

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, <i>Appellant,</i>	} On Appeal from the Supreme Court, Es- sex Circuit.	10
<i>vs.</i>		
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, a body corporate, <i>Respondent.</i>		
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ERNEST NAPIER, <i>Appellant,</i>	} On Appeal from the Supreme Court, Es- sex Circuit.	20
<i>vs.</i>		
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, a body corporate, <i>Respondent.</i>		

BRIEF OF RESPONDENT.

Statement of Facts.

These appeals bring up for review the judgments in favor of the respondent (defendant below) in two cases tried before Judge Frederic Adams in the Supreme Court, Essex County. Both actions grew out of the same transaction. 30

On May 22, 1915, Ernest Napier, a member and the President of the Board of Fish and Game Commissioners of New Jersey, boarded a train of the respondent at Orange, for the purpose of traveling to Hackettstown, where he was to make an inspection of the State Fish Hatchery which is operated by the Board of which he was President. 40

When approached by the conductor for his fare, he tendered a certificate which had been issued to him by the Secretary of State, pursuant to Chapter 194 of the Laws of 1914, and demanded to be transported free of charge. The conductor declined to honor the certificate, requested the payment of fare, and, upon refusal of Mr. Napier to comply with such request, ejected him from the train. No unnecessary force was used (Case, p. 20, line 10).

By the first entitled action, the State sought the penalty of \$1,000 imposed by Chapter 402 of the Laws of 1915 for refusal to transport Mr. Napier free of charge, one-half of which was for Mr. Napier personally.

By the second entitled action Mr. Napier sought to recover damages for an alleged wrongful ejection, grounding his right to be transported free of charge on the provisions of Chapter 194 of the Laws of 1914, and also upon Chapter 402 of the Laws of 1915. By the latter Act the Legislature seeks to impose upon the respondent in the guise of an amendment to an Act passed in 1851 (P. L., p. 28) and accepted by its lessor, The Morris and Essex Railroad Company, the same obligation with reference to the free transportation of state officers, place-holders and employees as is sought to be imposed upon railroads generally by Chapter 194 of the Laws of 1914.

The defense interposed to both actions was that the statutes relied upon in justification of Mr. Napier's demand for free transportation were unconstitutional, being in conflict with both the Fourteenth Amendment to the Federal Constitution and Article I, paragraph 16 of the Constitution of New Jersey.

The trial court ruled in favor of the respondent in both actions, whereupon judgment was entered, dismissing the complaints (Case, pp. 24-5, 48-9); hence these appeals.

ARGUMENT.

I.

The statutes cannot be sustained as an exercise of the power reserved to alter or amend the charter of the Railroad Company because they deprive the Company of property without due process of law.

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The plaintiffs in both cases having abandoned all contention that the legislation in question (P. L. 1914, Ch. 194, and P. L. 1915, Ch. 402) is justifiable as a constitutional exercise of the police power (Plaintiffs' brief, bottom of page 7), respondent's argument will be directed to a refutation of the only other possible theory under which an attempt can be made to sustain it, viz., that the statutes are valid alterations or amendments of the charter of respondent's lessor, The Morris and Essex Railroad Company, passed in the exercise of the reserved power of the Legislature.

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The provision which it is claimed was altered or amended by the statutes assailed below is a supplement to the act incorporating The Morris and Essex Railroad Company (P. L. 1851, p. 28). This supplement among other things authorized an extension of the company's lines and also contained the following provision:

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"14. The Governor, the Chancellor, the Justice of the Supreme Court and the Judges of the Court of Errors of this State, when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of this state, during their annual or other sessions, shall pass and repass over the railroad and railroads of said company, in their cars, free of charge."

While the Act of 1851 contains no express reservation of the right to alter or amend it, the

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General Corporation Act of 1846 (P. L. 1846, p. 16) was in effect at the time of its passage. It is not, therefore, contended that this supplement is not subject to alteration or amendment. What the respondent insists upon is that neither Chapter 402 of the Laws of 1915 nor Chapter 195~~4~~ of the Laws of 1914, is such an exercise of the reserved right as can be imposed upon the company without infringing upon constitutional guaranties, in
 10 so far as such statutes require the free transportation of the members of the Fish and Game Commission.

The Trial Court in holding that the statutes were unconstitutional as to the respondent, rested its conclusion upon the decision of the Supreme Court in *The Delaware, Lackawanna and Western Railroad Company vs. Board of Public Utility Commissioners*, 85 N. J. L., 28 (Case, p. 61, l. 36; p. 62, l. 1, etc.), where the latter court passed
 20 upon the right of Mahlon Hoagland, a member of the State Water Supply Commission, to free transportation over The Morris and Essex Railroad, under a statute almost identical with those now before this Court.

It was contended in the Hoagland case that the special charters accepted by the prosecutor's companies (among which was the charter of The Morris and Essex, here involved), contained a requirement as to free transportation of state officials and that therefore the number of such officials could by subsequent legislation be extended indefinitely. Such is also the contention of the
 30 appellants in the instant case. In writing the opinion of the Supreme Court, Justice Garrison answered it (p. 34):

“Such argument is palpably a *non sequitur*, since such charter requirements stand wholly upon the fact of their acceptance by the railroad company affected by them.” * * *

and again (page 38) :

“It is believed that apart from the police power or some principle of public policy no court has decided that legislative donations of free transportation are within its reserved right, and if such a decision were found it is difficult to conceive by what principle of law it would be justified.”

The Supreme Court held that the duty sought to be imposed by the act before it in the Hoagland case (P. L. 1911, Chap. 129), *was not an exercise of the reserved right to amend the charter of the company*, nor of the police power, but constituted a taking of property without due process of law. 10

The decision in the Hoagland case received the approval of this Court in *Penna. R. R. Co. vs. Herrmann*, 89 N. J. L., 582, where at pages 583 and 584 it was said :

“The Supreme Court held that inasmuch as the office in question was not within the charter contract of the railroad company the requirement of a later statute for the free carriage of the official in question was a taking of the property of the stockholders of the railroad company without compensation or due process of law, which was not justified as a valid exercise either of the police power or of the reserved rights of the Legislature. 20

“In this conclusion we concur and think that in the present case upon the same grounds the similar statutory requirement as to the free carriage of the Secretary to the Governor is likewise unconstitutional.” 30

The office of Mr. Napier is not distinguishable from that held by Mr. Hoagland so far as concerns the constitutionality of the legislative enactments now under consideration.

The Water Supply Commission's duties (Comp. Stat. 5797) are concerned with the general supervision over all sources of potable water supply, to the end that the same may be economically and prudently developed for the use of the people. 40

The Fish and Game Commission is charged with the duty of protecting and propagating fish, birds and game animals, and the enforcement of laws relating thereto (Comp. Stat. 2504, §2).

Neither Mr. Hoagland nor Mr. Napier, so far as their statutory duties were concerned, sustained any direct relationship to the respondent's railroad or its affairs. On the contrary, as pointed out by Judge Adams in the Court below (Case, 10 p. 40, lines 16-18), each official was a member of a board of conservation having only an incidental relation to railroad transportation.

The case at bar therefore is practically on all fours with the Hoagland case. The offices held by the two incumbents were similar. The identical charter provision before the Supreme Court in the Hoagland case is being dealt with here. The statutes in both cases are substantially alike. Confronted with this situation we submit that in 20 view of the decision of the Supreme Court in the Hoagland case and its approval by this Court in the Herrmann case, the statutes now under consideration cannot be upheld in favor of the appellants as valid alterations or amendments of the railroad company's charter.

While the extent of the power of the Legislature to alter or amend a corporate charter (we are not concerned with the power of repeal) may be difficult to define, the decisions of the courts 30 clearly indicate that it is not without limit. Every exercise of such power must be consistent with the enjoyment by the corporation affected of the rights guaranteed it under the State and Federal Constitutions.

The alteration or amendment must not defeat or substantially impair the object of the grant, or any rights vested under it. *Holyoke v. Lyman*, 15 Wall., 500, 532 (21 L. Ed., 133, 140).

40 It must be reasonable; made in good faith, and

be consistent with the scope and object of the act of incorporation. *Shields v. Ohio*, 95 U. S., 319, 324, (24 L. Ed., 357, 359).

The reservation of such right does not confer mere arbitrary power and cannot be so exercised as to violate fundamental principles of justice by the taking of property without due process of law. *Stearns v. Minnesota*, 179 U. S., 223, 259 (45 L. Ed., 162, 180).

In the instant case the statutes are inconsistent with the scope and object of the Company's act of incorporation in the respect that they deny to it the right granted by its charter, upon the faith of which it constructed its railroad, to receive a reasonable compensation for all persons transported (P. L. 1835, p. 25, Secs. 10, 14) except those named in the supplement of 1851. The object of the act of incorporation was the construction and operation of a railroad for the transportation of passengers for *hire*, and any statute which attempts to impose upon the company the obligation to transport *gratuitously* necessarily is inconsistent with such object.

That the statutes ~~also~~ constitute a taking of property without due process of law is apparent from the decisions in the *Hoagland* and *Herrmann* cases, *supra*, as well as the following cases which are analogous in principle.

In *Detroit vs. Plank Road Company*, 43 Mich., 140, 5 N. W., 275, the respondent whose charter was subject to alteration or amendment, maintained a toll gate within the corporate limits of Detroit. By subsequent legislation the maintenance of toll gates and the collection of tolls within the limits of cities was prohibited, without municipal consent. Mandamus was sought to compel the respondent to remove its gate beyond the city limits. The writ was denied the prose-

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cutor on the ground that the statute was not a legitimate exercise of the reserved power. Judge Cooley, speaking for the Court, said, after a review of the various cases on the point:

* * * "There is no well considered case in which it has been held that a legislature, under the power to amend a charter, might take from the corporation any of its substantial property or property rights" * * *

10 In *Rochester, etc., Turnpike Co. vs. Joel*, 41 App. Div. (N. Y.), it appears that the plaintiff incorporated under a general law subject to alteration or amendment. Later on the legislature eliminated from the act a provision permitting the corporation to charge a toll for each velocipede or bicycle. The court held that the amendment was unconstitutional.

