-nine."

Passed June 14, 1886, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

Transfer of improvement to Common Council.

SECTION 1. The power to grade, pave and improve Ninth avenue and Fifteenth street, in the city of Brooklyn, conferred upon the Brooklyn Park Commissioners by chapter seven hundred of the Laws of eighteen hundred and sixty-nine, entitled, "An act to widen and improve Ninth avenue and Fifteenth street, in the city of Brooklyn," passed May 7, 1869, is hereby transferred to and vested in the Common Council of said city, and said avenue and street, when graded, paved and improved, shall be graded, paved and improved under the same proceedings as other streets and avenues in said city are graded and paved; and the assessment therefor shall be laid, and the expense thereof paid in the same manner as the assessments and expense for grading and paving other streets and avenues in said city are laid and paid, except that the assessment shall be laid upon the lands within the district of assessment in the proportions provided in the fourth and seventh sections of said act.

Assessments; how laid.

Duty of Park Commissioners.

§ 2. Before the said avenue, and street, or either of them, are graded, paved or improved, the Brooklyn Park Commissioners shall determine and certify to the Common Council of said city the amounts already expended and advanced on the improvement of said avenue and street respectively by the Brooklyn Park Commissioners; and the amount so certified, with the interest thereon, shall be deemed to be and be taken as a part of the cost of grading, paving and improving said avenue and street, and shall be included in the amount of the prospective and actual cost and expense of the work and in the assessments therefor.

§ 3. This act shall take effect immediately.

CHAPTER 621.

AN ACT to amend chapter three hundred and thirty-five of the laws of eighteen hundred and eighty-one, entitled, "An Act to fix and limit the amount to be expended by the Brooklyn Park Commissioners for maintenance and improvement of the several parks and parkways which are a charge on the city of Brooklyn," as amended by chapter two hundred and fifty-four of the laws of eighteen hundred and eighty-four.

Passed June 14, 1886, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section one of chapter three hundred and thirty-five of the laws of eighteen hundred and eighty-one, entitled, "An Act to fix and limit the amount to be expended by the Brooklyn Park Commissioners for maintenance and improvement of the several parks and parkways which are a charge upon the city of Brooklyn," as amended by chapter two hundred and fifty-four of the laws of eighteen hundred and eighty-four, is hereby amended so as to read as follows:

§ 1. The Brooklyn Park Commissioners shall, on or before the fifteenth day of May in each year, transmit to the Board of Estimate for the county of Kings and city of Brooklyn a statement of the several amounts of money which ought to be spent the succeeding year, commencing on the first day of January, for the maintenance, ornamentation and improvement of the several public parks and parkways (including the Eastern parkway and Ocean parkway) now a charge on the city of Brooklyn. Upon the receipt of any such statement, it shall be the duty of the said Board of Estimate to estimate and determine the amounts necessary to be raised for the proper maintenance, improvement and ornamentation of the said parks and parkways during such succeeding year, and to include in their annual report the amounts necessary therefor; and the amounts so estimated and determined shall be included in the annual tax levy of said city, and shall be expended for the purposes for which they were raised, as needed, and upon the usual vouchers; provided, however, that no amount so included for any of the purposes aforesaid

Annual estimate of expenditures by Park Commissioners.

Duty of Board of Estimate.

Amount to be included in tax levy.

shall be greater than the amount stated by the said Park Commissioners to be required for that purpose.

§ 2. This act shall take effect immediately.

CHAPTER 623.

AN ACT to amend chapter six hundred and thirteen of the laws of eighteen hundred and seventy, entitled, "An Act to lay out, open and improve a street in the plaza of Prospect Park, in the city of Brooklyn."

Passed June 14, 1886, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section six of chapter six hundred and thirteen of the laws of eighteen hundred and seventy, entitled, "An Act to lay out, open and improve a street in the plaza of Prospect Park, in the city of Brooklyn," passed May third, eighteen hundred and seventy, is hereby amended so as to read as follows :

§ 6. The Brooklyn Park Commissioners may grade, pave and otherwise improve the street laid out pursuant to the provisions of this act, in parts. If the said Commissioners shall determine to grade, pave and improve the said streets in parts, they shall from time to time determine what lots within the district of assessment heretofore fixed pursuant to the provisions of this act are benefited by the improvement determined to be made, and shall cause a map thereof to be made, and the lot shown upon such map shall be and constitute the district of assessment for such improvement. The said Commissioners shall then estimate the prospective cost and expense of the improvement, and in such estimate shall include the proper proportionate amount already expended on the improvement of said street, with the interest thereon, and shall thereupon certify the same to the Board of Assessors of the city of Brooklyn. Upon the receipt of any such certificate it shall be the duty of the Board of Assessors to apportion and assess the said estimated cost and expense upon the several pieces or parcels of land and premises benefited by the improvement included within the district of assessment, in proportion to the benefit which in their opinion the same shall derive from or in justice ought to be assessed for the improvement. The Board of Assessors shall make a report in writing of the assessment so made, and before proceeding to sign the same shall give notice in the corporation newspapers of said city, which notice shall be published for ten days successively, of the time and place, when and where the parties interested can be

Proceedings for grading and paving of streets.

Districts of assessments.

Estimate of cost of improvement; how certified.

Duty of Board of Assessors as to apportionment.

Duty of Park Commissioners.

heard ; and after hearing the parties, the Board of Assessors shall proceed and complete the report and sign the same, and return the said report with all objections in writing, which shall be presented to and left with them by any of the parties interested, to the said Brooklyn Park Commissioners: The said Commissioners shall publish a notice in the corporation newspapers for ten days successively, to the parties interested, of the time and place, when and where they will meet to hear them on the objections and report. The said Commissioners shall thereupon examine the matter, and may correct the said report and assessment, and send it back to the Board of Assessors for re-apportionment, or may confirm the same, as they may deem just and proper, and their confirmation in the matter shall be final and conclusive, and thereupon the said assessment shall be and become a lien upon the several lots, pieces and parcels of land assessed, to the extent of the amount assessed thereon. The like proceedings shall be had when the report of the Board of Assessors is sent back as in the first instance. After the assessment shall be confirmed, the said Commissioners shall cause a warrant to be issued under the hand of their president to the collector of taxes and assessments of said city for the collection thereof.

Issue of warrant for collection.

§ 2. The said act is hereby further amended by adding thereto a section to be known as section seven, as follows :

Contract for work; when to be made.

§ 7. Whenever one half in amount of any such assessment shall have been collected (exclusive of the amounts assessed upon park property), the said Commissioners may make a contract for the work ; provided, however, that no such contract shall be made unless the amount unappropriated of the "assessment fund" of the city of Brooklyn, together with the amount of the assessment collected, shall be sufficient to pay the cost of said work as fixed by such contract. Upon the making of such contract the Comptroller of said city shall appropriate and set apart so much of the said "assessment fund" as shall be necessary to pay the cost of improvement. All moneys subsequently collected upon any such assessment shall be paid into said fund to reimburse the same, and any balance remaining after such reimbursement shall be paid into the Revenue Fund of said city. Immediately after the completion of the improvement the assessment therefor shall be revised by the Board of Assessors, and if the estimate made therefor shall have been greater than the actual cost of such improvement, such excess shall be deducted from the amounts assessed against the several parcels of land in the district of assessment in the proportion of their respective amounts,

Duty of City Comptroller.

Reimbursement of assessment fund.

Revising of assessment upon completion of work.

and if any part of such assessment shall have been collected, the proportion of such excess shall be refunded to the person paying the same. If the cost of such improvement shall be greater than the amount of the estimate made therefor, the excess of such cost shall be added to said assessment and apportioned upon the several parcels of land according to their respective proportions of the original assessment. The Board of Assessors shall prepare a list showing the amounts of such additions, and shall publish in the corporation newspapers, for at least ten days, a notice of the time and place when and where the same can be examined, and objections made thereto; and after hearing such objections shall make such corrections therein as they shall deem just, and shall certify the said additions as corrected upon the original assessment roll to the collector of taxes and assessments, and thereupon the amounts so added shall become a part of such original assessment and be collected without any further warrant in the same manner and with the same lien and effect as if such amount had been included in the estimate of said work. No rebate shall be allowed upon any assessment levied under the provisions of this act, and no such assessment shall be returned to the registrar of arrears until one year after the revision thereof or one year after the Brooklyn Park Commissioners shall certify upon the original assessment roll, or upon the abstract thereof, that the said assessment does not need revision.

Further duties
of Assessors.

§ 3. The said act is hereby further amended by adding thereto a section to be known as section eight, as follows :

§ 8. It shall be the duty of the Board of Estimate of the county of Kings and city of Brooklyn, to include in their annual report next after the laying any assessment under the provisions of section six of this act, an amount sufficient to pay any assessment laid upon the lands of Prospect Park or of the plaza, and such amount shall be included in the tax levy of said city.

Duty of Board
of Estimate.

§ 4. This act shall take effect immediately.

APPENDIX.

THE COURT OF APPEALS.

THE BROOKLYN PARK COMMISSIONERS,

against

JAMES ARMSTRONG,

Respondents,

Appellant.

Decided March 28, 1871.

Opinion of the Court, per FOLGER, J.—The act of 1861 conferred upon the city of Brooklyn the power of acquiring a right in the lands in question in this case. By the proceedings under the act, the city did, in fact, obtain all the interest and title which, by the terms of the law, it was empowered to acquire. The just compensation to the private owner was awarded; the award was confirmed by judicial authority; the sum of it paid to him, and by him accepted. His acceptance was a renunciation of the constitutional provision made for his benefit, and an assent to the taking of the land, even if there were any question as to the validity of the act, or any irregularity in the proceedings under it. (*Embury v. Conner*, 3 N. Y., 511-518.) But, neither by such renunciation, nor without it by proceedings under the statute, could the city obtain a right more extensive than it was authorized by the statute to acquire. The act of the owner, in accepting the awarded compensation, could not be made broader than the provisions of the law to which he thereby assented; nor could the city, by proceedings under it, reach a title greater than it conferred the power of acquiring. From the interpretation of the statute itself, then, must be found the extent of the right of the city in the lands taken.

The main object of the act is to provide for the city of Brooklyn, its people and the public, a park. Lands taken for such purpose are taken for a public use. (*Owners, etc., v. Mayor, etc., Albany*, 15 Wend., 374.) But, in the idea of a public park is comprehended more than a use, either occasional or limited by years, or susceptible of co-existence with a private right capable of concurrent exercise. The words suggest more than an open, extensive area of land, to be passed over or but temporarily

occupied by the public, and on which any private person may still do acts of ownership. To create a public park an extensive area is needed; but the area must be improved, and in various processes, alterative and subversive of natural formation, must much money be absorbed, and many years must go by before it is complete. And so costly, so extensive, so peculiar in character, and so undisturbed by interference must be these processes and the results of them, as that there is need of permanency and exclusiveness of public possession and control, as against the exercise of any private right therein. Of itself, then, the power to take lands for a public park, unless limited by the terms in which it is given, would, to a large degree, carry with it the right to acquire the largest title in the lands taken. That the extent of the right acquired in lands by the taking of them for public use depends, in some measure, upon the needs for which they are taken, is recognized and applied in this court, in *The People v. Kerr* (27 N. Y., 188-201, *et seq.*); see also *Heyward v. The Mayor, etc., of New York* (7 id, 314-325).

This, of itself, however, is not conclusive. But, when we advert to the terms in which the power given by this act is expressed, we find that the city is authorized to take title to the lands themselves. They are declared "to be a public place" (§ 1); "to be deemed to be taken for public use, as and for a public park" (§ 2); in ascertaining the just compensation to be paid to the private owner, "a just and true estimate of the *value of the lands* is to be made, and of the loss and damage to the respective owners, together *with the tenements, hereditaments and appurtenances, privileges and advantages to the same belonging*, by and in consequence of *relinquishing the same* to the city, without deduction for any supposed benefits or advantages" (§ 5); on fulfilling the requirements of the act, "*the lands shall vest forever in the city*" (§ 8); "whenever the city shall have become *vested with the title to said park*, as in the act provided, it *may sell any buildings, improvements or other materials not required for the purposes of the park or for public use*" (§ 20); the city is authorized to issue bonds to obtain the moneys to pay for the lands taken, and *the lands are*, by the act, *pledged for the payment* of those bonds (§§ 9, 12). The terms employed in the fifth section, descriptive of what is to be acquired and paid for, are broad, and would seem to include all of a proprietary nature in the lands, or connected with or growing out of them. And for relinquishing it all, the owner is to be paid the full value of it all, without deduction. It seems inconsistent, that if the Legislature intended that the city should take but an easement, it should be required to pay the value of the lands, and of all hereditaments and appurtenances, and also the other loss and damage to the owner from the taking, without deduc-

tion for benefit. This would be to exact the price of the fee for taking a user only. It could not have been intended that the owner should receive full value, and yet have left to him a reversionary interest. (*Haldeman v. The Penn. Cent. R. R. Co.*, 50 Penn. St., 425-437; *Coolley on Lim. Leg. Pow.*, 552.)