20 In *Atchinson etc. Ry. Co. vs. Campbell*, 61 Kans., 439; 48 L. R. A., 251, a statute requiring railroad companies to furnish free transportation to shippers of live stock in certain cases was held to be an unconstitutional exercise of the reserved power of amendment.

30 In *L. S. & M. S. Ry. Co. vs. Smith*, 173 U. S., 684; (43 L. ed. 858) a Michigan statute required the sale of thousand-mile books by railroad companies for less than ordinary rate of fare. The act was held to be unconstitutional as denying the company the equal protection of the laws and depriving it of its property without due process of law.

40 The appellants, under Point XIII of their brief (p. 35 et seq.), argue that the right to receive pay or to take toll for transportation over a railroad is not a property right, from which it follows that statutory provisions according to the members of the Fish and Game Commission the privilege of traveling free of charge over the respon-

dent's railroad did not operate to deprive it of property. If so, then Justice Garrison was wrong when, in writing the opinion in the *Hoagland* case, he said (p. 36) that the right of a railroad company to receive pay for the transportation of passengers is its property, as much as gas, or water, or electricity is the property of corporations authorized to deal in them. So too, was the Supreme Court of the United States in error when it held, in *C. M. & St. P. Co. v. Minnesota*, 134 U. S. 418 (33 L. Ed. 970) that when a railroad company was deprived of the power to charge reasonable rates for the use of its railroad, it was deprived of the use of its property, and, in effect, of the property itself. Likewise the Supreme Court of Michigan was mistaken when it held in *Detroit v. Plank Road Company* (*supra*) that the plank road company was deprived of its property when denied the right to take tolls for the use of part of its road, as was also the Appellate Division of the New York Supreme Court when it decided in *Rochester etc. Turnpike Co. v. Joel* (*supra*) that the right to charge toll for bicycles was property. We venture the statement that there are no reported cases supporting the appellants' contention. It ignores the fact that the transportation of any person over a railroad requires the performance of a service and the use of tangible property, all of which require an outlay in money. The right therefore to compensation for the transportation of the members of the Fish and Game Commission is the property of the respondent, of which, under the foregoing decisions, it cannot be deprived by the statutes in question.

While there are two statutes here under consideration, one a general law and the other a special act, they are in substance the same, and the contention of the appellants is that both affect

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the charter of the respondent's lessor as amendments. We have accordingly dealt with them together under this caption, as the attempt to uphold the constitutionality of the general law having failed in the *Hoagland* and *Herrmann* cases the contention with respect to the validity of Chapter 402 of the Laws of 1915 cannot be sustained. It seems needless to argue against so palpably unsound an insistence that the legislature may, by the passage of a special act instead of a general law, deprive a corporation of its property without due process. This feature was disposed of by the Trial Court (Case, p. 61, ll. 34-8, p. 62, ll. 1-12) as follows:

“So much for general legislation. The further question remains whether the special legislation affecting Mr. Napier, namely, Chapter 402 of the Laws of 1915, which is substantially the same as the general legislation, is, as to him, unconstitutional. This Court, of course, follows and adopts the reasoning of Mr. Justice Garrison in the *Hoagland* case, at page 32 of the opinion, and holds that the railroad company is affected only by such subsequent legislation, whether general or special, as was properly enacted under the reserved right of the legislature to regulate corporations in the interest of the public.

“This is equivalent to saying that in this case the rule which applies to general legislation applies also to special legislation. Therefore, as Mr. Napier's claim fails under general legislation, so also it fails under special legislation.”

II.

The statutes are repugnant to Article I paragraph 16 of the Constitution of New Jersey in that they take private property for public use without compensation.

At the time of the respondent's refusal to transport Mr. Napier free of charge the latter was traveling on business of the State (Case, p. 4, ll. 20-26). His demand, therefore, for free transportation, was for a public use, and under the statutes in question the respondent was called upon to provide it. 10

Inasmuch as the right of the company to receive pay for the transportation of passengers is its property as stated in the *Hoagland* case, the only way by which the State can take that property under the provisions of the Constitution is upon payment of just compensation. The compensation must also be paid in money (*Butler v. Sewer Commissioners*, 39 N. J. L., 665). 20

No provision whatever being made for the payment to the company for the service exacted, it follows that the statutes ignore the Constitutional provision above referred to.

III.

Chapter 402 of the Laws of 1915 denies to the respondent the equal protection of the laws. 30

It will be noted that Chapter 402 of the Laws of 1915 imposes upon the Morris and Essex Railroad Company by specific amendment to its charter the obligation to transport free of charge the same officers, place-holders and employees of the State as Chapter 195 of the Laws of 1914. 40

It does not, however, stop at that point, but imposes a penalty of one thousand dollars upon the Morris and Essex and its lessor (the respondent) for failure or refusal to transport the holders of the certificates without compensation. In other words, the Legislature selects the Morris and Essex Company and its lessee from all the other railroad companies operating in the State and inflicts a penalty upon them for refusal to carry the certificate holders free of charge which is imposed upon no other railroad company for its refusal.

Obviously such a statute conflicts with the Fourteenth Amendment to the Federal Constitution by denying to the Morris and Essex Company and this respondent the equal protection of the laws.

In *Barbier v. Connelly*, 113 U. S., 27; 28 L. Ed. 923, 925, it was said:

“The 14th Amendment, in declaring that no state ‘Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,’ undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; * * that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.”
* * * (italics ours.)

See, also: *Yick Wo v. Hopkins*, 118 U. S., 356; 30 L. Ed. 220; *Cotting v. Kansas City Stock Yards* 183 U. S., 79; 46 L. Ed. 92; *Connolly v. Sewer Pipe Co.*, 184 U. S., 540; 46 L. Ed. 679.

IV.

Principal cases relied upon by appellants.

Appellants point to numerous decisions of State and the Federal Supreme Courts to support their insistence that the legislation in question is sustainable as an exercise of the reserved right. The cases referred to below, which are the principal ones relied upon, are typical of appellants' other cases. We respectfully submit that not a single one of them goes so far as to decide that under such power the Legislature may donate free transportation to a large class of persons over the railroads of the State, irrespective of official relationship of such persons to the activities of railroad companies. 10

Spring Valley Water Works vs. Schotter, 110 U. S., 347, is authority for the proposition that under the reserved power the State may change the method of fixing water rates. It contains no suggestion that the corporation could be compelled to furnish water gratis to anyone. 20

Fairhaven Railroad Co. vs. New Haven, 203 U. S., 379, and *Sioux City Ry. Co. vs. Sioux City*, 138 U. S., 98, dealt with the power to compel street railroad companies to pave, or pay the cost of paving, certain parts of the streets upon which their tracks were laid. Plainly, such requirements are proper measures of regulation of the use of public highways by the corporations. Their operations in the streets directly affect the paving. 30

Erie Railroad Co. vs. Williams, 233 U. S., 685, brought before the Court a statute regulating the manner in which employees of railroad companies should be paid, and the right of the Legislature to require semi-monthly payments was upheld. 40

St. L., I. M. & S. Ry. Co. vs. St. Paul, 173 U. S., 404, like *Erie vs. Williams*, dealt with a statute regulating the manner of payment of wages earned by employees of railroad corporations.

Mayor, etc., vs. N. & W. Ry. Co., 197 Mass., 103, dealt with the power to require railroad companies to use the same station for passenger trains—something which may be said to be reasonably necessary for the adequate accommodation and convenience of the traveling public.

Atchinson, etc., Ry. Co. vs. Matthews, 174 U. S., 104, upheld a statute allowing a reasonable attorney's fee to successful plaintiffs in actions against railroad companies to recover for injuries due to fire. The allowance of the attorney's fee was held to be a penalty in the nature of a police regulation.

Macon, etc., Ry. Co. vs. Stamps, 11 S. E., 442, upheld a change in the route of a railroad made before the construction of the line.

Sutton vs. State and *Mihm vs. State*, Nos. 189 and 190, October Term, 1916, of the U. S. Supreme Court, are decisions sustaining this Court's judgment which upheld the validity of a statute requiring policemen and detectives to be carried free on the ground that it was a proper exercise of the police power.

Interstate Ry. Co. vs. Mass., 207 U. S., 79, upheld a statute requiring transportation of school children at reduced rates on the sole ground that the statute was in effect when the company was incorporated.

San Antonio Traction Co. vs. Altgelt, 200 U. S., 304, also dealt with a requirement that school children should be transported at reduced rates.

In neither of the two cases last above referred to is there any suggestion that the Legislature could require school children to be carried free.

On the contrary, it is said in the *Altgelt* case, pp. 309-10, that:

“Under the bill of rights the Legislature could not reduce the fares to a confiscatory amount or to an amount which would render it unprofitable to operate the road.”

It is submitted that while there may be a question whether or not a rate fixed by legislative enactment is so low as to be confiscatory (the presumption being in favor of the reasonableness of the rate), such cannot be the case where the service must be performed absolutely free of charge. However small the cost of transporting the members of the Fish and Game Commission may be, the Company is entitled to it, plus a reasonable profit, and it is no answer to such contention to say that what is lost on the passengers holding State certificates may be made up from others, for as said by Justice Hughes in *Northern Pacific Railway Co. vs. North Dakota*, 236 U. S., 585 at p. 598 (59 L. Ed. 735 at 743):

“It does not aid the argument to urge that the state may permit the carrier to make good its loss by charges on other transportation. If other rates are exorbitant they may be reduced. Certainly it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low.”