The power given to sell buildings, improvements and materials not needed for the public use, is one not consistent with the idea of an easement merely, a restricted right of user only. So the phrases which vest the lands and the title to the park forever in the city, are creative of a right, not limited by time or particular use, and are indeed essential to make operative the pledge of the lands to the creditor of the city holding these bonds. It would be entirely nugatory to pledge to a creditor an easement, a right of public use, which would expire the instant that by the enforcement of the pledge he had cut off the public use, extinguished the general easement, and made it, so far as possible, his private and exclusive property. The Legislature meant to give the creditor a lien upon these lands. That this could not be done, unless the city, the debtor, had more than a right of public use in them, draws strongly to the conclusion that the Legislature gave the power to acquire a title.

Language may be broad enough to vest an absolute title to lands, without being technical in its terms. If the expressions are such as that the whole force of them is not applied, unless a fee simple is created, that estate will be taken, though the exact words be not used. Thus, in *Rexford v. Knight* (11 N. Y., 308), it was held that the State had acquired an estate in fee in certain lands. It was said on the argument of the case now at bar, that the statute under which the lands in that case were taken, gave in express terms the fee simple to the State. It is true that chap. 262, § 3, of Laws of 1817, and § 52, 1 R. S., 226, are thus explicit. But the claim in that case (*N. Hill, Jr.*, for the respondent, *arguendo*, page 311), was put upon the provisions of § 49, 1 R. S., 226, and so was the judgment of the court. (Pp. 312, 314.) The language of the section last referred to, is: "And the premises so appropriated shall be deemed the property of the State." And the court says: "The language employed is so broad as to require a fee simple." So in *Dingley v. The City of Boston* (100 Mass., 544), an authority to "purchase or otherwise take lands," and a declaration that "the title to all lands so taken should vest in the city," was held to vest a title in fee simple in the defendants. See also *The Commonwealth v. McAlister* (2 Watts, 190); *Union Canal Co. v. Young* (1 Whart., 425); 50 Penn. St., *supra*. When the fee is taken from the former owner it must be held that he is fully compensated at the time of the original taking, and that the

possibility that the land may at any future time revert to him by the cessation of the public use, is too remote and contingent to be considered as property at all. (*Heyward v. The Mayor, supra.*)

Having determined that the act of 1861 conferred upon the city the power of acquiring an absolute estate in the lands, it is not necessary that we go into the inquiry whether the statute of 1865 be a valid act or not.

It is to be observed that the act of 1861 vested the lands in the city of Brooklyn forever, but for the uses and purposes in that act mentioned. Though the city took the title to the lands by this provision, it took it for the public use as a park, and held it in trust for that purpose. Of course, taking the title, had it taken it also free from such trust, it could have sold and conveyed it away when and as it chose. Receiving the title in trust for an especial public use, it could not convey without the sanction of the Legislature; and the act of 1870 expresses the Legislative sanction. Under its provisions (Laws of 1870, ch. 373, p. 848) it is authorized to sell and convey, with covenants, certain portions of the lands taken (§ 1), of which the premises in question in this case are a part. It was within the power of the Legislature to relieve the city from the trust to hold it for a use only, and to authorize it to sell and convey. (*Nicoll v. New York & Erie R. R.*, 2 Kern., 121.) Doubtless, in most cases, when land is condemned for a special purpose, on the score of public utility, the sequestration is limited to that particular use. But this is where the property is not taken, but the use only. Then, the right of the public being limited to the use, when the use ceases the right ceases. Where the property is taken, the owner paid its true value, and the title vested in the public, it owns the whole property, and not merely the use; and, though the particular use may be abandoned, the right to the property remains. The property is still held in trust for the public by the authorities. By Legislative sanction it may be sold, be changed in its character from realty to personalty, and the avails be devoted to general or special public purposes. (*De Varaigne v. Fox*, 2 Blatchf. C. C., 95.)

The appellant's counsel insists that the operation of the acts of 1861 and of 1870, in the practical result, is to take the property of one person and transfer it for the profit of the city to another. Such is not, however, the direct and necessary, nor was it the intended or anticipated operation of the act of 1861. That was passed in good faith by the Legislature, to meet a wide necessity. The authority to determine upon the necessity of the exercise of the power of taking private property for public use rests with the State. It ordinarily acts in this

matter through the Legislative department of the government. The Legislature is the proper body to determine the necessity of the exercise of the power, and the extent to which the exercise of it shall be carried. And there is no restraint upon the power, save that requiring that compensation shall be made. (*The People v. Smith*, 21 N. Y., 597.)

When the Legislature has indicated the existence of what is acknowledged to be a public use; has declared the necessity of the taking for that use, and its extent; has restricted the taking to the extent declared; and has provided for the ascertaining and the due payment of just compensation, the judicial power may not question its decision. It is only when the limits have been exceeded, or its authority has been abused or perverted, that the judiciary may restrain. (*Hazen v. Essex Co.*, 12 Cush., 477.)

That the Legislature erred, in 1861, in the exercise of this power, and mistook a seeming for a real necessity, does not render its further action in 1870 invalid. Under the act of 1861, all the steps were taken for the appropriation of the lands and the payment therefor. At once, on the appropriation, the owner became entitled to the compensation for them. His right to the price was complete. (*The People v. Hayden*, 6 Hill, 359.)

And the rights were reciprocal. The public had the right to the lands on making payment, and as soon as the owner was paid he was disseized. There is no reverter. They were the property of the city of Brooklyn. The Legislature could discharge it from the trust to hold them for a park, and empower it to sell. It has done so, and, so far as any express limitation in our State Constitution is concerned, it had the power to do so.

The appellant claims that the city is estopped by its own acts from selling any part of the land; that the plotting and filing of maps made a *quasi* contract between the city and the bondholders and individuals that the whole land should always be a park; and that the value of neighboring property having been enhanced in anticipation of the creation of this park, and greater assessments and taxes upon that property having thereby been made and paid, such taxation is in the nature of a contract, and the city cannot now sell any of its land. We apprehend that this point is not well taken.

If a street be discontinued and the value of lands abutting on other parts of it and on neighboring streets is lessened, it is not such an injury to the owner as to entitle him to damages. (*Smith v. City of Boston*, 7 Cush., 254.)

The city of Brooklyn was not the grantor of the neighboring owner, and did not induce him to buy of it, by a

purpose declared, of creating this park. Any enhanced value of his property was an incidental benefit to him, in its greater readiness of sale at a greater price, and any depreciation in value is an incidental detriment. The same results flow, in greater or less degree, from the commencement or abandonment of any of the measures of municipal enterprise, whether general or local. It would be going too far to hold, in the absence of any direct and particular relation between the city and the owner of real estate, that a projected work having influenced for the better the value of his property, he could forbid the abandonment of it, or that there existed any enforceable right, if it was abandoned.

Any proper exercise of governmental power which does not directly encroach upon the property of an individual, or disturb him in its possession or enjoyment, will not entitle him to compensation or give him a right of action. (*Gould v. Hud. R. R. R.*, 6 N. Y., 522.) Hence no obligation rests upon the government not to exercise its power in such manner. Familiar examples of this, are the changes of the grades of streets in cities and villages, by which lands adjoining are lessened in value. (*Radcliff v. The Mayor*, 4 N. Y., 195; *Wilson v. The Mayor*, 1 Denio, 595.) The general good is to prevail over partial individual inconvenience. (*Lansing v. Smith*, 8 Cow., 149.) This is the rule when public works for the general welfare are entered into. It is not different when works projected are, for the general good, abandoned before completion or commencement.

This act of 1870 directs that the moneys received upon such sale shall be paid over to the Commissioners of the Sinking Fund of the city, to be held for the redemption of the bonds issued in payment of the lands taken. (§ 3.) And, further, that upon the delivery of the deeds on such sale, all liens existing by virtue of the act of 1861, shall be terminated and extinguished. (§ 4.)

It is claimed, by the appellant, that the enactment contained in the fourth section is in conflict with the Federal Constitution, in that it impairs the obligation of the contract by which these lands are pledged for the payment of the bonds issued for the lands taken. (U. S. Const., art. 10, § 1, sub. 1.)

The Legislature when it declared, in the act of 1861, that these lands were pledged for the payment of these bonds, did thereby agree with whoever parted with his money and took a bond, that he should have, as an assurance for the payment of it, the security of these lands. It was not merely a restriction upon the power of the city. It was an obligation creating a lien. It agreed with the creditor itself, and fastened upon the city the same agreement, that for the money received from him

he should have these particular lands as a specific security for repayment. If section 4, of the act of 1870, is a valid enactment, it takes away from the holder of these bonds part of the security which he has for their payment. It is no answer to this to say that there is still pledged to him the land reserved for streets, avenues or other purposes. Such reply is only as to the degree, and not as to the fact, of the impairing the obligation. It is no answer to say that the avails of the sale will be turned into the Sinking Fund for the use of the bondholders. The holder of the bond did not agree to take a security upon a fund in the city treasury and incur any risk of its preservation, but stipulated for a specific lien upon this land. (See *Curran v. State of Arkansas*, *infra*, p. 319.)

Nor is there here any application of the reserved power of the Legislature to alter or amend the charter of the city. This is a contract not between the city and the State, but between the creditor of the one part and the city and the State of the other. No power has been reserved, either in constitution or otherwise, to alter that contract.

That it was an important matter to have these lands pledged for the payment of these bonds, is sufficiently shown by the solemnity with which the plédge is made, an enactment of the Legislature being sought to so specifically declare it. It is an essential element in the obligation of the city which the creditor received in exchange for his money. This act takes that element away and thus impairs the obligation. True, the entire contract is not destroyed. The liability to pay still remains. But the pledge of tangible property as a security that the liability would be met has been withdrawn. It was on the assurance that this should remain that the creditor was induced to take the bonds and give in exchange his property. This was a contract. The security cannot now be taken away without impairing the obligation of that contract. (*Curran v. The State of Arkansas*, 15 How., U. S., 304-314; *McGee v. Mathis*, 4 Wallace, 143; *Wabash, &c., Co. v. Beers*, 2 Black, 448.)

It follows that the act of 1870, so far as it assumes to discharge the lands from the lien, is in conflict with the Constitution of the United States. The parts of the statute not obnoxious to this objection may be upheld. But as the provisions of the law which discharges the lien are those upon which it is relied to remove the encumbrance upon the premises, and as without them the city cannot give such a title as the act authorizes it to pass, and as the purchaser has agreed for, they are of no avail to the respondents in this controversy.

It is true that the danger to the purchaser, to all seeming, is very slight and very remote, that the premises for

which he has contracted will ever be called upon to contribute to the payment of these bonds. The probabilities are, that with the wealth concentrated within the corporate bounds of the city of Brooklyn, and with the means at its command, it will always find the ordinary means of raising money by taxation sufficient for the purpose of payment of interest, and the method of a new loan at any time available to pay the principal. But yet there is the possibility. The debt is an encumbrance upon this land, and does affect that for which the appellant bargained. This is a legal certainty. However strong the probability that the debt will never be exacted from the land, it cannot be asserted to be more than a probability. While it exists there is, as matter of law and matter of fact, the possibility that the creditor may enforce his lien. And this hampers the estate. It may be conceded that a title free from reasonable doubt may be forced upon an unwilling purchaser. Thus, in a case in which it appeared that there was in a prior deed a reservation of mines, specific performance was decreed, not because there being mines it was not probable that the right reserved would ever be exercised, but because, 1st. The court saw upon examination the probability was great that there were no mines for the right reserved to act upon. 2d. That all legal right to exercise it had ceased. But this is a doubt whether there exists, in law or in fact, any defect in the title. When it is ascertained that there is an existing defect in the title, the purchaser will not be compelled to perform on the allegation that it is doubtful whether the defect will ever incommode him. If there be any reasonable chance that some third person may raise a question against the owner of the estate after the completion of the contract, the court considers this a circumstance which renders the bargain a hard one for the purchaser, and one which it will not, in the exercise of its discretion, compel him to execute. (*Seaman v. Vawdrey*, 16 Vesey, 390.) We are not able to hold that a good title in fee to the premises can be acquired by the respondent, under and by virtue of the acts, proceedings and sale.

The judgment of the courts below must be reversed, with costs to the respondent.

All the judges concurring.

Judgment reversed and judgment ordered for the defendant.

THE COURT OF APPEALS.

In the matter of widening and improving Ninth avenue
and Fifteenth street, in the city of Brooklyn.

THE BROOKLYN-PARK COMMISSIONERS,

Respondents,

against

CHARLES A. NICHOLS and others,

Appellants.

Decided June 22, 1871.

Opinion of the Court, per GROVER, J.—It was for the Legislature to determine whether the expense of widening Ninth avenue and Fifteenth street, in the city of Brooklyn, should be paid by the city at large, or assessed upon the property benefited by the improvement; and in case of adopting the latter mode, to provide for the assessment of such property in proportion to the benefit received. (*Litchfield v. Vernon*, 41 N. Y., 123.) To effect this, section three of the act (Laws of 1869, vol. 2, 1659), provides that, before any assessment for such widening and opening is made, the Park Commissioners shall, by resolution, fix a district of assessment, beyond which the assessment to liquidate and defray the expenses and damages incident to said widening and opening and the subsequent improvement thereof shall not extend. Section two provides for the appointment of Commissioners, by the Supreme Court, to estimate the expense of such widening and opening, and the amount of damages to be sustained by the owners of land and all other persons affected thereby, and to apportion and assess the same as directed by the act. Section four provides that the Commissioners shall estimate the expenses and damages occasioned by the said improvement. And after their report thereon shall have been confirmed, they shall apportion and assess the same as they shall deem just and equitable, upon the lands and premises in their judgment benefited by the improvement within the district so limited by the Park Commissioners, and that in making the assessment for widening and improving Ninth

avenue, they shall apportion and assess three-fifths of the expense and damage upon lands lying southeast of said avenue, and the remaining two-fifths thereof upon land lying northwest of said avenue. The only error of the Commissioners complained of by the appellants, is the assessment in favor of the city of the value of the land taken from the park for the purpose of widening the street and avenue. This complaint is not that such land has been overvalued by the Commissioners if the city, as owner, was entitled to payment of the value, but they claim that the city was not entitled to such payment, but only to nominal damages, at most, therefor. By the acts of the Legislature, under which the lands included in Prospect Park were acquired by the city of Brooklyn, the city became the owner of such lands in fee, to be held by it for the purposes of a public park. The city cannot dispose of, or use the lands for any other purpose, without the sanction of the Legislature; but with such sanction, the city may dispose of or use them in any way it may deem proper. (*Brooklyn Park Com. v Armstrong*, decided by this court, March, 1871, *ante*, p. 234.) No question is made by the counsel for the appellant, but that the Legislature may authorize the taking of the land from the park for the purpose of widening the street and avenue. The statute provides for the assessment of the damages sustained by the owners of the land taken for the improvement, and others who may be affected thereby. The city was the owner in fee of the land in question, charged with a trust to use the same for a park only. The Legislature provided for the payment of the expenses of the improvement by an assessment upon the land especially benefited thereby. From the act and the map produced, it appears that the lands of the city embraced in the park were subject to an assessment for benefit in like manner as those of any other owner. Its land only was taken for widening the avenue, and the act provides for the assessment of three-fifths of the expense upon the lands of the city embraced in the park and two-fifths upon the lands of owners upon the opposite side of the avenue. This shows an intention of placing the lands of the city embraced in the park upon the same footing in respect to the improvement as those of any other proprietor. An assessment of the damages sustained by the city by the taking the strip from the park for widening the avenue, must have been intended, otherwise there would have been no land to appraise, and the provision therefor would have been nugatory. It follows that the city, under the act in question, was entitled to compensation for the lands taken for the improvement. It is unnecessary to determine whether the Legislature could have authorized the taking of the land from the park for a street without compensation, as it

clearly has not done so. On the contrary, it has provided that compensation should be made for the lands taken, and that such compensation should be assessed upon and paid by the owners of the land benefited, including those of the city. This brings us to the question principally argued by the counsel for the appellant. He insists that, the lands being held by the city in trust for a park for the use of the people of the city, the only damages that could be assessed was the pecuniary loss, if any, sustained by the city by the change of the use to a street instead of a park, and that this at most was merely nominal. To sustain this position the counsel relies upon the well settled rule that, where lands are taken for public use, the owner is only entitled to compensation for the loss or damages caused to him by such taking. This principle has been applied where the land was already subject to a servitude in behalf of the public and an additional servitude was imposed upon it. It has accordingly been held in such cases that the owner of the fee was only entitled to compensation for the loss or injury, if any, sustained by subjecting the land to the additional servitude, or in case the fee was taken for public use, he was only entitled to the value subject to the servitude already charged thereon. This is so well settled that a citation of the authorities is unnecessary. It cannot be questioned that the intention of the act was to compensate the city for any loss sustained by converting park lands into streets, nor but that the Legislature had power to provide that it should be so compensated, but it was designed only to make compensation for the loss. To this extent only were damages to the city to be assessed. To sustain the position of the defendant's counsel, it must be held, as matter of law, that the lands embraced in the park, that can only be used for park purposes, are of no more value to the city than the same lands devoted to the public use as streets. I am not aware of any principle upon which such a legal conclusion can be based. The lands embraced in the park have, under the authority of the Legislature, been acquired by the city at very great expense for park purposes. To hold as a legal conclusion that such lands so to be used are of no more value to the city than the same lands laid out into and used as avenues and streets, would be, I think, absurd. It must be so held, or the award of the Commissioners in favor of the city must be sustained. If the city sustained any substantial loss by the taking of the land from the park and converting it into streets, it was for the Commissioners to ascertain and determine the amount of such damages. Their report, when confirmed by the Supreme Court, became conclusive, unless some rule of law was violated by them. Even had this court the power to review the correctness of their deter-

mination as to the sum to be awarded to the city, there is nothing in the case showing any error committed by them in this respect. No such point was made by the counsel for the appellant. His claim is that the city is not entitled to any compensation in consequence of the new use to which the land was devoted. But it is said that the improvement was designed for the benefit of the park, by creating a fine promenade and drive exterior to this portion of it, and not for the benefit of the owners of the lands upon the opposite side of the street, and that it would, therefore, be unjust to assess the latter for the lands taken from the park for that purpose. This argument should have been addressed to the Legislature. That body has deemed the improvement beneficial to both, and has therefore provided that the owner should be compensated for the land taken, and that each should contribute to the payment of such compensation, in proportion to the benefit respectively received, declaring, in substance, that such portion, so far as the avenue was concerned, should be as three to two, thus relieving the private owners to that extent, which was as far as the Legislature deemed just. It should be borne in mind that the city has, with the sanction of the Legislature, the right to dispose of the park land for any purpose, and that, without such sanction, it has no right of disposition whatever. The act providing that the land in question may be taken for streets upon compensation to the city, as provided therein, is the sanction required, and the conditions thereby imposed must govern the rights of the parties. If the appellants are injured by being compelled to contribute for an improvement not beneficial to them, but which the Legislature has so declared, the court cannot redress such injury. No question arises upon the facts presented as to the rights of the holders of bonds issued by the city, in respect to a lien upon the lands in question to secure payment of such bonds.

CHURCH, Ch. J., PECKHAM and ANDREWS, JJ., concur; ALLEN and FOLGER, JJ., dissent; RAPALLO, J., not voting. Order affirmed.

AN OPINION

BY

WM. C. DEWITT, ESQ.,

As to the Present State and Effect of the Laws in Relation to The Department of Parks.

189 MONTAGUE STREET,

BROOKLYN, JUNE 10, 1882.

JOHN A. TAYLOR, ESQ.,

Corporation Counsel :

MY DEAR SIR :

I have the honor to acknowledge the receipt of your request for an opinion as to the state of the law respecting the Park Commission and Department of Parks, and particularly in reply to questions specifically propounded by you, which I shall quote at the appropriate points in the presentation of my views.

I think it essential to a satisfactory solution of these inquiries that certain leading facts and fundamental principles should, at the outset, be considered and appreciated. It is obvious, even within the lines which govern a chaste examination and construction of statutory law, that there has been within the last twelve years a steady, persistent, and intelligent progress, in both the legislation and jurisprudence of our State, toward the establishment of independent local self-government for our cities. This pursuit is a natural outgrowth from the original principles of our Government. Our State was formed on that English system which distributes power by allowing it to arise and abide in a variety of municipal corporations—a system directly converse to the style and character of the European forms of civil administration where the State, as in France, particularly under the Empire, is everything, and all law and power is administered by the chosen deputies of a supreme ruler. Here, under each of the three constitutions of our State, the counties and cities, towns and villages, school districts, and road districts, with the multitude of territorial divisions which they have respectively created, are all recognized, fostered and protected. It was clearly the cherished object of the founders of our system that these distinct communities should choose their own officers, make their own local laws, and administer their own affairs in their own way and at their own cost. This complex principle, for the

development of home rule and community government, has been regarded by the highest authorities in philosophy and law as the peculiar virtue and distinguished characteristic of our American institutions (De Tocqueville *Democ. Am.*, chap. 5, 2 Kent Com., 275n, and *People v. Draper*, 15 N. Y., at p. 562, Brown, *F.*).

The passage of what is known as the Metropolitan Police Act in 1857, and the legislation and judicial decisions which followed in its train, threatened a total subversion of this system. The scheme invented to evade the provisions of the Constitution was, by the creation of districts, inclusive of more than one municipality, to transfer to officers chosen by the State the powers and functions of each municipality to be exercised in common throughout the new district. Hard upon this act followed similar legislation as to the health powers of each city, and then a long series of special acts creating internal commissions filled by the Legislature, or by local officers not elected by the people of the city for any such purpose, but specially selected by the Legislature to suit the object in view in each particular case. The history of the careers of these special commissions, with the great burdens of debt which they left behind them, is familiar to every one.

In 1870, the reactionary movement began. The Metropolitan Boards of Police and Health were abolished. In 1873 a new charter for the City of Brooklyn was introduced in the Legislature, having for its prime object the restoration of the government of the city to the people of the city. In its original draft as presented by leading citizens of Brooklyn, it fully embodied and carried out this design, and while it was largely deformed in this particular during its pendency in the Legislature, its passage effected a great advance in the right direction.

No one can peruse the pages of this bill, as it became a law, without detecting the cardinal design. It first describes the territory of the city and divides it into wards. It then, under separate heads and titles, places this territory under a single municipal corporation. The legislative power is vested in a Board of Aldermen. The administrative power is vested in the Mayor, the heads of the various departments and such other officers as shall from time to time be created by law. This unique municipal government is then expressly divided in point of administrative powers into several departments, among which are: Department of Finance, Department of Audit, Treasury Department, Department of Law, Department of Police, Department of Parks, &c. The Mayor, Comptroller and Auditor are to be elected, and all the other officers are to be appointed, at periods more or less remote, by the Mayor, with the con-

sent of the Common Council. The first rule to guide and govern the construction of statutes is to ascertain the intent of the law giver (*People v. Potter*, 47 N. Y., 379), and I need add no more of comment upon the Charter Act of 1873 to show that its design was to extirpate commissions ordained by special legislation and to gather into a unique and complete system of municipal government all the powers, duties and subjects of local administration.

No fair-minded man can doubt that it was indispensable to the accomplishment of this design that the control of the parks and other public places should accompany the general municipal powers. Unless the people of the city had the right to control the property which was their own, in a private and proprietary sense, they could lay no claim to those franchises and powers, which were political in character. To say that a man is not competent to manage his own estate but is competent to participate in managing the affairs of the public would be absurd; but it would be no more absurd than to accord to the people of a city the right to manage all those intricate matters of finance, public peace and order and education pertaining to municipal administration and yet deny their right or capacity to take care of the land which they own in fee as a park.

Nor was this inseparable ingredient of complete home rule left to bare implication from general design in the Charter of 1873. Among the various titles expressly defining the powers and duties of the respective departments, there was one completely devoted to this branch of local self-government. It was entitled "Title XV., Department of Parks." It provided that at the first meeting of the Board of Aldermen in January, in the year 1875, and every two years thereafter, the Mayor should nominate, and with the consent of the Board of Aldermen, appoint a proper person to be President of the Department of Parks, and two Commissioners, who, together with the President, should constitute the Commissioners of Parks. It fixed their term of office, etc., and enacted that when they should have been thus appointed the present Board of Park Commissioners "shall forthwith, under oath, account for and pay over to the Treasurer of the city all moneys in their hands belonging to the city, and transfer to the said Commissioners all books, maps, papers, and property of every kind that may be then in their possession or under their control, and thereupon the office and duties of the present Board of Park Commissioners shall cease;" and further: "Sec. 3. All the parks, plazas, squares, and public places of the city shall be under the control, management and supervision of the said Commissioners, subject, however, to the Common

“Council.” It is thus entirely clear that it was the intent and express provision of the Charter Act of 1873 that the Park Commission should be abolished and its powers vested in the new government emanating from the people of the city.

We shall shortly see in what respect this statute has been changed. At present I wish to call attention to the fact that the obstacles interposed, both in the Act of 1873, and elsewhere, to the consummation of the design to establish a complete and unique government for Brooklyn, emanating wholly from its people, were gradually overcome, and that the passage of the act of 1880, commonly known as the “single-head-bill,” perfected local self-government for Brooklyn by vesting all power in the Mayor and officers elected in the city.