The dicta quoted in appellant's brief in support of the contention that under the power to alter or amend the charter of a corporation, the legislature may insert in a charter anything that might have been inserted before the charter was accepted, runs counter to the decisions, in this State at least. If it were literally true, the legislature could force upon the corporation, by way of amendment, a contract which it never would have accepted in the first instance. Of course that can-

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not be done. *Zabriskie vs. Ry. Co.*, 18 N. J. E., 178; *D. L. & W. R. R. Co. vs. Public Utility Board*, *supra*.

V.

The judgments of the Supreme Court in favor of the respondent should be affirmed.

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Respectfully submitted,

WALTER J. LARRABEE,

Attorney for and of Counsel with
Respondent.

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NEW JERSEY Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Plaintiff,
vs.
THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, A BODY CORPORATE,
Respondent.

On Appeal from
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Plaintiff,
vs.
THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, A BODY CORPORATE,
Respondent.

On Appeal from
the Supreme Court,
Essex Circuit.

Brief for Plaintiff.

STATEMENT OF FACTS.

The appeals in these cases bring up for review the judgments of the Supreme Court in two cases tried in the Essex Circuit before Judge Adams.

The complaint in the case in which the State of New Jersey is plaintiff appears in the State of the Case, pages 7 to 11, inclusive, while the complaint in the case in which Ernest Napier is plaintiff appears on pages 32 to 35, inclusive.

The State case was brought against the Delaware, Lackawanna and Western Railroad Company to recover the penalty of one thousand dollars provided by an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April twenty-third, nineteen hundred and fifteen. (*P. L. 1915, p. 772.*) This supplement provides that certain State officers and employees, therein named, shall be entitled to ride free of charge over the railroad of the Morris and Essex Railroad Company, and imposes a penalty of one thousand dollars upon the said railroad company, its successors, lessee or lessees, for failure to comply with the provisions of that act.

The Napier case was brought by Mr. Napier, President of the Board of Fish and Game Commissioners, one of the officials named in the act above referred to, to recover damages for the failure of the Delaware, Lackawanna and Western Railroad Company to carry him free of charge over the road of the Morris and Essex Railroad Company, between East Orange and Hackettstown.

All of the facts in both cases were admitted. The agreed statement of facts in the State case appears on pages 16 to 23 of the Case, and in the Napier case on pages 40 to 47 of the Case. Both cases were based upon the same occurrence.

It appears from these facts that Mr. Napier, on the twenty-second day of May, nineteen hundred and fifteen,

boarded a train of the defendant company at the East Orange station for the purpose of traveling from East Orange to Hackettstown; that the train was scheduled to stop at Hackettstown; that Mr. Napier undertook this journey in the performance of his official duties as member and president of the Board of Fish and Game Commissioners, for the purpose of inspecting the fish hatchery owned by the State and operated by the Board of Fish and Game Commissioners; that upon entering the train he tendered to the conductor in charge of the train a certificate in card form, under the seal of the State, bearing the title of office of the plaintiff, the date of issuance of such certificate to the plaintiff, the date of expiration of the plaintiff's term of office, showing that the plaintiff was at said time a member of the Board of Fish and Game Commissioners, which certificate was signed by the Secretary of State and endorsed by said plaintiff on the back thereof, and was tendered in accordance with the provisions of an act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April fifteenth, nineteen hundred and fourteen (*P. L.* 1914, *p.* 358, *sec.* 40); that the conductor of the train refused to carry Mr. Napier without payment of fare, viz., the sum of \$1.20; that Mr. Napier refused to pay the fare and was ejected from the train at the Orange station, the conductor acting pursuant to general instructions in so ejecting him; that no more force was used than was necessary to eject Mr. Napier.

The action for the penalty brought by the State of New Jersey rests solely upon the Act of 1915 amending the Supplement of 1851 to the charter of the Morris and Essex Railroad Company, while the action for damages instituted by Mr. Napier rests upon the special act above named and the amendment of 1914 to section 40 of the General Railroad Law as well. If the provision of either of these statutes requiring the railroad

company to carry members of the Board of Fish and Game Commissioners free of charge is valid, it is conceded that Mr. Napier is entitled to prevail in the action which he has brought.

The respondent contends that both the special act of 1915, purporting to amend the charter of the Morris and Essex Railroad Company, and the amendment of 1914 to section 40 of the General Railroad Law, are invalid because in conflict with the Fourteenth Amendment of the Constitution of the United States and Article I, Paragraph 16, of the Constitution of the State of New Jersey.

The findings of fact and conclusions of law of the trial judge are printed on pages 52 to 63 of the Case, and sustain the contentions made by the defendant. Exceptions were taken to these findings and duly sealed by the trial judge. These exceptions, so far as they refer to the case of the State of New Jersey, appear on pages 25 to 27 of the Case; and, so far as they refer to the case of Ernest Napier, appear on pages 49 to 51 of the Case.

Inasmuch as these two cases involve no question but the question of the constitutionality of the statutes to which reference has above been made, the argument of the plaintiff in error with reference thereto will be presented in one brief.

ARGUMENT.

I.

The question as to the power of the Legislature to require railroad companies to carry State officers and employees, free of charge, has recently been before the Supreme Court in the cases of *Delaware, Lackawanna and Western Railroad Company v. Public Utility Board*, 85 N. J. L. 28; *Pennsylvania Railroad Company v.*

Herrmann, 88 N. J. L. 526; *Pennsylvania Railroad Company v. Gebhardt* (not yet reported), and before this Court in the case of *Pennsylvania Railroad Company v. Herrmann*, 99 Atl. 404. In each of these cases the decision of the Court was against the validity of the legislation there considered.

In *Delaware, Lackawanna and Western Railroad Company v. Public Utility Board*, *supra*, the Supreme Court held that an amendment to section 40 of the General Railroad Law, passed in 1912, was unconstitutional in so far as it required the railroad companies to carry a member of the New Jersey State Water-Supply Commission free of charge. The decision was confined to the right of a member of the State Water-Supply Commission under this statute. In this case the railroad company contended, as it contended in the court below in the case at bar, that its duties with regard to the free carriage of public officials were stated in its charter, and that the Legislature had no power to require it to carry free of charge any official not named in the original charter, or in any supplement or amendment thereto, which had been formally accepted by the company.

The Supreme Court in the Public Utility case disagreed with this contention and held that "the railroad company is affected by such subsequent legislation as was properly enacted under the reserved right of the Legislature," but decided as above stated that the requirement that a member of the Water-Supply Commission be carried free of charge was not a valid exercise of such reserved right. The trial judge regarded this decision as controlling the case at bar.

The next case which came before the Supreme Court was *Pennsylvania Railroad Company v. Herrmann*. In this case the Supreme Court decided that the amendment of 1914 to section 40 of the General Railroad Act (one of the statutes upon which the plaintiff's claim in the case at bar is based) was valid, in so far as it required

the railroad companies to carry, free of charge, the secretary to the Governor. This latter case, however, was carried to this court on appeal and was reversed upon the ground that the Legislature had no power to require the railroad companies to carry the secretary to the Governor free of charge. No opinion was expressed in this court as to the extent of the power of the Legislature to require the railroads to carry, free, any official not named in the charter. This case, however, decided that the requirement that the secretary to the Governor be carried free of charge was not a proper exercise of the police power. The question of the reserved right to alter or amend the charter of a corporation was not involved in this case for the reason that the various charters of the railroads operated by the Pennsylvania Railroad Company contained no such reservation of power to alter, amend or repeal. The amendments to section 40 of the General Railroad Law could, therefore, be sustained, if at all (in so far as they affected the railroads operated by the Pennsylvania Railroad Company), only as an exercise of the police power of the Legislature.

It is true that this Court used the following language in the case last cited:

“In its legal aspects the case thus presented is identical with that of Hoagland passed upon by the Supreme Court in *Delaware, Lackawanna and Western R. R. Co. v. Public Utilities Commissioners*, 85 N. J. L. 28, 98 Atl. 849. Hoagland was a member of the New Jersey State Water-Supply Commission, the members of which were by a similar amendment to the General Railway Law required to be carried free of charge. The question was the constitutionality of this requirement. The Supreme Court held that, inasmuch as the office in question was not within the charter contract of the railroad company, the requirement of a later statute for the free car-

riage of the official in question was the taking of the property of the stockholders of the railroad company without compensation or due process of law, which was not justified as a valid exercise either of the police power or the reserved rights of the Legislature.

“In this conclusion we concur, and think that in the present case, upon the same grounds, the similar statutory requirement as to the free carriage of the secretary to the Governor is likewise unconstitutional.”

It is submitted, however, that in view of the fact that, as has above been stated, the charter of the roads operated by the Pennsylvania Railroad Company contained no reserved right to alter, amend or repeal the same, anything said by this Court in the Herrmann case with reference to the extent of the reserved power is *obiter dicta*.

The next case in which this question was considered was *Pennsylvania Railroad Company v. Gebhardt*. In this case, as in the Herrmann case, no question of the power of the Legislature under the reserved right to alter, amend or repeal the charter of a corporation was involved. Following is an extract from the opinion of the Court:

“In this connection we may add that no theory of the police power that has been suggested or brought to our attention justifies, in our judgment, the imposition of the statutory requirement under consideration by any general legislation, early or late, that does not in legal effect give rise to a contract obligation upon the part of the railroad company to perform the duty imposed upon it.”

In view of these decisions, no contention will be here made that the legislation in question may be sustained as an exercise of the police power of the Legislature.

II.

THE LEGISLATION IN QUESTION IS A VALID EXERCISE OF THE RESERVED POWER TO ALTER, AMEND OR REPEAL.

The plaintiffs submit that the legislation, in so far as it requires the Delaware, Lackawanna and Western Railroad Company to carry a member of the Board of Fish and Game Commissioners free of charge, is valid and constitutional as an exercise of the reserved power of the Legislature to alter, amend or repeal the charter of the Morris and Essex Railroad Company, which railroad the Delaware, Lackawanna and Western Railroad Company is operating as lessee.