Parallel with this advance of legislation there has been a concurrent progress in our judicial decisions. Notwithstanding the prevailing opinion of the Court of Appeals in *People v. Draper*, by which the constitutionality of the Metropolitan Police act was upheld, was written by Judge Denio, in respect to whom Judge Allen says, “but for his ability and influence, the decision might possibly have been the other way,” there has been a gradual abandonment of that authority, and the Court of Appeals, as at present constituted, or, at all events, as it stood under the presidency of Chief Judge Sanford E. Church, has given its support in no doubtful terms to the great opinion rendered by Judge Brown in dissent to that of Judge Denio, in *People v. Draper*, and wherein the right of each city, town, village, and county to administer its own affairs is upheld, upon the provisions of the Constitution, in unmeasured terms (*People v. Alberton*, 55 N. Y., at 63-64; *Sturges v. Spofford*, 45 N. Y., 450; *People v. Bull*, N. Y.,—*v. Williamson*, N. Y.).

This remarkable product of judicial genius has likewise received the approval of the text writers and of the courts of other States, and it may now be safely stated that the dissenting opinion of Judge Brown, in *People v. Draper*, is an established exposition of our State Constitution. In *People v. Alberton*, the Court of Appeals, then composed of Judges Church, Allen, Grover, Folger, Rapallo, Andrews and Johnson, referring to the decision in *People v. Draper*, say, through Allen, *F.*:

“That decision has now stood so long judicially uncondemned, although never, I think, satisfactory to the public or the legal profession, that it might not be proper, under any circumstances, to review or overrule it; and it is to be hoped in the interests of constitutional government by the people, that the occasion to reaffirm its doctrines may never arise. To my mind, the dissenting opinion of Judge Brown, concurred in by Judge Comstock, presents unanswerable arguments why the decision should have been different. The Constitution, in providing for a State government in all its parts, and for an entire territory distributing its powers among the various de-

partments, and organizing and authorizing the creation and organization of local governments for the different parts of the State, under the general division of counties, cities, villages and towns, and in such forms that every power of government necessary to be delegated to any locality, may be delegated and conferred upon one or the other of the municipal governments, thus authorized and recognized, would seem to exclude the idea of the creation of any new or other division for the exercise of political power, or any other different local government, and by necessary implication prohibit it. People *vs.* Draper fully recognizes the fact that the general political divisions of the State cannot be disturbed. The learned judge says: 'The counties and cities must not only be preserved but the Legislature must do nothing respecting them less suitable for the purposes for which they are recognized and employed by the Constitution.' If the judge had added that neither should the Legislature do anything to deprive the counties and cities, and their electors, of these rights of local self-government and the substantial rights and franchises guaranteed by the Constitution, it would have been less objectionable."

Enough has now been stated to demonstrate that the Charter Act of 1873, conferring the control, management and supervision of all the parks, plazas, squares and public places of this city upon a Department of Parks, constituting an integral part of the city government, and to be filled by appointment by the Mayor, was, so far at least as all subjects lying within the territorial domain of the city is concerned, a constitutional exercise of legislative power in keeping with the character of our system of government, and sanctioned by the authority of our courts.

Title XV., of the Act of 1873, relative to the Department of Parks, has been twice amended, first in 1877, and second in 1880, obviously for the purpose of extending the Commissioners' term of office. Each amendment assumes the literary form of rewriting the original title.

The amendment of 1877 makes the Brooklyn Park Commissioners the Department of Parks in the City Government. It provides that they shall serve without compensation, and protracts their terms by enacting that "at the first meeting of the Common Council in 1880, and every two years thereafter, the Mayor shall nominate, and with the consent of the Common Council appoint, a successor to each of said Commissioners. The second section transfers all the powers of the Brooklyn Park Commissioners to the Department of Parks under the Municipal Corporation, subject to the direction of the Common Council; and the third section conforms the financial affairs of the department to the rules governing other departments." *

The effect of this act was, at least so far as all matters within the city limits were concerned, to induct the former Park Commissioners into office as a City Depart-

* See chap. 354, Laws of 1877.

ment, whose successors were to be appointed by the Mayor, &c., and to abolish the Park Commission. The department continued in this character to the year 1880, when another amendatory act, again rewriting Title XV., Department of Parks, was passed, providing that "The Brooklyn Park Commission, now in office, shall continue in office for two years after the passage of this act, and until others are appointed in their places; and in addition to the duties now devolved upon them by law, shall be and serve as the Department of Parks, and without compensation, and at the expiration of the term of office of said department, and every two years thereafter, they shall be appointed by the same authorities and in the same manner as other departments are or may be appointed."

The remaining two sections are substantially the same as those of the two previous acts. There occurs in this act one or two expressions which are claimed to be indicative of a legislative recognition of the existence of the old commission in matters outside the city. But, in view of the fact that the Act of 1877 had been in operation for three years, the precise *status* of the department, and of the old commission, must have been determined by that act and the Act of 1873, and thus, any suggestion or criticism founded upon any particular phraseology in the Act of 1880, must be inconsiderable. In other words, the former Brooklyn Park Commissioners must have become a department of the city government, and in all other respects have been abolished by the Acts of 1873 and 1877, if it were competent for Charter Acts to effect such a purpose, and there can be no pretense that there is anything in the Act of 1880 restoring them to life in a capacity other than municipal.

I have now arrived at a point where, bearing in mind that the Act of 1880, called the "Single Head Bill," vested the power of making all the appointments of heads of departments in the Mayor alone—the act to which the Park Act of that year directly points for the appointing power to fill the vacancies of the Park Department—it is proper that I should answer two of the questions propounded by you :

"1. Has the Mayor power, under existing acts, to create a Department of Parks?"

I answer : That the Mayor has the power, and it is his duty, by appointing the successors to the commissioners now filling the Department of Parks, to call into actual operation, for the first time, a Department of Parks, occupied by the authority and subject to the control of the People of the City of Brooklyn alone.

“4. Of how many commissioners should the said department consist?”

I answer: As many as the commissioners who may now occupy such department by the authority of the Legislature.

This brings us to the question about which there has been the most debate. Was it competent for the Legislature, through these various charter acts, to vest all the powers of the Park Commissioners, created by prior special legislation, in a department of the City Government?

It must, of course, be admitted that these acts were sufficient to transfer to the Municipal Corporation all powers possessed by the Special Commission respecting parks, plazas, highways or other public places situated within the territorial limits of the city, because these are clearly within the scope of charter acts, and it has been settled by a decision of the Court of Appeals, directly in point, that even if a charter act was constitutionally unable to reach powers to be exercised outside of the city limits, such an act would nevertheless be valid and binding in respect to all other matters pertinent to the city which it might contain.

People v. Briggs, 50 N. Y., 558.

Hence it should be observed, preliminarily, that even if the old commission still continued as to the powers to be exercised outside of the city, the new department in the corporation would now have full and exclusive jurisdiction over everything within the city's borders, and it cannot for an instant be questioned that this new department, the Mayor, possesses the power to fill by appointments. I may add that there is nothing incongruous in the eye of the law about the continuance of the old commission in care of the Boulevard and Concourse connecting the Park with the Ocean as the sole remnant of an office to which no compensation was awarded. But the law, I am satisfied, is not left in this bifurcated condition.

I am convinced by the highest authorities, as well as by the reason of the thing, that the charter acts cited were sufficient to transfer all the powers possessed by the former Park Commission at the time of the passage of the charter acts, as well those to be exercised outside the city limits as those to be exercised within those limits, to the department of the City Government. The suggested infirmity of the Legislature is founded exclusively on the section of the State Constitution, which provides that a local or private bill shall contain but one subject, which shall be expressed in its title.

Sec. 11, Art. 2, Const. 1846.

No doubt is expressed, nor could any exist, as to the inherent power of the Legislature to work the attempted transfer of power, or to vest jurisdiction over the outlying highways or public places for the purposes entrusted to the original Park Commission in the City Department; and it is equally clear, as has been shown, that the general provisions and direct sections of the Act of 1873, and the acts amendatory thereof, are sufficiently broad and plain in language and meaning to command such a transfer, and to complete such an investiture. The point is, barely, that the section of the Constitution quoted, interposes a restraint, rendering nugatory both the letter and the design of the Legislature respecting these outlying matters in the charter acts.

This section of the Constitution was intended to avert two abuses in legislation—one called “log rolling,” and the other the surreptitious passage of laws affecting local interests. It cannot be claimed that the introduction of the park provision under the title used in the Acts of 1873, 1877, or 1880, opened a way to either of these abuses. In the two latter acts no other subject was touched upon; and there could, therefore, have been no danger of what is termed “log rolling,” or the making of one interest help another in these bills. In view of the fact that the main body of the power of the Park Commission was resident within the city, a title which gave notice of the possibility of legislation upon all matters of interest to the city was sufficient to put everybody on his guard respecting matters in the hands of that commission, and hence there was no danger of covert or surreptitious legislation. The substance and spirit of the constitutional restraint were not, therefore, in fact, violated.

Nor was the letter of the Constitution infringed.

Let us concede that the Act of 1873, entitled, “An Act to amend the charter of the City of Brooklyn, and the acts amendatory thereof,” was a local bill, although doubt has been authoritatively intimated on this point (*Harris v. People*, 59 N. Y., 601). Were not the powers exercised by the Brooklyn Park Commissioners, outside and inside the city limits, legitimately a part of the subject expressed in this title? This question, I think, has been fully answered by the highest authority. Bear in mind the axiom that every presumption and intendment favors the validity of legislative acts, and that they are to be upheld unless there is a plain and substantial departure from the organic law.

Such a title as that quoted has been held to include, as in of one subject, every matter of interest and power pertaining the city named (*People v. Briggs*, 50 N. Y., 553; 19 N. Y., 116; 8 N. Y., 252; 50 N. Y., 504). The subject mentioned in this title is the government, char-

ter or corporation of the City of Brooklyn, and hence the bill could embrace every detail of city government, and every matter of corporate character (see authorities last cited). That eminent jurist H. S. G. Tucker, President of the Court of Appeals of Virginia, in 1834, says, in rendering his opinion in *Golden vs. Crump*, 8 Leigh R., at p. 155:

“It has been argued that corporate powers must be confined to the limits of the corporation. This, I think, a most imperfect test; for, confessedly, the limits of the corporation may be extended, so that by this mode of reasoning you extend the power by extending the boundaries of the city. Moreover, it is not denied that a corporation may bring water into the city from a point beyond it, and it may erect its works for that purpose without its own jurisdiction. This affords us a better test. The interest of the corporation is the true test of the corporate character of the act; for every by-law, says Lord Holt, by which the benefit of the corporation is advanced, is good for that reason. Thus in the case of the water works, though the source be ten miles off, the act for introducing the water is fairly a corporate act, because the want is experienced in the heart and through all the wards of the corporation; and the benefit is experienced within the limits, though the operations by which it is introduced are carried on without. So too, the removal of the bar in James River, above Warwick, would be fairly a corporate act, since it would greatly redound to the advantage of Richmond, would benefit its trade, and diminish the charges which now encumber and embarrass it. For, though the *work* would be done beyond the limits of the city, the consequences or effects of it would be felt throughout its borders.”

Within the line of thought here suggested, it has been held in this State that the Legislature may authorize a municipal corporation to lend financial aid to a railway leading into its midst—such being regarded as a subject of corporate interest (18 N. Y., 38). To the same effect are repeated decisions of the Supreme Court of the United States (1 Wall, 291; 3 Wall, 654). A city may also assist in the construction of a plank-road outside its limits “running to and from the city” (*Mitchell vs. Burlington*, 4 Wall, 271; *Learned vs. Burlington*, 4 Wall, 275). In these two cases the aid was extended by authority of a charter provision authorizing the Common Council “to borrow money for public purposes,” and it was sustained by the highest judicial tribunal of our country. In *Chambers vs. St. Louis*, (29 Mo., 543,) the Supreme Court of Missouri held it was competent for the City of St. Louis to take lands lying outside its limits, for the purposes of a cemetery, necessary to the exercise of a charter-given power. So also in *Wisconsin* (7 Wis., 688). In *Skinner vs. Hutton*, 33 Mo., 244, the same court held it was competent for the Legislature to authorize the city to grade and improve roads lying outside of its limits, but leading up to the city and contributing to its trade and commerce, and that such were corporate purposes. To the like end and in like charac-

ter the Supreme Court of North Carolina upheld legislative authority to a city to improve the navigation of a bordering river (*Taylor v. Comrs. of Newberne*, 2 Jones N. C. Eq., 141).

From these authorities it must be seen that the exercise of administrative powers in the interest or for the comfort or prosperity of a city, on public highways or public grounds lying outside the territorial boundaries of a city, but actually connected with its trade, its pleasures or its progress, and being really, in a social and community sense, a part of the artificial body of the city itself are matters of corporate character and interest, and within the embrace of the grand subject—the city, its government, charter or corporation.

Is this subject, thus including the extra-territorial powers under consideration, sufficiently expressed in such a title as that employed in the Charter Act of 1873, or the Act of 1877, or the Act of 1880, to wit: "An Act to amend the Charter of the City of Brooklyn, and the various amendments thereof?"