This question has not been passed upon directly by the Supreme Court or by this Court, and is still an open question in this State.

III.

THE CHARTER OF THE MORRIS AND ESSEX RAILROAD COMPANY IS SUBJECT TO THE RESERVED RIGHT TO ALTER, AMEND OR REPEAL.

The original charter of this company was granted in 1835, and the 20th section reserved the right to the Legislature to alter, amend or repeal the act whenever it should think proper (*P. L. 1835, p. 32*). A supplement to the charter, passed March 2d, 1836, gave additional powers to the railroad company, repealed the 20th section of the charter of 1835, but reserved the right of the Legislature to alter or amend the supplement or the act to which it was a supplement whenever the public good might require it (*P. L. 1836, p. 225*). An additional supplement was passed in 1851 (*P. L. 1851, p. 28*). This was subsequent to the passage of section 6 of the "Act concerning corporations" (*P. L. 1846, p. 16*), which section reserved generally the right to the Legislature to alter, amend or repeal charters thereafter granted.

It was admitted by the defendant, in the trial below, that this charter was accepted subject to the power of the Legislature to alter, amend or repeal it.

Section 14 of the Supplement of 1851 provides that:

"The governor, the chancellor, the justices of the supreme court, and the judges of the court of errors of this state, when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the legislature of this state, during their annual or other sessions, shall pass and repass over the railroad and railroads of said company, in their cars, free of charge."

The Act of 1915 (*P. L.* 1915, *p.* 772) is an amendment to this section, and changes its provisions by enlarging the number of State officials and employees whom the railroad is required to carry without payment of fare.

It is apparent, therefore, that the charter of the Morris and Essex Railroad Company is subject to the reserved right of the Legislature to alter or amend it, and that the Legislature has attempted to exercise this reserved right, both by the General Law of 1914, amending section 40 of the General Railroad Law, which, by its terms, applies to all railroads, and by the special act of 1915.

IV.

THE EXTENT OF THE POWER TO ALTER, AMEND OR REPEAL A CORPORATE CHARTER.

The extent of this power is difficult to define. Mr. Justice Cooley, in his work on *Constitutional Limitations*, 7th Ed., page 394 (note), says:

"Respecting the power to amend or repeal corporate grants, some troublesome questions are likely to arise which have only as yet been hinted at in the decided cases."

It is established that the power to alter or amend a corporate charter is not an unlimited power; that some amendments may be made and some may not. It is difficult, however, to deduce the rules limiting the exercise of this power from the decided cases.

As is well known, it became the practice to reserve this power in the grant of corporate charters shortly after the decision of the United States Supreme Court in *Dartmouth College v. Woodward*, 4 *Wheat.* 518. In this case the Supreme Court announced the doctrine that a charter granted by the Legislature to a private corporation is a contract within the protection of the provision of the Federal Constitution prohibiting the States from passing any law impairing the obligation of contracts.

On principle, the reservation of this power would seem to authorize the Legislature to make any change in the contract *between the State and the corporation* which, in the judgment of the Legislature, might be deemed advisable.

It is well established that under this reservation of power the Legislature is not authorized to deprive a corporation of any property which it has already acquired, or cannot compel it to embark in a business or enterprise which is foreign to that named in the charter. It has also been held that this power confers no right upon the Legislature to alter or change contracts between the corporation and third parties, except so far as the amendment of the contract between the State and the corporation may incidentally affect such contracts.

V.

THE POWER IS DISTINCT FROM THE POLICE POWER.

In many of the decided cases the power to alter or amend a corporate charter is considered by the Courts in connection with the police power of the Legislature.

It is apparent, however, from a consideration of the subject that the purpose and scope of the reserved power is necessarily distinct and separate from that of the police power, being based upon an entirely different principle. It is elementary law that the Legislature, even in the absence of a reserved power to alter, amend or repeal a corporate charter, may, by virtue of the police power, exercise supervision over corporations as well as over individuals, for the protection of the public health, safety and comfort. See *Chicago Life Ins. Co. v. Needles*, 113 U. S. 574; *Hill v. Merchants' Mutual Ins. Co.*, 134 U. S. 515; *Louisville and Nashville R. R. Co. v. Kentucky*, 161 U. S. 677.

Since, in the absence of this power, the Legislature may pass such regulations as may in its judgment be necessary for the protection of the public health, public comfort and public safety, and make such regulations apply to corporations, it is apparent that the purpose of the reservation of this power is to confer upon the Legislature a right to pass legislation in respect to corporations which could not be sustained as an exercise of the police power.

VI.

THE RESERVED RIGHT PLACES UNDER THE CONTROL OF THE LEGISLATURE ALL RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CORPORATION DERIVED BY THE CHARTER DIRECTLY FROM THE STATE.

Tomlinson v. Jessup, 15 Wall. 454; *In re N. Y. Cable Ry. Co.*, 40 Hun. (N. Y.) 1; *Lawrence v. Rutland Railway Co.*, 67 Atl. 1091 (Vt. Sup. Ct.); *Hinckley v. Schwarzschild & Sulzberger*, 95 N. Y. Supp. 357; *Stanislaus County v. San Joaquin C. & J. Co.*, 192 U. S. 201; *State, Morris & Essex Railroad Co. v. Miller*, 30 N. J. L. 368; *Zabriskie v. Hackensack & N. Y. Railroad Co.*, 18 N. J. Eq. 178.

In *Tomlinson v. Jessup*, 15 Wall. 454, *supra*, the Supreme Court of the United States, speaking by Mr. Justice Field, used the following language:

"The reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges and immunities derived by its charter directly from the State. Rights acquired by third parties and which have become vested under the charter in the legitimate exercise of its powers stand upon a different footing; but of such rights it is unnecessary to speak. The State only asserts in the present case the power and reservation to modify its own contract with corporators, and it does not contend for a power to revoke the contracts of the corporations with other parties or to impair any vested rights thereby acquired."

In *Hinckly v. Schwarzschild & Sulzberger*, *supra*, the Appellate Division of the Supreme Court of New York said:

"The logical result of this claim, however, leads to the conclusion that in so far as the franchise to be a corporation is concerned, and over the exercise of such powers as can only be exercised by its possession, the State control under the reserved power is absolute. This is the express holding in *Mayor v. 23d St. Ry. Co.*, 113 N. Y. 311, 21 N. E. 360. The power thus reserved is not only vast in extent, it is, in many respects, alarming. As it rests in the legislative will to repeal the charter of a corporation and destroy its life, so it may prescribe such conditions as it chooses to the continued enjoyment of its franchise. It is readily seen that by means of this control the Legislature may regulate any and all affairs of a corporation through the simple medium of conditioning its right to exist as a corporation."

In *State, The Morris & Essex Railroad Co. v. Miller*, 30 N. J. L. 368, the Supreme Court held that the charter of the Morris & Essex Railroad Company was subject to amendment, and that the General Tax Law of 1862 subjected the real property of that company to taxation and repealed the provision of the charter providing a special method of taxation. In this case it was urged that the reserved right to alter or amend the charter could not be interpreted to reserve the right to alter the prescribed mode of taxation, because of the fact that the charter contained an express exemption from any other mode. Speaking of this the Court, by Mr. Justice Elmer, said:

“The answer, however, is that the language of the reservation is general, and extends to all the provisions of the charter; and that the stockholders accepted and became parties to a contract, one of the express terms of which is that the Legislature may alter or rescind it whenever, in their opinion, the public good should so require.
* * * If the Legislature have erred in judgment and have dealt hardly with this and other railroads in like circumstances, as to which we have neither the means nor the right to form an opinion, the remedy is not to be sought from the judiciary, but from those whose duty it is to determine what, in this matter, is really for the public good.”

In *Zabriskie v. The Hackensack and New York R. Co.*, 18 N. J. Eq. 178 (at page 192), Chancellor Zabriskie, speaking of this power, said:

“Again the power is to alter or modify the act, and the true construction of this I hold to be an alteration of something contained in or granted by the act. Any of the franchises granted may be altered; the right to take land by condemnation, the right to take tolls or fare, or the amount to be taken. But the Legislature had

no right to impose upon the company any other duty, or anything involving any other duty than that attending the building of a railroad from the Paterson road to Hackensack; anything in the manner of doing that they had a right to change. They could not oblige it to dam and drain all the meadows along the Hackensack, or to construct a canal, or to build a road from Hoboken to Newark, nor could they oblige it to extend its road to Nanent. They could as well oblige it to run to the Pacific. We must keep in mind that by the decisions in New Jersey the company need not accept the alterations; they are bound by them without acceptance if within the power reserved."

VII.

THE AMENDMENT MUST NOT PROVIDE FOR THE TAKING OF THE PROPERTY OF THE CORPORATION PREVIOUSLY ACQUIRED OR DEFEAT OR SUBSTANTIALLY IMPAIR THE OBJECT OF THE GRANT.

Commissioners, &c., v. Holyoke Water Power Co., 104 Mass. 446; *Miller v. State*, 15 Wall. 478; *Close v. Glenwood Cemetery*, 107 U. S. 466; *U. S. v. Union Pacific Ry. Co.*, 160 U. S. 1; *Looker v. Maynard*, 179 U. S. 51; *Mayor, &c., v. 23d St. Ry. Co.*, 113 N. Y. 311; *Railroad Tax Cases*, 13 Fed. Rep. 754; *Opinion of Justices*, 66 N. H. 638; *Commonwealth v. Boston & Northern St. Ry. Co.*, 212 Mass. 82.

In *Holyoke v. Lyman*, 15 Wall. 500, this rule is stated by the Supreme Court of the United States in the following language:

"The power to legislate founded upon such a reservation is certainly not without limit, but it may safely be affirmed that it reserves to the Legislature the authority to make any alteration or amendment in a charter granted subject to

it, that will not defeat or substantially impair the object of the grant or any rights which have vested under it which the Legislature may deem necessary to secure either the object of the grant or any other public right not expressly granted away by the charter."

In this case the plaintiff company had been incorporated with authority to construct and maintain a dam across the Connecticut River, paying damages to the owners of fishing rights above the dam. The charter of this company did not expressly exempt it from maintaining its dam without a fishway, and was subject to alteration and repeal at the pleasure of the Legislature. The company duly paid damages to the owners of fishing rights above the dam and constructed its dam without a fishway so as to destroy the fishing rights above and to impair similar rights below. No compensation had been made or provided for the impairment of the fishing rights below the dam. It was held that this corporation and any other corporation which had purchased its dam under the authority of a subsequent statute might constitutionally be required to construct a fishway in the dam to the satisfaction of commissioners appointed by the Legislature.

In *Close v. Glenwood Cemetery*, 107 U. S. 466, an act had been passed incorporating Glenwood Cemetery. This act provided that the affairs of the company should be conducted by a president and three other managers to be elected annually by vote of the proprietors. An amendment to the charter was passed providing that the property should be managed by a board of five trustees, three chosen by the bona fide owners of lots upon which a burial had been made, two by the original proprietors, and that the gross receipts arising from future sales of lots should be divided, and that one-quarter of the gross receipts arising from future sales of lots should be annually paid to the original proprietors and the remainder devoted to improvements and maintenance of

the cemetery. Mr. Justice Grey, speaking of the power to alter, amend or repeal a corporate charter, said:

“It follows that the act of Congress of 1877 must be deemed constitutional and valid within the principle affirmed by this Court in the case of ‘The Holyoke Dam’ for the power reserved to the Legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it which will not defeat or substantially impair the object of the grant, or any rights vested under it and which the Legislature may deem necessary to secure either that object or any public right.”

In *United States v. Union Pacific Ry. Co.*, 160 U. S. 1, it was held by the Supreme Court that under the reserved power to alter, amend or repeal a corporate charter Congress had power to require the Union Pacific Railway Company, a corporation formed by the consolidation, under the authority of acts of Congress of certain railroad corporations, to operate telegraph lines through its own officers and servants, and to exercise its telegraph franchises through its own officers and servants, although under a previous law such company had been permitted to lease its telegraph lines and offices to a telegraph company. In this case, Mr. Justice Harlan delivered the opinion of the Court, and said in part:

“It would not be competent for Congress under the guise of altering and amending the act in question to impose upon the railroad company duties wholly foreign to the object for which it was created, or for which government aid was given; neither could it by such alteration or amendment destroy rights actually vested, nor disturb transactions fully secured.” (Citing *Sinking Fund Cases*, 99 U. S. 700, 718, 720.)

In *Looker v. Maynard*, 179 U. S. 51, the Supreme Court of the United States determined that a power reserved by the Constitution of a State to the Legislature

to alter, amend or repeal the charter of a corporation authorized the Legislature, in order (as declared in the title of the statute in question) "to secure the minority of stockholders in corporations organized under the general laws the power of electing a representative membership in boards of directors" to permit each stockholder to cumulate his votes upon any one or more candidates for directors. In this case the Court said, in part, at page 52:

"The effect of such a provision, whether contained in an original act of incorporation or in a constitution or general law subject to which a charter is accepted, is, at the least, to reserve to the Legislature the power to make any alteration or amendment of the charter, subject to it, which will not defeat or substantially impair the object of the grant or any right vested under the grant which the Legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs."

In *Mayor, &c., v. Twenty-third Street Railway Co.*, 113 N. Y. 311, an act had been passed requiring the B. S. & F. R. Co., a street railroad corporation organized under the General Railroad Act, to pay into the treasury of the City of New York one per cent. of its gross receipts instead of a license fee, as before prescribed. This was held to be a valid alteration and amendment of the charter and within the reserved right of the Legislature. It was also held that a company which had leased the rights of said railroad company was liable to make the payment, although the statute did not impose this duty upon the company. Speaking of the reserved power, the Court said:

"It is difficult to put precise limits upon the power of the Legislature thus reserved over corporations created by it, or under its authority.

Under its reserved power it cannot deprive corporations of its property or interfere with or annul its contracts with third persons (citing *People v. O'Brien*, 111 N. Y. 1), but it may take away its franchise to be a corporation and may regulate the exercise of its corporate powers. As it has the power utterly to deprive a corporation of its franchise to be a corporation, it may prescribe the conditions and terms upon which it may live and exercise such franchise. It may enlarge or limit its powers, and it may increase or limit its burdens."

In *Opinion of Justices*, 66 N. H. 638, the Supreme Court of New Hampshire advised the Legislature that the State had no right to take the property of the Concord Railroad Company without compensating its owners for the full value of the property. Speaking of the reserved right to alter, amend or repeal the charter of the railroad company, the opinion said in part:

"This history of the reservation clause in acts of incorporation supports our proposition that whatever right, franchise or power in the corporation depends for its existence upon the granting clauses of the charter, is lost by its repeal. * * * Whatever power is dependent solely upon the grant of the charter, and which could not be exercised by unincorporated private persons under the general laws of the State, is abrogated by the repeal of the law which granted these special rights. Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the Courts may, if the Legislature does not provide some special remedy, enforce such rights by the means within their power. The rights

of the shareholders of such a corporation to their interest in its property are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights.' *Greenwood v. Freight Co.*, 105 U. S. 13, 19-21; *Spring Valley Water Works v. Schottler*, 110 U. S. 347, 352, 369, 370. * * *

"That this power has a limit no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter.' *Sinking-Fund Cases*, 99 U. S. 700, 720. 'Where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted.' *Commonwealth v. Essex Co.*, 13 Gray 239, 253."

VIII.

THE LEGISLATURE MAY INSERT IN THE CHARTER BY AMENDMENT ANY PROVISION WHICH COULD RIGHTFULLY HAVE BEEN PLACED IN THE ORIGINAL CHARTER.

Sinking-Fund Cases, 99 U. S. 700, 720; *Fairhaven Railroad Co. v. New Haven*, 203 U. S. 379; *Spring Valley Water Works v. Schottler*, 110 U. S. 353; *Eric Railroad Co. v. Williams*, 233 U. S. 685; *English v. New Haven & N. Hampton R. R. Co.*, 32 Conn. 240.

In *Spring Valley Water Works v. Schottler*, 110 U. S. 347, the original charter of the plaintiff company, creating a water company, provided that rates should be fixed by a commission, two members of which should be appointed by the company, two by the municipality supplied with water and one by the members previously appointed. The charter of the company was subject to alteration, amendment and repeal. The constitution of California, subsequently adopted, provided that the right

to collect tolls for supplying water should be deemed a franchise and could only be exercised in the manner authorized by law, and that the rates charged by water companies should be paid by the governing body of the municipality supplied. This alteration in the charter of the company was held to be valid under the reserved power. It was contended in this case that the provision for fixing rates was an express contract with the water company and not subject to governmental control under the reserved power to alter or amend. This was the view taken by Mr. Justice Field in his strong dissenting opinion. On page 353 of the prevailing opinion of the Court, rendered by Chief Justice Waite, appears the following:

“In the *Sinking-Fund Cases*, 99 U. S. 700, it was said that whatever rules for the government of the affairs of a corporation might have been put into the charter when granted could afterward be established by the Legislature under its reserved power of amendment.”

In *Fairhaven Railroad Co. v. New Haven Railroad Co.*, 203 U. S. 379, it appeared by the original charter of the company (1862) that the plaintiff in error was required to keep the street between its tracks, with a space of two feet on each side of the tracks, in good and sufficient repair. The charter provided that the act might be altered, amended or repealed at the pleasure of the General Assembly. In the amendment of its charter in 1864 the obligation was retained. A similar provision was contained in a general law applicable to all railways enacted in 1893. In 1895 a statute was passed, containing the following provision as to railways:

“On all streets occupied by the track or tracks of any railway company * * * said company * * * shall be assessed and shall severally pay to the city the cost of paving and repaving the full length, and nine feet wide for

each and every line of track on such railway,
* * *”

This latter statute the plaintiff in error attacked. In sustaining it Mr. Justice McKenna said:

“We shall assume, for the purpose of our discussion, that the duty to repair did not include the duty to pave and repave. * * * Does the change and increase of burden upon the plaintiff in error come within the limitations upon the reserved power of the State? Has it no proper relation to the objects of the grant to the company or any of the public rights of the State? Can it be said to be exercised in mere oppression and wrong? All of these questions must be answered in the negative. The company was given the right to occupy the streets. It exercised this right with a single track and afterward with a double track. *Before granting this right the State certainly could have put upon the company the duty of paving as well as repairing. Such requirement would have been consistent with the object of the grant. It is yet consistent with the object of the grant.* (Italics ours.) It is not imposed in sheer oppression and wrong, and the good faith of the State cannot be questioned. It is imposed in the exercise of one of the public rights of the State; the establishment, maintenance and care of its highways.”

In *Erie Railroad Company v. Williams*, 233 U. S. 685, the Supreme Court of the United States sustained a statute of the State of New York, requiring railroad companies to pay their employees semi-monthly in cash. Speaking of the reserved power, the Court, by Mr. Justice McKenna, said (italics ours):

“It may be deemed an advantage is taken away from plaintiff, or, to put it another way, a burden is imposed upon it. Is it within the power of the State to impose a burden by virtue of its

reserved control over the plaintiff? The question must be answered as if the requirement of the law was part of the charter of plaintiff, and in such case it would seem certainly that a liberty of contract could not be asserted against it, for it would be a part of the contract accepted and binding on plaintiff, a liberty exercised precluding a liberty to exercised, *and it would seem necessarily to be the very essence of the right of amendment reserved that what could have been put in the charter originally, whatever its consequence, can be added to the charter, whatever the consequence of the addition.* (Italics ours.) Of course, we mean what was and is competent for the State to impose, and we are brought to the narrow question whether a regulation of the time and manner of payment by a railroad of its employees is within the competency of the State to require.