Let us now consider the authorities of our own State on this point. The case of *More v. De Yoe* (22 Hun, 208), is nice and to the point. The Revised Statutes require, in the foreclosure of mortgages by advertisement, that the advertisements shall be made in newspapers published in the county where the property lies. Under the statutes in this case the advertisement should have been in the County of Delaware. It chanced that the village of Deposit was situated partly in Delaware and partly in Broome counties. Its charter, an act entitled, "An Act to incorporate the village of Deposit," provided that an advertisement in a newspaper of the village should be in law sufficient for either county. Thus, the advertisement in *More v. De Yoe* occurred actually in Broome County, in violation of the Revised Statutes, unless supported by the charter of the village of Deposit. The respected General Term of the Supreme Court for the Third Department sustained the validity and sufficiency of the provision of the village charter.

I may here observe, before alluding to the cases in the Court of Appeals, that in *Philadelphia v. The Commonwealth* (52 Penn., 454-5), it was held that under the Consolidation Act of 1854, by which the city was made to embrace the entire county, that all political and governmental power within the new territory passed to the city government, although a section of the act saved the county from abolition.

It seems to me, however, that the opinions expressed in two leading cases in our own court of last resort establish the rule that an act entitled as a charter or amendment of a charter of a city, may embrace matters of corporate interest, or matters, the control of which is

important to the comfort and prosperity of the people, even where such matters are actually located outside the city limits.

The act under consideration, in *People vs. Briggs* (50 N. Y., 553), was entitled, "An Act to amend the several acts in relation to the City of Rochester." Like our charter act of 1873, it made many and important changes in the government of the city, embracing nearly all the details of local administration. Its 25th section conferred upon the Water Commissioners to be appointed by city authority the power to enter upon any public street, highway or railroad in any of the villages or towns adjoining or in the vicinity of the city, through which it might be necessary to conduct water to the city, and to lay pipes, etc., therein. And the trustees of such villages and directors of such railroads were required to consent thereto; or such right might be obtained through the courts. This section, likewise, authorized the Water Commissioners of the city to contract with the trustees of such neighboring villages to furnish the people of the villages with water, and power is therein conferred on such trustees to collect the expense of such contracts by taxes to be levied in such villages.

It will be instantly apparent that the support of this section of the act required a far more extended and doubtful construction of the constitutional provision respecting the title of local bills than is necessary to maintain the provisions of the charter act of 1873, respecting the outlying powers of the Park Commissioners.

Nevertheless, Chief Judge Church, in speaking of the many and important extra territorial powers conferred by section 25 of the act amending the Rochester charter, says:

"The authority to secure these rights, although it may involve details in no other way connected with the city, and may affect other persons or corporations and their property, does not constitute it an independent subject. The power to supply villages with water by contract is incidental to the main purpose, and may serve as a means of attaining it. The authority conferred upon the trustees to levy the tax was indispensable to render the contract effectual. The power to sell involves the power to buy and pay for, and taxation was the only mode which could be adopted for that purpose. The choice of means is with the Legislature, and we cannot detach a mere instrumentality and declare it independent, unless it is entirely incongruous and foreign to the principal subject. An act entitled 'An Act for the relief of J. L.' was held valid by this court, although it authorized the Common Council of a city to levy a tax and pay the claimant \$600 beyond the contract price for building a sewer (19 N. Y., 116). The court said: 'The different steps by which the relief is to be brought about are not distinct subjects, but are minor parts of the same general subject. The degree of particularity with which an act is to express its subject is not defined in the Constitution, and rests in the discretion of the Legislature.' And in 8 N. Y. (*supra*) the court said: 'Whether the description of the subject may not be

more specific is a question for the Legislature.' It seems to me that it would be going too far for the courts to declare a measure, adopted by the Legislature to accomplish a given purpose, a subject independent of that purpose, where we can see that it would or might facilitate its accomplishment. Within this limitation the judgment of the Legislature is conclusive. Under a similar provision in the Constitution of Kentucky, it was held that in an act entitled, 'An Act to amend the Charter of the Cincinnati and Covington Bridge Company,' a provision that the bridge company might sell, and the City of Covington might subscribe for \$100,000 of the stock, and sell the bonds to the city and levy a tax to pay them, was valid. The court said: 'None of the provisions of a statute should be regarded as unconstitutional where they all relate directly or indirectly to the same subject, have a natural connection, and are not foreign to the subject expressed in the title. The power to sell the stock to the City of Covington requires that a power should be conferred on the latter to subscribe and pay for it; for without such a power, the power to sell would be nugatory. The subject is the same' (2 Met., 219). In 27 Ill. R., 534, it was held that, in an act entitled, 'An Act to incorporate the Northwestern University,' a provision prohibiting the sale of spirituous liquors within five miles of the location of the college was valid under a similar constitutional provision, upon the ground that it was competent to embrace within the act everything designed to facilitate the object expressed. The court says: 'Its purpose was to keep far away from the members of the institution the temptation to intemperance and its attendant vices' and that it was not objectionable because others might be affected by it. Under a similar provision in the Constitution of Pennsylvania, it was held that 'An Act to increase the boundaries of Forrest County,' provisions for the location of the county site, and procuring donations for erecting county buildings, were connected with the subject expressed in the title and were valid (53 Penn. R., 391). Similar decisions have been made in other States where this constitutional clause is found, and in every case the courts concur that the means of accomplishing a general purpose, and all matters fairly and reasonably connected with it, are proper to be incorporated within the bill, and are germane to the title. The views of the appellants would require one act authorizing the Water Commissioners to conduct the water through villages, another authorizing them to contract with village trustees for supply of water, and another authorizing the trustees to contract with them and levy a tax to pay the expense; thus requiring three independent acts to accomplish an incidental detail of a general subject. This constitutional clause does not, I am persuaded, involve any such circumlocution."

It is true that in this opinion Judges Allen and Andrews alone fully concurred, while Rapallo, *J.*, concurred on the point of the validity of the act in other respects, without expressing any opinion on the point quoted; and Grover, Peckham and Folger, *J. J.*, dissented without any recorded statement of their views. While, in an opinion rendered in a subsequent case, one of the judges of the court is permitted, without dissent, to treat the opinion of Chief Judge Church, quoted, as among the established precedents of the court (*People v. Banks*, 67 N.Y., 573), I deem it sufficient for my purpose to regard it merely as lending to a far more extensive application of the rule, heretofore stated by me, than is needful to the subject I have in hand, the great authority of the distinguished chief and those of his associates, who affirmatively made the language quoted their own.

It seems to me quite clear that the court would have been unanimous, had the Charter Act of Rochester merely vested in the municipal officers, the few extra territorial powers confided to the Department of Parks by the terms of our Charter Act of 1873.

After a careful survey of the numerous special acts in relation to the Brooklyn Park Commissioners, I cannot discover that there remains in being, any considerable quantity of power to be exercised, or subjects to be controlled, outside of the city limits. There is the function of police regulation over the Boulevard and Concourse, connecting Prospect Park with Coney Island, with a power to regulate railroad crossings thereon; some care, though to any considerable extent very doubtful, over the Parade Ground, and a trifling matter respecting the setting back of fences on what was formerly the Coney Island Plank Road. I do not find, nor is my attention called, to any thing else.

It is surely not essential to consider the matter of the Parade Ground or the fences on the Coney Island Plank Road. If the care of this field for military evolutions should fall to the ground by the transposition of the Commissioners into a city department, it may easily be taken up by the county, and a simple resolution of the Board of Supervisors could provide the insignificant means required; while the ordinary town Commissioners of highways might set back the fences on the Coney Island Plank road. It is my opinion that both these functions have passed to the Department of Parks by the terms and efficacy of the charter acts. But it would be absurd to predicate the validity of so important a change in local administration on two such subjects as these. *De minimis non curat lex.*

The boulevard called Ocean Parkway and the Concourse at Coney Island, are, it is true, as a matter of geography, situated beyond the limits of the city, and within the lines of neighboring towns. In every other respect, however, they are metropolitan. In structural character, and in the kind and quality of their uses, they are adjunctive parts of the municipality. They are in the main, devoted to the use and enjoyment of the people of the city, and the police and regulatory powers over them, which were confided to the Park Commission, are exercised at the expense of the city. These powers and the expenditure they entail are, therefore, corporate in character, and while in a geographical sense they are exercised abroad, in a legal sense they reside in the municipal corporation, and are an essential detail of the grand subject covered by the city charter. On this decisive point I have the good fortune to be able to quote the authority of the Court of Appeals, expressed through the learning and ability of Judge Earl in a case in which our

city was interested. In the case of the People *ex rel.* Murphy *vs.* Kelly (5 Abb., new cases, p. 447), the appropriation of the moneys of this city for the construction of the East River Bridge had been assailed from the fact that the bridge lay outside the city limits, as in violation of that section of the Constitution which forbids the use of such moneys for any other than city purposes. In this portion of the opinion all the judges concurred (p. 460). The court say :

“ Nor can it be said that the indebtedness authorized to be incurred by the cities for the construction of the bridge was not for a city purpose. It is impossible to define in a general way, with entire accuracy, what a city purpose is, within the meaning of the Constitution. Each case must largely depend upon its own facts, and the meaning of these words must be evolved by a process of exclusion and inclusion in judicial construction. It would not be a city purpose for the City of New York to build a railroad from that city to Philadelphia, or to improve the navigation of the Hudson river generally, between that city and Albany, although incidental benefit might flow to the city. Such works have never been regarded as within the legitimate scope of the municipal government. On the contrary, it would be a city purpose to purchase a supply of water outside of the city, and convey it into the city, and for such a purpose a city debt could be created. So, lands for a park for the health and comfort of the inhabitants of a city could be purchased outside of the city limits, and yet conveniently near thereto.

Such improvements are for the common and general benefits of all the citizens, and have always been regarded as within the scope of municipal government; and so, too, highways or streets leading into a city or village may be improved, provided the improvements be confined within such limits that they may be regarded as for the common benefit and enjoyment of all the citizens. It cannot, therefore, well be held, as claimed by the learned counsel for the appellants, that what is meant by a city purpose is some work or expenditure within the city limits. There could be no good reason for such a limitation. It would be no worse for a city to incur debt for city purposes outside of the city limits than for one within such limits, and there is just as much reason for allowing it to be incurred in the one as in the other.

But as the dividing line between what is a municipal purpose and what is not, is, in many cases, shadowy and uncertain, great weight should be given by the courts to the legislative determination, and its action should not be annulled, unless the purpose appears clearly to be one not authorized. As said by Judge Folger, in *Weismer v. Village of Douglas*, 64 N. Y., 91: ‘If the purpose designated by the Legislature lies so near the border line that it may be doubtful on which side of it it is domiciled, the courts may not set their judgment against that of the law-makers.’”

I may now reply to the two remaining questions propounded by you, viz. :

“ 2. Do the terms of the present Park Commissioners expire upon the appointment of such department by the Mayor ?

“ 3. Are the existing acts effectual to vest in such department all the powers and duties now vested in the Brooklyn Park Commissioners ? ”

To each of these questions I answer in the affirmative.

With modest distrust of my own judgment upon matters of such complexity and importance, I yet deeply feel that the foregoing review of the principles and authorities of the law will satisfy any candid mind that the Charter Act of 1873, with its subsequent amendments and additions, has allotted to the people of Brooklyn a complete system of municipal government, exclusive of all extrinsic Commissions, wherein the doctrines of community independence and home rule, lying at the heart of our political philosophy, may have a full and unfettered trial. To the present Mayor events have entrusted the duty of introducing the new creation into the practical affairs of life. The difficulty lies, if anywhere, not in the inauguration but in the conduct of the enterprise. As the trial progresses, it will concern a far larger constituency than ours, to know whether the virtue and intelligence of our people, acting through the forms prescribed for the expression of their will at the polls, shall prove adequate to a wise and honest administration of the great and important trusts now, at last, entirely committed to their care.

I am, my dear sir,

Very respectfully yours,

WM. C. DE WITT.

AN OPINION

BY

JOHN A. TAYLOR, ESQ., *Corporation Counsel*,

As to the Present State and Effect of the Laws Govern-
ing the Department of Parks.

OFFICE OF THE CORPORATION COUNSEL, }
CITY HALL, BROOKLYN, June 16, 1882. }

Hon. Seth Low, Mayor :

DEAR SIR :

When some two weeks ago I reported to you orally my conclusions in reference to your power under the charter and amendments governing the Park Commission, I had been unable, in the pressure of immediate duties, to do more than examine the various statutes and draw from them the legal inferences then submitted to you. Since that time two opinions have reached me, solicited at the instance of the President of the Park Commission, which I beg to hand you with this, and which you will observe corroborate in all particulars the views which I had the honor to communicate to you at that time. I beg also to put before you such further reflections upon the situation as have occurred to me in the interval.

The main conclusions at that time presented were as follows :

First—That Title XV, of the charter of 1873, as amended, is valid and operative to create a Department of Parks, consisting of eight persons, residents in the City of Brooklyn, to be appointed solely by the Mayor of said city, to hold office for the period of two years, from the time of their appointment.

Second—That the existing acts of the Legislature vest in said Department of Parks all the duties, authority and discretion heretofore vested in the Brooklyn Park Commissioners.