* * * * *

“The effect of the control reserved was to make plaintiff, from the moment of creation, subject to the legislative power of alteration and, if deemed expedient, of absolute extinguishment as a corporate body. *Spring Valley Water Works v. Schottler*, 110 U. S. 347, 352. *And whether expedient or not, is a question for the Legislature, not for the Courts.* (Italics ours.) In other cases the effect of the reserved power of amendment is said to be to make any alteration or amendment of a charter subject to it, which will not defeat or substantially impair the object of the grant or any right vested under the grant.”

IX.

AMENDMENTS MAY BE MADE IMPOSING ADDITIONAL BURDENS UPON THE CORPORATION.

Mayo, &c., v. Norwich & Worcester R. R. Co., 109 Mass. 103; *Holyoke Water Co. v. Lyman*, 15 Wall. 500; *Commissioners v. Holyoke Water Company*, 104 Mass. 446; *Atchinson, &c., R. R. Co. v. Mayhews*, 174 U. S. 104; *Commonwealth v. Eastern Railroad Co.*, 103 Mass. 254; *Sioux City Railroad Co. v. Sioux City*, 138 U. S. 98; *Fairhaven Railroad Co. v. New Haven Railroad Co.*, 203 U. S. 379; *St. Louis & Iron Mountain Ry. Co. v. St. Paul*, 173 U. S. 404; *Massachusetts General Hospital v. State Mutual Life Ass. Co.*, 70 Mass. 227; *Railway Company v. Philadelphia*, 101 U. S. 528.

In *Mayor and Aldermen of Worcester v. Norwich & Worcester Railroad Co.*, 109 Mass. 103, the Supreme Court of Massachusetts sustained a statute requiring the Boston and Albany, the Norwich and Worcester, the Providence and Worcester, the Worcester and Nashua, the Boston, Barr and Gardner Railroad Companies, to unite in a station in the City of Worcester for the accommodation of the passenger trains of all of said corporations.

Speaking of the reserved power, the Court said:

“The power to alter a charter includes the right to take away some of the powers granted by it or to add to it new powers without which improvements of the greatest importance would be *ultra vires*.”

In *Sioux City Railroad Company v. Sioux City*, 138 U. S. 98, the Supreme Court of the United States sustained an ordinance of the City of Sioux City requiring street railway companies to pave the streets between the rails of their tracks and one foot on the outside of such rails. The original ordinance of the city permitting the

company to lay tracks had required paving between the rails, but not outside of the rails, but subsequent to the passage of this ordinance a statute had been passed giving cities the power to require railway companies to pave one foot outside the rails. Speaking of this power, the Court said in part, by Mr. Justice Blatchford:

“Moreover, the city derived from the State alone its power to grant a license to the company. The right to operate the railway in the streets is a franchise obtained through power given to the city by the State, but the State reserved the power to regulate such franchise and impose conditions upon it. It reserved the power to determine the question of the exemption of the company from taxation and to prescribe what burdens should be imposed upon it for the public good in the enjoyment of its franchise. Manifestly, such power of the State would exist if the right to occupy the streets with tracks was granted to the company directly by an act of the Legislature of the State; and the case is not changed by the fact that the franchise was granted by the city. There is nothing in the ordinance of the city council which takes away the power of the State and the city to impose additional taxes on the property of the company, or which indicates an intent that no further or different tax should be subsequently imposed on its property. *Delaware Railroad Tax*, 18 *Wall.* 206, 227; *Railway Co. v. Philadelphia*, 101 *U. S.* 528, 536; *Commonwealth v. Easton Bank*, 10 *Penn. St.* 451.

“No question can arise as to the impairment of the obligation of a contract, when the company accepted all of its corporate powers subject to the reserved power of the State to modify its charter and to impose additional burdens upon the enjoyment of its franchise. Under the act

of March 15, 1884, it was made a condition of the enjoyment of its franchise by the company, that, when the city should determine that the streets should be paved, the company should bear a certain portion of the cost thereof; and any prior contract between the company and the city in regard to paving was subject to the provisions of section 1090 of the Code. There was nothing in the ordinance of December 12, 1883, which bound or could bind the city not to exercise its statutory authority to impose other conditions upon the exercise of the rights of the company."

In *St. Louis & Iron Mountain Railway Company v. St. Paul*, 173 U. S. 404, the Supreme Court of the United States sustained an act of the Legislature of the State of Arkansas which provided that whenever any railroad company, or company engaged in the business of operating or constructing any railroad or railroad bridge, should discharge any employee, the unpaid wages of such employee, then earned, at the contract rate, should become due and payable on the date of such discharge, and subjected the company to a penalty for non-payment. The Court said in part, by Mr. Justice Fuller:

"Corporations are the creations of the State and endowed with such faculties as the State bestows, and subject to such conditions as the State imposes, and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligation, and as this amendment rested on reasons deduced from the peculiar character of the business of the corporations affected and the public nature of their functions; and applied to all alike, the equal protection of the law was not denied."

In *Atchison, &c., R. R. Co. v. Mayhews*, 174 U. S. 104, it was held by the Supreme Court of the United States that the provisions of an act providing that in all actions commenced under it to recover damages from the railroad company for injury to property by fire, if the plaintiff shall recover, there shall be allowed him by the Court a reasonable attorney's fee, which shall become a part of the judgment. It was contended in this case that the act violated the fourteenth amendment in that it denied to the company the equal protection of the laws. This contention was denied upon the ground that the classification of railroads for this purpose was a proper one. The Court used the following language, with regard to the right of the Legislature to alter the charter of a corporation:

"It is also clear that the Legislature (which has power in advance to determine what rights, privileges and duties it will give to, and impose upon, the corporation which it has created) has, under the general right to alter, amend or repeal the charter, power to impose new duties and new liabilities upon such artificial entities of its creation."

Massachusetts General Hospital v. State Mutual Life Ass. Co., 70 Mass. 227. In this case the defendant company was incorporated in 1844. Its charter required it, as did the charter of each other insurance company, to pay to the plaintiff, the Massachusetts General Hospital, one-third of the net profits of insurance on lives. The defendant company was a mutual company and had no net profits. It had, however, a guaranty capital, the owners of the stock of which were authorized by the charter to receive an annual dividend not to exceed seven per cent. The by-laws provided that a dividend of seven per cent. should be paid. It was contended that this dividend represented an expense and not a profit as it tended to increase the cost of insurance to the members, the company being a

mutual one. In 1846 a law was passed which provided that net profits should be taken to be the excess of the dividend over six per centum annually, payable by the said companies respectively to the holders of the guaranty stock actually paid in. The constitutionality of this statute was challenged. The Court, however, sustained it under the reserved power to alter, amend or repeal charters of corporations subject to which the charter of the defendant company was granted.

X.

THE LEGISLATURE MAY REPEAL AN EXCLUSIVE FRANCHISE.

It was held in *Hamilton Gas Light Co. v. Hamilton City*, 146 U. S. 258, that a statute of Ohio authorizing cities and villages in that State to erect gas works at the expense of the municipality, or to purchase any gas works therein, did not infringe the contract clause of the Constitution of the United States, when applied to enable a municipality, in which a gas company had been authorized to lay down pipes and had exercised that power, and in which the municipal authorities had contracted with such company to supply the public streets with gas (the term of the contract having expired). At the time the charter was granted the constitution of Ohio prohibited the granting of a charter that might not be altered, revoked or repealed by the General Assembly. The Supreme Court held that even if the charter was considered as giving the company the exclusive privilege of supplying gas light to the City of Hamilton and its inhabitants, it was subject to the power of the Legislature. The Court said in part:

“A corporation by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation.”

Speaking of the power to alter, amend or repeal in this case Mr. Justice Harlan, quoting from the opinion of the Court in *Greenwood v. Freight Company*, 105 U. S. 13-17, said:

“Such an act may be amended; that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power, and it may be repealed. What is it may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of a company depends which may be repealed, so that it shall cease to be a law; or the Legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the Legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it or on the soundness of the reasons which prompted it.”

Referring to the words “at the pleasure of the Legislature,” the Court, in the Hamilton case, used the following language:

“The words ‘at the pleasure of the Legislature’ are not in the clause of the constitution of Ohio, or in the statutes to which we have referred. But the general reservation of the power to alter, revoke, or repeal a grant of special privileges necessarily implies that the power may be exerted at the pleasure of the Legislature.”

XI.

THE LEGISLATURE MAY REGULATE AND CONTROL THE EXERCISE OF THE RIGHT GRANTED IN ANY MANNER NOT SUBVERSIVE OF THE PURPOSE OF THE GRANT.

Macon & B. R. R. Co. v. Stamps, 11 S. E. 442 (Sup. Ct. Ga.); *Interstate Railway Co. v. Massachusetts*, 207 U. S. 79; *San Antonio Traction v. Altgelt*, 200 U. S. 304; *Commonwealth v. Boston & Northern St. Ry. Co.*, 212 Mass. 82; *State ex rel. Simpson v. Chicago, M. & St. P. Ry. Co.* (Sup. Ct. Minn.), 137 N. W. 2; *Spring Valley Water Works v. Schottler*, 110 U. S. 348; *Sutton v. State of New Jersey*, and *Mihm v. State of New Jersey* (opinions delivered 1917, not yet reported); *Atlantic & Pacific R. R. Co. v. U. S.*, 76 Fed. Rep. 186.

In *Macon & B. R. R. Co. v. Stamps*, 11 S. E. 442, a charter was granted to build a line between two points, giving the railroad the right to locate the route. After the route had been located by the railroad company, but before the building of the road, an amendment was passed to the charter providing that if the route came within five miles of Thomaston, the railroad should locate and construct its lines through that town, if the citizens of Thomaston should pay the extra cost. This was sustained as a constitutional exercise of the reserved power to alter or amend.