Third—That the term of office of the present Brooklyn Park Commissioners ceases and determines immediately upon the acceptance and qualification of the said Department of Parks.

Fourth—That upon a failure by the Mayor to appoint, on or before the 17th day of June, 1882, eight such persons as the Department of Parks, the present members

of the Brooklyn Park Commission would by operation of law be appointed for the term of two years from the 17th day of June instant.

A more careful analysis and comparison of the various acts of the Legislature, over fifty in number, which have been passed in furtherance of the park and boulevard system of our city, confirms me in the conclusions then arrived at. The situation seems to call for no elaborate metaphysical disquisition, but rather that we should resort for guidance to that aid which Chief Justice Folger has denominated "Common sense—the strong solvent of our perplexities."

The powers and duties of the Department of Parks provided for in title 15 of the charter of 1873, have arisen from a variety of statutes affecting the development of Prospect Park and lateral highways, beginning with an act passed April 17, 1860, the purpose of which was succinctly stated in its title as being "to lay out a public park and parade ground for the City of Brooklyn." By a variety of acts since passed, the scope of this department has been extended until as at present constituted it has entire custody, control and regulation of five important public improvements, each a part of a broad scheme of park and boulevards, designed almost entirely for the benefit of the City of Brooklyn, from whose revenues, with inconsiderable exceptions, the sum of about \$10,000,000 has been expended in their development and improvement.

These several improvements are: Prospect Park, the Ocean Parkway, the Parade Ground, the Concourse and the Sacket street Boulevard or Eastern Parkway. In addition to these principal improvements, control has from time to time been given the Commissioners over Douglass, Degraw and Fifteenth streets, and Ninth, Washington, Bedford, Flatbush, Ocean and Franklin avenues, as well as Coney Island Plank Road and the City Parks. All these improvements are in immediate juxtaposition, Ocean Parkway being a broad ligament, binding all together. The topographical scheme of the system seems to be a large acreage for public resort within the city limits, an adjacent level plain set apart for military parades, a concourse on the border of the sea, directly connected with the large park by an amply shaded avenue, two hundred and ten feet in width. The whole constitutes an arrangement of park, driving and beach privileges not excelled by any other city in the Union. It is true that a portion of the territory occupied by these improvements is within the political boundaries of other small towns. But there is nothing in the character of these provinces which would suggest that any other consideration was in the minds of the

founders of the enterprise than the perfecting of a generous park system, to be mainly enjoyed by, paid for and under the control of the City of Brooklyn. This view is in entire harmony with the many acts of the Legislature providing for the scheme. Although it was not until 1868 that the name of the Commission was changed to the Brooklyn Park Commission, the Mayor, *ex officio*, added to the membership and the requirement of a city residence for each Commissioner made, yet the first act for the acquisition of lands, which was passed April 17, 1860, provided that the Commission should make a full report to the Common Council of their purchases in January of each year, with a detailed report of all receipts and expenditures. And the act of the previous year (1859), which appointed a Commission to locate the site, provided for a selection of ground in the City of Brooklyn and adjacent thereto, "to be set apart for public parks and also for a parade ground for said city." Shortly after the resources and credit of the City of Brooklyn began to be drawn upon for the acquisition of land and the improvement of it, until, beginning with the year 1871, an average annual payment of about \$115,000 for each year has been found necessary in developing the project. Most of the acts passed relating to the park and the boulevards have been called for to secure the means of lawfully putting the public in possession of these properties and to remedy many errors discovered in the legislation from time to time as the acts were applied, to the exigencies of the scheme. All of them tended to consolidate in the Brooklyn Park Commission very unusual powers in appropriating money, determining the direction and extent of the proposed plazas, roads and avenues, levying districts of assessment, collecting assessments, making awards, and some of them even dispensing with the statutory provisions for advertising and awarding contracts and allowed the Commissioners to employ labor directly—in one instance to the extent of \$10,000.

It is highly improbable that such absolute powers over such important matters, involving an expenditure of nearly \$10,000,000, were ever before given to so small a body of men. At no time, however, since 1868 have they been without a legal responsibility to the Common Council of the city. Indeed, to all intents and purposes they may be held to have been since that date in essence if not in title a full fledged municipal department, administering the functions of their important offices for the benefit, as they derived their revenues from the exchequer, of the City of Brooklyn.

By the charter act of 1873, however, which undertook to consolidate and remodel the autonomy of our city, they were created in terms, under Title XV, a Department of Parks. That title is as follows:

TITLE XV.—SECTION 1. At the first meeting of the Board of Aldermen in January, in the year eighteen hundred and seventy-five, and every two years thereafter, the Mayor shall nominate and, with the consent of the Board of Aldermen, appoint a proper person to be President of the Department of Parks, and two Commissioners, who, together with the President, shall constitute the Commissioners of Parks. The term of office shall commence on the first day of January, eighteen hundred and seventy-five, or as soon thereafter as they have qualified. The President shall receive an annual salary of five thousand dollars, and each of said Commissioners an annual salary of two thousand dollars.

Sec. 2. When the said Commissioners of Parks shall have been appointed and qualified the present Board of Park Commissioners shall forthwith under oath account for and pay over to the treasurer of the city all moneys in their hands belonging to the city, and transfer to the Commissioners all books, maps, papers and property of every kind that may be then in their possession or under their control, and thereupon the office and duties of the present Board of Park Commissioners shall cease.

Sec. 3. All the parks, plazas and public places of the city shall be under the control, management and supervision of the said Commissioners, subject, however, to the direction of the Common Council.

Sec. 4. They shall report to the Common Council from time to time, as may be necessary in their judgment and as they may be directed by the Common Council, the condition, repairs, improvements, expenses of keeping or improving the public property under their charge and all matters relating to this department.

Sec. 5. The present Park Commissioners shall continue in office until the first day of January, one thousand eight hundred and seventy-five, and serve without compensation, and all appointments to fill vacancies occurring in the said department shall be made by the Mayor, with the consent of the Board of Aldermen. The said present Commissioners shall have and exercise all the powers now conferred upon them by existing laws until the first day of January, one thousand eight hundred and seventy-five, and until their successors shall have qualified.

If we can be satisfied that this title was competent in terms to provide for the object clearly contemplated by the Legislature—to wit, the transfer of the park system from the hands of a special commission having its rise and deriving its continuance from the direct interven-

tion and appointment of the Legislature, to a subordinate department of the municipality following the fortunes of its lawfully elected head, the Mayor, and dependent under the act of 1880, chapter 377, upon its fealty to that head for official life, there can be little doubt but that it has fallen into line with other departments, and is as completely under the control of the Mayor as any department provided for in other titles of the same act.

No other conclusion seems to me possible in considering the course of the Legislature for the past ten years. Twice since its original passage has this short title of the charter been under the special consideration of the Legislature. Once in 1877, chapter 357 of the Laws of 1877, when the *personnel* of the department was continued intact, and again in 1880, chapter 319, when the same intervention was obtained at the hands of the Legislature. Here were two distinct opportunities, separated by intervals of four and three years respectively, for the Legislature to say something different than the ordinary meaning of the language already used would imply if any such intent had possessed the legislative mind.

Its silence after such opportunities must necessarily imply the absence of any such intent. Yet the intent of the Legislature once ascertained is the most potent key to any ambiguous language employed by them. It is acknowledged by all authorities to be both compass and chart in statutory construction. But having created this department, had the Legislature power to vest in it all the powers from time to time theretofore conveyed to the Park Commissioner?

An immediate answer to this question is found when it is considered that the Commission had no powers inherent to its *personnel* as such. It was at all times the agent through whom the municipality as beneficiary derived the splendid advantages of its park and boulevard system. It was the people, in whom was vested the ultimate right of enjoyment under all the acts, and the power which could authorize and direct the inception and prosecution of the improvement through a given agent, could at any time discharge this specific agent and appoint another in its stead. To hold the contrary is to impeach the competency of the Commission itself, which is wholly the creature of the Legislature. A further question arises in respect to the sufficiency of the terms employed to accomplish the result. Is the title obnoxious to section 11, article 2, of the Constitution of 1848, confining local acts to one subject to be expressed in the title?

The title to the act of 1873, under which the Department of Parks first took corporative shape, was as com-

prehensive as the extent and scope of the municipality, and all the possible powers necessary to make its existence beneficial to the community over which it was erected as a rule of government. It was entitled, "An Act to amend the charter of the City of Brooklyn." It was, therefore, competent to provide for all matters properly within the purview of the city government, whether relating to the safety, the health, the amusement, the recreation or the rules of action of its constituency. The subject was as broad as the requirements of the city. To hold that a great park and boulevard system, upon which the city's obligations were at that moment outstanding, to the extent of and in furtherance of which private citizens had surrendered their real estate to the amount of hundreds of acres, was not to be reasonably comprehended by such an act, is to ignore one of the most important functions of city government. No act has ever been found by the courts defective for want of proper title which did not contain provisions relating to matters not reasonably to be anticipated as acted upon from the language employed in the title.

The title to an act is a sign-board designed to correctly indicate to the casual reader the proposed road of legislation. It is only defective when it fails to indicate the real direction "where the public or members of the Legislature may be misled by it," as the Court of Appeals declare in *Sun Mutual Life Ins. Co. vs. Mayor of New York*, 8 N. Y., 253. The terms employed are effectual to make the change designed. It is not only necessary to supply new words to show a contrary intent, but to hold the words employed to meanings directly opposite their ordinary signification to support any other theory, and as before suggested, substantially the same terms are thrice employed.

The suggestions that the portions of the park system lying outside the corporate limits may not properly be brought under the authority of a municipal department when first put forward seems to have force; but when it is remembered that they are in marked subordination to that part of the system which is within the city and may therefore be regarded as incidentally within its management—as in a sense an appurtenance to Prospect Park—the doubt diminishes rapidly, and it is wholly obliterated when we reflect that it is the direct enactment of the Legislature which includes them within the general scheme, and that only for purposes of police maintenance and proper surveillance. The Ocean Parkway was originally extended toward Coney Island only (see chapter 861, Laws of 1869), clearly indicating that it was but an extension of a park avenue which developed with the general scheme until it reached the shore of the sea. The books abound with statements in support of this

view, and such cases as *People vs. Banks*, 67 N. Y., 568, and *Hazard vs. City of Legrange*, 33 mo, 244, have held valid similar schemes of public improvement.

A brief consideration of the results of the contrary view must afford ample consideration of its weakness. The Supreme Court of the United States in the case of *Supervisors of Albany vs. Stanley*, decided April 3, 1882, have lately reaffirmed the before generally received doctrine that an act inadequate for some of the purposes which it proposes to accomplish by reason of constitutional limitations may still be operative for such purposes as do not thus conflict, and decisions are not wanting to determine that the acts in question were competent to create a municipal department having full control of improvements within the city limits; this must be conceded by all.

The conclusion is inevitable then that unless all the powers were conferred on the City Department the Legislature have with great deliberation, and after three solemn attempts, cleft the park and boulevard system in twain, and that by an imaginary line, involving the greatest confusion of their respective powers and division of finances and retaining eight citizens of Brooklyn in formal commission to exercise the very inconsiderable duties of maintenance and surveillance of those odd ends of the park system. It is difficult to spell out any such result from the language or to infer any disability in the Legislature to intrust to eight citizens of Brooklyn, organized as a municipal department, powers with which they were competent to clothe eight individuals of the same city as Commissioners of Parks.

The number of the members of the department remains for determination. If Title XV, before quoted, had been unamended the department would have been complete by the appointment of a president and two members; but chapter 354 of the Laws of 1877 amends the title by constituting anew the Commissioners then in office, being eight in number, as such department, and provides for their successors to be appointed by the Mayor and Common Council. As this was in substance re-enacted by chapter 377 of the Laws of 1880, it must be held to have changed the number of the Commission back to eight, the original number.

If these views thus hastily indicated be founded upon a correct interpretation of the statutes, the Department of Parks presents itself to you for consideration in precisely the same aspect as the Department of Police or any other department, and is by your official action added to the new scheme of municipal government now on trial, which, holding the Mayor directly responsible to the people, leaves the selection of the heads of departments solely to his individual judgment of the public requirements. Respectfully yours,

JOHN A. TAYLOR.

CIVIL SERVICE LAW.

CHAPTER 354.

AN ACT to regulate and improve the civil service of the State of New York.

Passed May 4, 1883, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Governor is authorized to appoint, by and with the advice and consent of the senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three Commissioners shall constitute the New York Civil Service Commission. They shall hold no other official place under the state of New York. The Governor may remove any Commissioner; and any vacancy in the position of Commissioner shall be so filled by the Governor, by and with the advice and consent of the Senate, so as to conform to said conditions for the first selection of Commissioners. The three Commissioners shall each receive a salary of two thousand dollars a year. And each of said Commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a Commissioner.

Commissioners;
appointment of,
etc.

§ 2. It shall be the duty of said Commission :

Duty of com-
mission.