San Antonio Traction Co. v. Altgelt, 200 U. S. 304. This case was an application by Altgelt for mandamus against the traction company, a Texas corporation, operating a street railroad system, commanding it to issue to the plaintiff twenty half fare street car tickets upon the payment of fifty cents, same being at the rate of two and one-half cents per ticket. The mandamus was granted by the District Court and the action of the District Court was affirmed by the Court of Civil

Appeals and taken to the Supreme Court of the United States on writ of error. The claim of the appellee was based upon a statute of the State of Texas which required the traction company to sell tickets to school children, not more than seventeen years of age, in lots of twenty for a half dollar, the regular fare being five cents. The Court sustained the statute as a constitutional exercise of legislative power.

In *Interstate Ry. Co. v. Massachusetts*, 207 U. S. 79, the Supreme Court of the United States sustained a statute of the State of Massachusetts requiring street railway companies to transport children attending public schools at half price. The precise ground upon which the Supreme Court of the United States placed its decision was that the charter of the objecting company was taken subject to all the restrictions imposed by laws then in existence and this statute was in existence at that time. The opinion of the Court was written by Mr. Justice Holmes. He, however, stated that in his opinion, aside from the fact that the charter of the street railway company had been granted subsequent to the passage of the act requiring the carriage of school children for half fare, the act, in his judgment, was a valid act. Following is a brief extract from his opinion:

“Notwithstanding the foregoing considerations, I hesitatingly agree with the state court that the requirement may be justified under what commonly is called the police power. The obverse way of stating this power in the sense in which I am using the phrase would be that constitutional rights, like others, are matters of degree, and that the great constitutional provisions for the protection of property cannot be pushed to a logical extreme, but must be taken to permit the infliction of some fractional and relatively small losses, without compensation, for some at least of the purposes of whole-

some legislation. *Martin v. Dist of Columbia*, 205 U. S. 135, 139; *Camfield v. United States*, 167 U. S. 518, 524.

"If the Fourteenth Amendment is not to be a greater hamper upon the established practices of the State, in common with other governments, than I think was intended, they must be allowed a certain latitude in the minor adjustments of life, even though by their action the burdens of a part of the community are somewhat increased. The traditions and habits of centuries were not intended to be overthrown when that amendment was passed."

In *Commonwealth v. Boston & Northern Street Ry. Co.*, 212 Mass. 82, the defendant company was indicted for violation of the provisions of a statute of 1910 in refusing to sell to one Barker, a boy about fifteen years of age (who was a pupil of the Lawrence Industrial School), tickets in lots of ten for his transportation between the school house and his home, at a rate of fare not exceeding one-half the regular fare charged by the defendant for the transportation of passengers between those points. The defendant claimed that the statute requiring the sale of these tickets at this rate was unconstitutional. Speaking on this subject, the Supreme Court of Massachusetts said in part:

"The statute does not impair, in contravention of Art. I, Section 10, of the Constitution of the United States, the obligation of the contract set forth in the charter of the Lynn and Boston Ry. Co. (St. 1859, c. 202, sec. 4), to which it is said that the defendant has succeeded. That charter, when granted, was liable by general law to alteration or repeal and was, therefore, taken by consent, subject to this condition, of which it cannot now be heard to complain. *Parker v. Metropolitan R. R. Co.*, 109

Mass. 506; *Selectmen of Clinton v. Worcester Consolidated St. Ry. Co.*, 199 *Mass.* 279. This reserved power of amendment is not exceeded so long as the object of the grant is not defeated or essentially impaired, and property rights acquired upon the faith of the charter are not taken away. The charter right to fix fares is subject to amendment within this limitation. Moreover no charter contract can prevent the Legislature from a valid exercise of the police power. *Texas & N. O. v. Miller*, 221 *U. S.* 408, 414."

In *State, ex rel. Simpson v. Chicago, M. & St. Paul R. R. Co.* (*Sup. Ct. Minn.* 1912), 137 *N. W.* 2, the Supreme Court of Minnesota determined that an act of the Legislature which required the railroads of Minnesota to carry officers and enlisted men of the National Guard, traveling under orders from competent authority to perform military duty, at the rate of one cent per mile, was valid. It was claimed that the act violated Section 1, of Art. XIV, of the Federal Constitution, because the railroad company was denied the equal protection of the laws, that property rights were invaded without compensation, and that it contravened Sections 2, 7, and 13 of Article I of the Constitution on the same ground.

In *Sutton v. State* and *In Mihm v. State*, Nos. 189 and 190, *Oct. Term*, 1916, the Supreme Court of the United States sustained as constitutional a statute of this State requiring street railway companies to grant free transportation to uniformed public officers, while engaged in the performance of their public duties, or police officers of whatever grade or rank, acting as detectives, etc.

The Court said in part, by Mr. Justice Brandeis:

"Freedom to come and go upon the public streets without the obstacle or discouragement incident to the payment of fares may well have

been deemed by the Legislature essential to efficient and pervasive performance of the police duty. Increased protection may thereby enure to both the company and the general public without imposing upon the former an appreciable burden. * * *

“Furthermore, the charter of the railway company was subject to alteration in the discretion of the Legislature (Constitution New Jersey, Art. IV, s. 7, § 2, P. L. 1846, p. 17). The obligation to carry free city detectives engaged in the discharge of their duties is a burden far lighter than those imposed upon street-using corporations which has been sustained by this court as a valid exercise of the reserved power.”

It is apparent from this decision that the Supreme Court of the United States was of the opinion that railway companies could be required to carry police officers and county detectives free of charge under the reserved right of the Legislature to alter or amend the charters of such corporations.

XII.

THE SPECIAL ACT OF 1915 AND THE GENERAL ACT OF 1914 AMENDING SEC. 40 OF THE GENERAL RAILROAD LAW ARE VALID UNDER THE RULES ABOVE REFERRED TO.

Tested by the rules above referred to, it is submitted that it was competent for the Legislature to alter its contract with the Morris and Essex Railroad Company in the manner effected by the act of 1915 and by the amendment to Section 40 of the General Railroad Law.

The contract between the State and the Morris and Essex Railroad Company was that that company should be authorized to exist as a corporation, should be authorized to build a railroad, and clothed with the

State's right of eminent domain for that purpose, and to operate that railroad, receiving tolls therefor.

By section 14 of the Supplement of 1851 of the charter of the Morris and Essex Railroad Company (*P. L.* 1851, *p.* 32) it was provided that:

"The governor, the chancellor, the justices of the Supreme Court and the judges of the Court of Errors of this State, when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of this State, during their annual or other sessions, shall pass and repass over the railroad and railroads of said company in their cars free of charge."

It has above been shown that the right was reserved to alter or amend this contract. The requirement that the State officers named in the charter should be carried over the railroad free of charge was one of the conditions upon the performance of which the company was permitted to continue to operate its railroad. Without the grant of the State the corporation had no existence. Without this grant neither the individuals composing the corporation nor the association itself could have any right to build or operate a railroad or to receive tolls for the carriage of passengers and freight.

The thing granted, therefore, by the contract of the State, was the right to exist as a corporation, the right to build a railroad, and the right to receive tolls for the carriage of passengers and freight over the railroad when built. One of the conditions of this valuable grant was that certain officers of the State should be carried free of charge over the public highways which the company was authorized to build and maintain. This, then, was the contract between the corporation and the State, and this was the contract which the State reserved to itself the right to alter, amend or repeal. It was as though the State had said to the

corporation, "You may do these things, which we now authorize, upon the conditions which we have named. We reserve, however, to ourselves the right to change these conditions, to impose upon you additional burdens if we see fit, and to entirely deprive you of these franchises at our discretion." In accepting this charter the company accepted not only the conditions specifically imposed in the charter, but the reserved right as well of the Legislature to alter these conditions at will.

The provisions of these amendments could lawfully have been inserted in the original charter.

It is not contended by the respondent that the Legislature was without power to require it, by the provisions of its original charter, or any of the amendments which it has formally accepted, to carry certain officials and employees free of charge.

If the provisions of section 40 of the General Railroad act, or of section one of the Special Act of 1915, had originally been incorporated in the charter of the Morris and Essex Railroad Company, the respondent would concede their binding force. Since, therefore, these provisions could, with propriety, have been inserted in the original charter, they could be subsequently placed in the charter under the power to alter or repeal. See cases cited under subdivision VIII.

XIII.

NEITHER THE AMENDMENT TO SECTION 40 OF THE GENERAL RAILROAD LAW NOR THE SPECIAL ACT OF 1915 INVOLVE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW OR WITHOUT COMPENSATION.

Although the acts above mentioned require the railroad company to render some service without direct compensation, they are not a taking of the property of the railroad company already acquired within the meaning of *Holyoke Water Co. v. Lyman*, 15 Wall. 500, 522;

Looker v. Maynard, 189 U. S. 51, and the cases which follow this doctrine. By property in these cases is not meant the franchise of the railroad company, granted by the sovereign power of the State, subject to the right of alteration, amendment or repeal.

It is not denied that the franchises are property, but they are the property which the Legislature granted upon the condition that they might be retaken at pleasure, or that additional burdens might be imposed as conditions upon the right of the railroad company to retain such franchises. In other words, the railroad company owns its tracks, its right of way, its cars and its depots, absolutely. It cannot be deprived of them by any amendment to its charter. Property of this kind may be owned by an individual, and the right of a corporation to this property is as secure as that of an individual would be.

The right to take tolls, however, for the carriage of passengers and freight over its railroad is a right which under our laws an individual cannot exercise and which depends exclusively upon the legislative grant. This right is subject to the legislative power to alter, amend or repeal, and any alteration, amendment or repeal of such right does not constitute the taking of property within the meaning either of the Federal Constitution or of the decisions above cited.