First. To aid the Governor, as he may request, in preparing suitable rules for carrying this act into effect; and when said rules shall have been promulgated, it shall be the duty of all officers of the state of New York, in the departments and offices to which any such rules may relate, to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Second. And among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

What rules
shall provide
for.

1. For open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character and, so far as may be, shall relate to those matters which will fairly test the relative

capacity and fitness of the persons examined to discharge the duties of that service into which they seek to be appointed.

2. All the offices, places and employments so arranged or to be arranged in classes shall be filled by selections from among those graded highest as the results of such competitive examinations.

3. There shall be a period of probation before any absolute appointment or employment aforesaid.

4. Promotions from the lower grades to the higher shall be on the basis of merit and competition.

5. No person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service; and no person shall be removed or otherwise prejudiced for refusing to do so.

6. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

7. There shall be non-competitive examinations when competition may not be found practicable.

8. Notice shall be given in writing by the appointing power to said Commission of the person selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons, after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said Commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the Commission.

Control of examinations.

Third. Said Commission shall, subject to the rules that may be made by the Governor, make regulation for, and have control of such examinations and, through its members or the examiners, it shall supervise and preserve the records of the same; and said Commission shall keep minutes of its own proceedings.

Investigations and reports.

Fourth. Said Commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act; and in the course of such investigations, each Commissioner and their secretary shall have power to administer said oaths.

Fifth. Said Commission shall make an annual report

to the Governor for transmission to the legislature, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

§ 3. Said Commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Albany or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of thirty-six hundred dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The Commission is authorized to employ a secretary, who may be one of its own number, who shall receive a compensation of one thousand dollars per annum, and also a person to act as a stenographer and copyist, who shall be entitled to receive a compensation of one thousand dollars a year. The Commission may also engage the services of a messenger at a salary of six hundred dollars a year, and may dismiss the same at pleasure. The Commission may, at Albany and in any other part of the State where examinations are to take place, designate and select a suitable number of persons in the official service of the state of New York, after consulting the head of the department or office in which such person serves, to be members of Boards of Examiners, and may at any time substitute any other person in such service in the place of any one so selected. It shall be the duty of the officers of the state of New York, or of any political division thereof, at any place outside of the city of Albany where examinations are directed by said rules or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same.

Chief examiner.

Salary.

Secretary, stenographer, copyist, messenger; compensation of, etc.

Members of boards of examiners.

Uses of public buildings for examinations.

§ 4. It shall be the duty of the Secretary of State to cause suitable and convenient rooms and accommodations to be assigned or provided, and to be furnished, heated and lighted, at the city of Albany, for carrying on the work of said Commission and said examinations, and to cause the necessary stationery and other articles to be supplied, and the necessary printing to be done for said Commission. And the cost and expense thereof, and the several salaries, compensations, and necessary expenses hereinbefore mentioned, upon the same being stated in detail and verified by affidavit, as the Comptroller may direct, shall be paid from any money in the treasury not otherwise appropriated.

Secretary of State to provide rooms, stationery, etc.

Penalty for willful violations of this act.

§ 5. Any Commissioner, examiner, copyist, or messenger herein mentioned, or any other person who shall willfully and corruptly, by himself or in co-operation with one or more persons, defeat, deceive or obstruct any person in respect of his or her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same, or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, being appointed, employed, or promoted, shall for each offense be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or by both such fine and imprisonment.

Clerks to be classified.

§ 6. Within four months after the expiration of the present session of the legislature, it shall be the duty of the Governor to cause to be arranged in classes of the several clerks and persons employed or being in the public service, for the purposes of the examination herein provided for, and he shall include in one or more of such classes, so far as practicable, all subordinate places, clerks and officers in the public service of the State.

After eight months persons not to be appointed until after examination.

§ 7. After the termination of eight months from the expiration of the present session of the legislature, no officer or clerk shall be appointed, and no person shall be admitted to or be promoted in either of the said classes now existing, or that may be arranged here under pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination, in conformity herewith. No elective officer, and no person merely employed as a laborer or workman, shall be required to be classified hereunder; nor, unless by the direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination.

Mayors may prescribe rules for admission to civil service in cities having 50,000 population or over.

§ 8. The Mayor of each city in this State having a population of fifty thousand or over, as shown by the last census, is authorized to prescribe such regulations for the admission of persons in the civil service of such city as may best promote the efficiency thereof, and as-

certain the fitness of candidates in respect to character, knowledge, and ability for the branch of the service into which they seek to enter, and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties and establish regulations for the conduct of the persons who may receive appointments in the said service. Said regulations, however, shall not extend to any elective officer, or to those in or seeking to enter said service under the police, health, fire, educational, or law department of any city, nor to any officer having immediate custody of public moneys for the safe-keeping of which any head of an office has given bonds and is thereunder responsible, nor shall any regulation be incompatible with any existing law as to entrance to said service. And each of the Boards (or the officer, as the case may be, at the head of each said department) is hereby given, in respect to those seeking to enter or serving in the same, the same kind and measure of authority which is hereby conferred upon the Mayor in regard to certain other officials, which authority shall be exercised by the said Boards or officers after consultation with the Mayor. It shall be the duty of all those in the official service of any said city to aid and facilitate, in all reasonable and proper ways, the enforcement of all regulations, and the holding of all examinations which may be required under the authority conferred by this section. But no authority in this section conferred shall be so exercised as to take from any policeman or fireman any right or benefit now conferred by law, or existing under any lawful regulation of the department in which he serves. And all examinations herein authorized shall be public, and all regulations shall be published, and with all the proceedings and papers connected with said examinations, shall be at all times subject to the inspection of said Commission and its agents; and said Commission shall set forth in its reports the character and practical effects of such examinations, together with its views as to the improvement and extension of the same, and also copies of all regulations made under the authority hereby conferred.

Not to extend to elective offices.

Same powers conferred on boards and heads of departments.

Officers to facilitate enforcement of rules, etc.

Examinations to be public.

§ 9. No recommendation of any person who shall apply for office or place under the provisions of this act, which may be given by any senator or member of assembly, or officer confirmed by the senate, or judge of any court, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

Recommendations from certain officers not to be received.

§ 10. No person shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, contribution,

Soliciting political assessments prohibited.

promise or pledge, for any political purpose whatever, from any officer or from any person receiving, or entitled to receive, a salary from the State, or from any county, city, town, village or political division within the State, or fees for the discharge of any public duty, nor from any member of any public police department, or fire or other department within this State, or any of the political divisions thereof, nor from any person officially connected with the system of public instruction in this State, or in any of the political divisions thereof.

Officers, etc., not to use influence to compel payment of political assessment.

§ 11. No officer, agent, clerk, or employee under the government of the state of New York, or any political division thereof shall, directly or indirectly, use his authority or official influence to compel or induce any other officer, clerk, agent or employee under said government, or any political division thereof, to pay or promise to pay any political assessment. Every said officer, agent or clerk who may have charge or control in any building, office or room occupied for any purpose of said government, or any said division thereof, is hereby authorized to prohibit the entry of any person; and he shall not consent that any person enter the same, for the purpose of therein making, collecting, receiving or giving notice of any political assessment; and no person shall enter or remain in any said office, building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting, nor shall any person therein give notice of, demand, collect or receive any such assessment; and no person shall prepare or make out, or take any part in preparing or making out, any political assessment, with the intent that the same shall be sent or presented to, or collected of, any officer, agent or employee under the government of the state of New York, or that of any political division thereof; and no person shall knowingly send or present any political assessment to, or request its payment of, any said officer, agent or employee.

Penalty for violating two preceding sections.

§ 12. Any person who shall be guilty of violating any provision of the two previous sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

Recommendations, etc., under this act not to relate to politics.

§ 13. No recommendation or question under the authority of this act shall relate to the political opinions or affiliations of any person whatever.

§ 14. Whoever while holding any public office, or in

nomination for, or while seeking a nomination or appointment for any public office, shall corruptly use or promise to use, whether directly or indirectly, any official authority or influence (whether then possessed or merely anticipated), in the way of conferring upon any person, or in order to secure or aid any person in securing any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon the consideration or condition that the vote or political influence or action of the last-named person, or any other shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration, shall be deemed guilty of bribery or an attempt at bribery. And whoever, being a public officer, or having or claiming to have any authority or influence for or affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer, shall corruptly use or promise or threaten to use any such authority or influence, directly or indirectly, in order to coerce or persuade the vote or political action of any citizen, or the removal, discharge or promotion of any officer or public employee, or upon any other corrupt consideration, shall also be guilty of bribery or of an attempt at bribery. And every person found guilty of such bribery or of an attempt to commit the same, as aforesaid, shall, upon conviction thereof, be liable to be punished by a fine of not less than one hundred dollars nor more than three thousand dollars, or be imprisoned not less than ten days nor more than two years, or to both said fine and said imprisonment in the discretion of the court. The phrase "public officer" shall be held to include all public officials in this state, whether paid directly or indirectly from the public treasury of the State, or from that of any political division thereof, or by fees or otherwise; and the phrase "public employee" shall be held to include every person not being an officer who is paid from any said treasury.

Officers and candidates not to corruptly promise influence, etc., to secure vote or influence political action.

Penalty.

"Public officer" defined.

Quorum.

Inquiries as to methods of appointments, etc.

§ 15. A majority of the members of said board shall constitute a quorum, but a less number may adjourn from day to day. Said commission, when organized, shall immediately inquire into the methods of appointment, removal, terms of service, duties, compensation and numbers of all clerks, employees or subordinate officers of any nature whatsoever, either of this state or of cities or counties therein, having a population exceeding fifty thousand inhabitants, who are not, by existing laws, appointed by the Governor of the State or by the Mayor of any city, or elected by the people; and whether the action of political parties or the public acts of official servants are in any wise affected, and if so to what de-

gree, by the present methods of such appointments, tenure of office, removals and compensations, and whether the public interest would or would not be advanced by prescribing competitive tests or standards of appointment for any or all of such subordinate public servants, in addition to those who are hereinbefore included, and if so, the nature and extent of such tests or standards; and whether any abuses exist in connection with the existing practices touching said appointments, tenures, compensations or removals that require reform, or that may be abated by legislation or otherwise. Said Commission may also further extend its inquiries so far as to enable it to report whether any, and if so, what legislation is expedient, relative to the methods and amounts of compensation of all county officers and their subordinates in this State.

Power to compel attendance of witnesses, etc.

§ 16. Said Commission shall have like power to secure, by its subpoena, the attendance and testimony of witnesses, and the production of books and papers pertinent to the investigation hereby instituted, to that prescribed in and by chapter three hundred and fifty-three, laws of eighteen hundred and eighty-two, for the Commission thereby constituted in the execution of its duties as in said act last mentioned; and all state, county, town, municipal and other officers and their deputies, clerks, subordinates and employees shall afford the said Board all reasonable facilities in conducting the inquiries specified in this act, and give inspection to said Board of all books, papers and documents belonging or in any wise appertaining to their respective offices, and also shall produce said books and papers, and shall attend and testify as hereinbefore provided.

Official oath.

§ 17. Said Commissioners hereinbefore named, or in case of vacancy from among their number by declination, resignation or otherwise, a successor Commissioner to be appointed by the Governor, shall qualify by filing with the Secretary of State an oath to perform faithfully the duties of such Commissioner. Each Commissioner

Compensation.

shall receive the compensation hereinbefore provided, together with his actual traveling expenses in the discharge of his duties as such Commissioner. The said salaries and expenses, together with the other necessary expenses of said Board, to be approved by the Comptroller and thereafter paid out of the treasury of this State; and the sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated for the purposes stated in this act.

\$15,000 appropriated

CHAPTER 357.

AN ACT to amend chapter three hundred and fifty-four of the Laws of eighteen hundred and eighty-three, entitled, "An act to regulate and improve the civil service of the State of New York."

Passed May 24, 1884, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section three of chapter three hundred and fifty-four of the Laws of eighteen hundred and eighty-three, entitled, "An act to regulate and improve the civil service of the State of New York," is hereby amended so as to read as follows :

§ 3. Said Commission is authorized to employ a Chief Examiner, a part of whose duty it shall be under its direction to act with the Examining Boards so far as practicable, whether at Albany or elsewhere, and to secure accuracy, uniformity and justice in all their proceedings, which shall be at all times open to him. The Chief Examiner shall be entitled to receive a salary at the rate of thirty-six hundred dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The Commission is authorized to employ a secretary, who may be one of its own number, who shall receive a compensation of one thousand dollars per annum, and who shall also be paid his necessary traveling expenses incurred in the discharge of his duty, and also a person to act as stenographer and copyist who shall be entitled to receive a compensation of one thousand dollars a year, or in its discretion may from time to time employ stenographers and copyists at an expense not to exceed in the aggregate the sum of one thousand dollars a year. The Commission may appoint a messenger, to act also as clerk, at a salary not exceeding nine hundred dollars a year, and may dismiss him at pleasure. The Commission may, at Albany and in any other part of the State where examinations are to take place, designate and select a suitable number of persons in the official service of the State of New York, after consulting the head of the department or office in which such person serves, or in its discretion, persons not in the official service, to be members of Boards of Examiners, and may at any time substitute any other person in or out of such service in place of any one so

Chief examiner;
duty of, etc.

Secretary, etc.

Messenger, etc.

Board of exam-
iners.

Compensation
of examiners.

selected. Any person not at the time in the official service of the State, or of any political division thereof serving as a member of the Board of Examiners, shall be entitled to compensation for every day actually and necessarily spent in the discharge of his duty as Examiner at the rate of five dollars a day; but the aggregate compensation of any such Examiner shall not exceed one hundred dollars in any year. It shall be the duty of the officers of the State of New York, or of any political division thereof, at any place outside of the city of Albany, where examinations are directed by said rules or by said Board to be held, to allow the reasonable use of the public buildings, and to light and heat the same, for holding such examinations, and in all proper ways to facilitate the same.

Use of public
buildings.

§ 2. Section four of said act is hereby amended to read as follows :

Trustees of public
buildings to
provide suitable
rooms, station-
ery, etc.

§ 4. It shall be the duty of the Trustees of public buildings, designated by chapter three hundred and forty-nine of the laws of eighteen hundred and eighty-three, to cause suitable and convenient rooms and accommodations to be assigned or provided, and to be furnished, heated and lighted at the city of Albany for carrying on the work of said Commission and said examinations; and said Commission may order the necessary stationery, postage stamps, an official seal and other articles to be supplied, and the necessary printing to be done for its official use. And the cost and expense thereof, and the several salaries, compensations and necessary expenses of the Commission, upon the same being stated in detail and verified by affidavit as the Comptroller may direct, shall be paid monthly from any money in the Treasury not otherwise appropriated.

§ 3. Section eleven of said act is hereby amended to read as follows :

Political assess-
ments prohib-
ited.

§ 11. No officer, agent, clerk or employee under the government of the State of New York, or any political division thereof, shall directly or indirectly use his authority or official influence to compel or induce any other officer, clerk, agent or employee under said government, or any political division thereof, to pay or promise to pay any political assessment. Every said officer, agent or clerk, who may have charge or control in any building, office or room occupied for any purpose of said government, or any said division thereof, is hereby authorized to prohibit the entry of any person; and he shall not consent that any person enter the same for the purpose of therein making, collecting, receiving

or giving notice of any political assessment; and no person shall enter or remain in any said office, building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting, nor shall any person therein give notice of, demand, collect or receive any such assessment; and no person shall prepare or make out, or take any part in preparing or making out, any political assessment, subscription or contribution with the intent that the same shall be sent or presented to or collected of any officer, agent or employee subject to the provisions of this act, under the government of the State of New York, or that of any political division thereof; and no person shall knowingly send or present any political assessment, subscription or contribution to or request its payment of any said officer, agent or employee.

§ 4. Section twelve of said act is hereby amended to read as follows :

§ 12. Any person who shall be guilty of violating any provision of the last section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. Penalty.

§ 5. Section sixteen of said act is hereby amended so as to read as follows :

§ 16. Said Commission shall have like power to secure, by its subpoena, the attendance and testimony of witnesses, and the production of books and papers pertinent to the investigations and inquiries hereby authorized, to that prescribed in and by chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two, for the Commission thereby constituted in the execution of its duties, as in said act last mentioned; and witnesses and officers to subpoena and secure the attendance of witnesses before said Commission shall be entitled to the same fees as are allowed witnesses in civil suits in courts of record. Such fees need not be prepaid, but the Comptroller shall draw his warrant for the payment of the amount thereof when the same shall have been certified to by the President of the Commission, and duly proved by affidavit or otherwise to the satisfaction of the said Comptroller; and all State, county, town, municipal and other officers and their deputies, clerks, subordinates and employees shall afford the said Board all reasonable facilities in conducting the inquiries specified in this act, and give inspection to said Attendance of witnesses, etc.

Board of all books, papers and documents belonging or in anywise appertaining to their respective offices, and also shall produce said books and papers, and shall attend and testify when required to do so by said Commission.

*\$1,000 appropriated.

§ 6. The sum of one thousand dollars is hereby appropriated out of any unexpended balance in the Treasury, to meet any expense incurred by section five of this act; which expense the Treasurer shall pay on the warrant of the Comptroller.

§ 7. Section ten of said act is hereby repealed.

§ 8. The election officers now in office, and the inspectors of election and poll clerks shall be exempt from examination, in accordance with the act hereby amended, or the amendments thereof; and it shall be the duty of the Commissioners and Mayors of cities so to provide in regulations made under said act.

§ 9. This act shall take effect immediately.

CHAPTER 410.

AN ACT to amend chapter three hundred and fifty-four of the laws of eighteen hundred and eighty-three, entitled, "An Act to regulate and improve the Civil Service of the State of New York."

Passed May 29, 1884, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section five of chapter three hundred and fifty-four of the laws of eighteen hundred and eighty-three, entitled, "An Act to regulate and improve the Civil Service of the State of New York," is hereby amended so as to read as follows :

§ 5. Any commissioner, examiner, copyist, or messenger herein mentioned, or any other person who shall willfully and corruptly, by himself or in co-operation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination according to any rules or regulations prescribed pursuant to the provisions of this act, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined pursuant to the provisions of this act, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same, or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, shall for each offence be deemed guilty of a misdemeanor.

Misdemeanor to willfully or corruptly obstruct, etc., persons applying for examination, etc.

§ 2. Section eight of this act is hereby amended so as to read as follows :

§ 8. The Mayor of each city in this State is authorized and is hereby directed to prescribe such regulations for the admission of persons into the Civil Service of such city as may best promote the efficiency thereof and ascertain the fitness of candidates in respect to character, knowledge, and ability for the branch of the service into which they seek to enter ; and for this purpose he shall from time to time employ suitable persons to conduct such inquiries and make examinations, and shall pre-

Mayor to prescribe regulations for admission of persons into civil service of city, etc.

scribe their duties and establish regulations for the conduct of persons who may receive appointments in the said service. And the regulations so to be prescribed shall among other things provide and declare as in the second subdivision of the second section of this act is provided and declared in reference to regulations for admission to the Civil Service of the State. Within two months after the passage of this act, it shall be the duty of each of said Mayors in and by such regulations to cause to be arranged in classes the several clerks and persons employed, or being in the public service of the city of which he is Mayor; and he shall include in one or more of such classes, so far as practicable for the purposes of the examination herein provided for, all subordinate clerks and officers in the public service of the said city to whom his power under this act extends. After the termination of three months from the passage of this act, no officer or clerk shall be appointed, and no person shall be admitted to or be promoted in either of the said classes now existing or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be exempted from such examination, in conformity with such regulations. Such regulations hereafter prescribed and established, and any subsequent modification thereof, shall take effect upon the approval of the New York Civil Service Commission. Officers elected by the people, and the subordinates of any such officer for whose errors or violation of duty such officer is financially responsible, and the head or heads of any department of the city government, and persons employed in or who seek to enter the public service under the educational departments of any city, and any subordinate officer who by virtue of his office has personal custody of public moneys or public securities, for the safe keeping of which the head of an office is under official bonds, shall not be subject to the regulations prescribed pursuant to this section, nor shall any regulations contravene an existing statute relating to entrance to said service. It shall be the duty of all those in the official service of any such city to conform to and comply with any regulations made pursuant to this act, and to aid and facilitate in all reasonable and proper ways the enforcement of all regulations and the holding of all examinations which may be required under the authority conferred by this section. But the authority by this section conferred shall not be so exercised as to take from any policeman or fireman any right or benefit conferred by law, or existing under any lawful regulation of the department in which he serves. And all examinations herein authorized shall be public, and all regulations shall be published, and, with all the proceedings and papers connected with said examina-

After three months from passage of act no person to be appointed or promoted until examined.

Officers, etc., excepted from provisions of this act.

Not to affect vested rights of policemen, etc.

Examinations to be public.

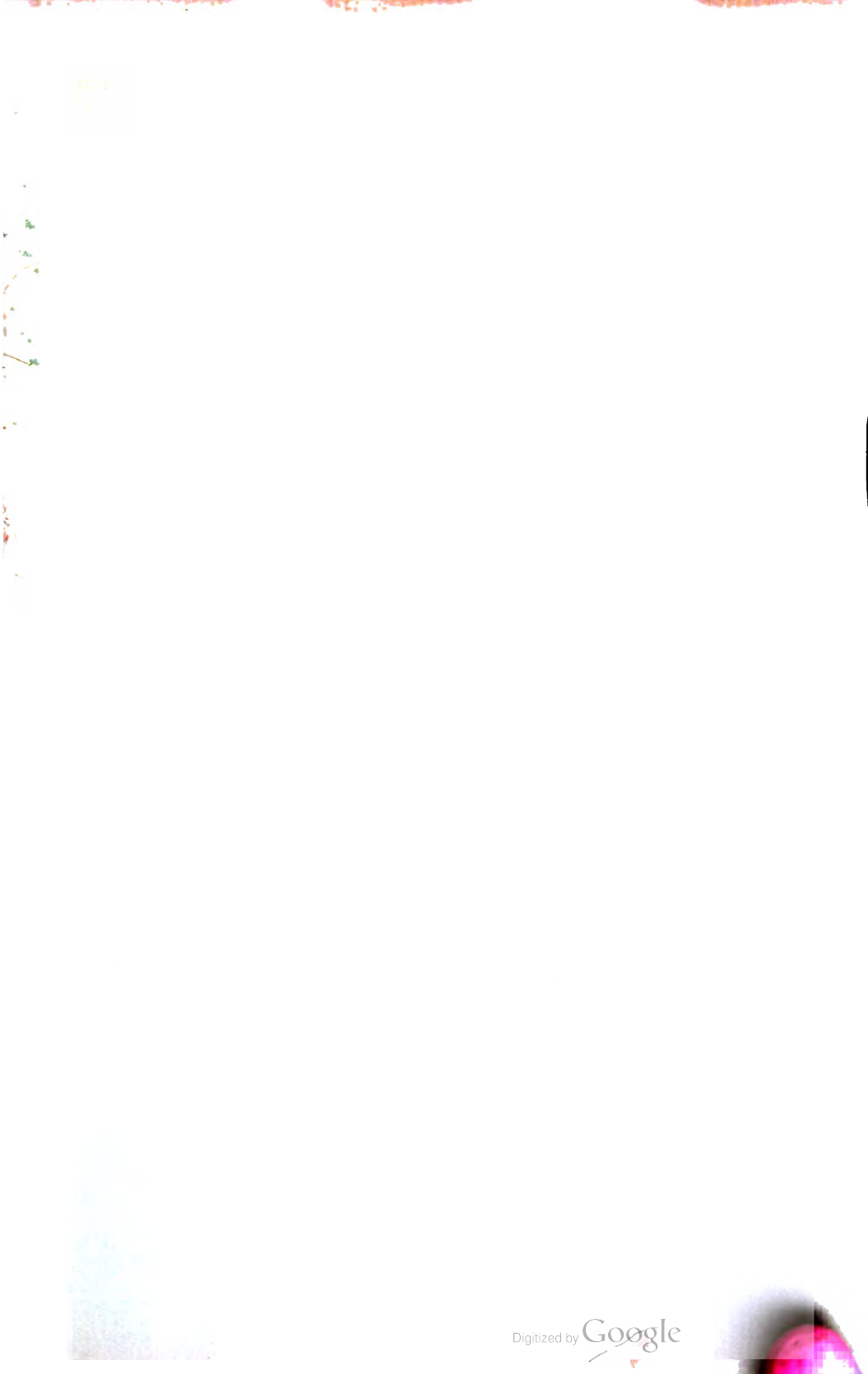
tions, shall be at all times subject to the inspection of said Commission and its agents; and said Commission shall set forth in its reports the character and practical effects of such examinations, together with its views as to the improvement and extension of the same, and also copies of all regulations made under the authority hereby conferred.

§ 3. Where before the passage of this act the Mayor of any city herein mentioned has prescribed regulations pursuant to the power given him by the act hereby amended, such regulations shall be deemed to be established and prescribed and to be operative as if established, prescribed, and approved under the provisions of the said act as hereby amended; and the examiners, who before the passage of this act have by the Mayor of, any such city been appointed or designated under the provisions of the said act, shall be deemed to be appointed, and to have all the powers and duties which they would have if appointed under the provisions of the said act as hereby amended.

Existing regulations continued in force.

§ 4. In grateful recognition of the services, sacrifices and sufferings of persons who served in the army or navy of the United States in the late war, and have been honorably discharged therefrom, they shall be preferred for appointment to positions in the Civil Service of the State and of the cities affected by this act over other persons (of equal standing) as ascertained under this act and the act hereby amended; and the person thus preferred shall not be disqualified from holding any position in said Civil Service on account of his age nor by reason of any physical disability, provided such disability does not render him incompetent to perform the duties of the position applied for.

Persons who served in army or navy to be preferred.



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