In *Delaware, Lackawanna & Western Railroad Company v. Public Utilities Board*, 85 N. J. L. 28, at page 36, Mr. Justice Garrison used the following language:

"For the right of a railroad company to receive pay for the transportation of passengers is its property, as much as gas, or water, or electricity is the property of corporations authorized to deal in those commodities."

It is submitted that this is not an accurate statement of the law. The property right which an individual or a corporation has in a commodity in which it deals is an absolute property right; the right of a railroad company to receive pay for the transportation of pas-

sengers, while a species of property, is a property right which rests absolutely upon the continuance of the franchise to take tolls, granted by the State. The right of the railroad company to take tolls in case the charter of the company is subject to alteration, amendment or repeal differs from the right of property in commodities which the railroad company may own, in much the same way that the right of occupancy of a tenant at will differs from the right of occupancy of the absolute owner of the fee.

When the charter of a railroad company is subject to alteration, amendment or repeal, the railroad company exercises the right to take tolls merely during the pleasure of the Legislature. If its right to receive pay for transportation were its property as much as commodities which it might own are its property, the line of cases which hold that a railroad corporation may be deprived, not only of its right to take tolls, but of all its other franchises, would have been differently decided. See *Greenwood v. Freight Company*, 105 U. S. 13-17.

The railroad company is not obliged to run trains or to continue to exercise any of its franchises. It may at any time surrender such franchise and distribute its property among those having an interest therein. In this way it can avoid the performance of any duty imposed upon it by amendment of its charter. If, however, it continues to run trains, it does not follow that it is deprived of any property or of the profitable use thereof by the requirements of these acts.

There is nothing in the record to show that compliance with the act of 1914 or the act of 1915 will seriously impair the revenues of the prosecutor, nor to show that such compliance will prevent it from earning a fair return upon the value of its property devoted to public use. In this situation the prosecutor is not in a position to contend that the act of 1914 or the act of 1915 either deprives it of property without due process of law or without compensation. *San Antonio*

Traction Co. v. Altgelt, supra; Interstate Railway Company v. Massachusetts, supra.

It cannot be said that a corporation is deprived of property without due process of law in the case of a repeal of its franchise, or in the imposition upon it of conditions for the further retention of such franchise where the power of repeal or alteration is reserved. In such case the State merely retakes in whole or in part what it has given; its act is the act of a party to a contract exercising the right for which it has contracted.

XIV.

THE BURDEN IMPOSED UPON THE RAILROAD COMPANY IS AN INSIGNIFICANT ONE.

The Court can take notice of the fact that the number of State officers and employees named in the amendments is utterly insignificant as compared with the large number of persons daily carried by this great railroad corporation, and that the carriage of these persons free of charge could not possibly substantially interfere with the revenues of the company. The extent of the burden imposed is a matter which may well be considered.

In *State, ex rel. Simpson v. Chicago, M. & St. P. Ry. Co.* (*Sup. Ct. Minn.* 1912), 137 *N. W.* 2, the Supreme Court of Minnesota said:

"But in the case at bar we may take knowledge of the fact that the military force of the State is limited, and the reduction in the earnings of the railways by being compelled to transport this force at the rate provided, must be considered so small as not to be appreciable."

See, also, *Interstate Ry. Co. v. Massachusetts*, 207 *U. S.* 79.

In *Sutton v. State*, and *Mihm v. State* (the most recent opinions of the United States Supreme Court on this subject) the Supreme Court said:

“The obligation to carry free city detectives engaged in the discharge of their duties is a burden far lighter than others imposed upon street-using corporations which have been sustained by this Court as a valid exercise of the reserved power.”

See, also, *Lawton v. Steele*, 152 U. S. 133.

XV.

THIS AMENDMENT, THEREFORE, IS WITHIN THE RULES ABOVE SET FORTH.

(a) *It is an exercise of control only over the rights, privileges and immunities of the corporation, derived by its charter directly from the State.*

(b) *It does not provide for the taking of the property of the corporation previously acquired, or defeat or substantially impair the object of the grant.*

(c) *It is a provision which could rightfully have been inserted in the original charter.*

(d) *Although it imposes an additional burden upon the corporation, it is a burden much less, in character and extent, than those imposed by statutes which have been sustained by the Supreme Court of the United States.*

(e) *It is merely a regulation of the right granted by the State in a manner not subversive of the purpose of the grant.*

XVI.

THE AMENDMENTS ARE NOT WITHIN THE DECISION IN *LAKESHORE, &C., R. R. Co. v. SMITH*.

At the argument before Judge Adams in the Supreme Court the respondent cited the case of *Lakeshore, &c., R. R. Co. v. Smith*, 173 U. S. 684. It is

submitted that this case is not in point because of the reason that it was decided upon the ground that the statute of Michigan there under consideration, which provided for the sale of thousand-mile mileage books for \$20, that such mileage books should be valid for two years from the date of sale, should be issued in the names of the purchaser, his wife and children, and should be accepted when presented for transportation by any person to whom they were issued, provided for an improper discrimination between those who were able and willing to purchase mileage books and those who were required to pay the higher rate of fare.

It was pointed out in *State, ex rel. Simpson v. Chicago, M. & St. P. Ry. Co.* (*Sup. Ct. Minn.* 1912), 137 *N. W.* 2, that this doctrine does not apply to a discrimination in favor of government, and reference was there made to the case of *Willcox v. Consolidated Gas Co.*, 212 *U. S.* 19, in the following language:

“And as to the chief contention of illegal discrimination, the Supreme Court in *Willcox v. Consolidated Gas Company*, 212 *U. S.* 19, *supra*, held, although in brief of counsel cited to the Smith case, *supra* (the opinion in both cases being by Justice Peckham), that a discrimination in favor of a municipality is not illegal.

XVII.

D., L. & W. R. R. Co. v. PUBLIC UTILITIES BOARD
CONSIDERED.

In *D., L. & W. R. R. Co. v. Public Utilities Board*, 85 *N. J. L.* 28, page 32, the Supreme Court said:

“This suggestion of a limit to the exercise of such reserved right implies and is intended to imply that such right is neither so narrow nor so broad as counsel have respectively intended, *i. e.*, it is not so narrow as to preclude substantial

regulation of the right previously granted, if required for the public good, and that it is not so broad as to justify the arbitrary imposition for alien purposes of provisions not regulative in character and for the public good that conflict with or substantially impair such right. * * *

“In cases of repeal or suspension of charters, the public good is the sole criterion, but in case of their alteration, with which alone we have to deal, an added requirement is that such alteration shall bear such relation to the original charter as to be in effect regulative of the rights and duties thereby conferred or imposed. Broadly speaking, therefore, the reserved right may be said to be the continuing right of the Legislature to regulate in the interest of the public the corporations created under its laws, and the essential factors of such reserved right, drawn from the nature of the parties thereto are, first, its regulative character which is derived from the already existing grant, and second, its promotion of the public welfare which is derived from the presumed purpose of all legislative action.”

It is respectfully submitted that the amendments in question are a “substantial regulation of the right previously granted,” and that they do not conflict with or substantially impair such right, that they do “bear such relation to the original charter as to be in effect regulative of the rights and duties thereby conferred or imposed.”

The right conferred by the charter of the Morris and Essex Railroad Company was the right to be a railroad, and to receive tolls for the carriage of passengers and freight. One of the duties imposed by the charter and its supplements was the carriage of certain officials therein named free of charge. The franchise to collect

tolls, therefore, applied only to those not mentioned in the charter as entitled to free transportation.

The amendments in question; therefore, regulate the rights and duties conferred and imposed by the charter and its supplements, by imposing upon the railroad company an additional duty, a greater duty, but, nevertheless, one of substantially the same character as that originally imposed, and by varying the franchise originally granted by depriving the railroad company of the right to receive tolls from the officials and employees mentioned in the amendment. In view of the fact that these amendments are mere variations of matters covered by the original charter and its supplements, they are valid not only under the rules announced by the Supreme Court of the United States in the *Sinking-Fund Cases*, 99 U. S. 700, 720, *supra*; *Fairhaven v. New Haven*, 203 U. S. 379, *supra*; *Spring Valley Water Works v. Schottler*, 110 U. S. 353, *supra*; *Erie Railroad v. Williams*, 233 U. S. 685, *supra*, but also under the test prescribed by Mr. Justice Garrison in *Delaware, Lackawanna and Western Railroad Company v. Public Utilities Board*, *supra*.

It is true that Mr. Justice Garrison included in this test the condition that such regulations might be made "if required for the public good," that it must appear that the amendment would tend toward the promotion of the public welfare, which, as he said, "is derived from the presumed purpose of all legislative action."

It is assumed that Justice Garrison did not intend by this language to state that it was the duty of the Court to pass upon the question as to whether or not the public welfare would be promoted by a given amendment. The Legislature, and not the Court, is the guardian of the public welfare. Whether or not the change made in the charter of a corporation by an amendment is for the public good, or in the interest of the public, is purely a legislative question.

These amendments are attacked upon the ground that

they deprive the railroad company of its property without due process of law. Certainly the Court could not sustain an amendment which deprived a corporation of its property without due process of law, even though they might find that the amendment if effective would promote the public welfare. The converse of this is true—that, if the amendment does not deprive the company of its property without due process of law, it cannot be declared invalid by this Court merely because the Court may differ with the Legislature as to the effect of the amendment in question upon the public welfare.

If the Court were considering the question as to whether or not the amendments could be sustained as an exercise of any of the broad powers of the Legislature, comprehended under the general term of "police power," the effect of the amendment upon the public welfare might, perhaps, be considered for the purpose of determining whether or not it was an exercise of any of such powers.

In the case at bar, the attempt is not made to sustain the amendments as an exercise of the police power, but as an exercise of the right of the State to vary some of the terms of the contract made by it with the corporation, and made expressly subject to the right of the Legislature to so vary any of the terms of such contract.

With the policy of an amendment of this kind, or with the question as to the effect of such an amendment upon the public welfare, it is submitted, the Courts have no concern; that is a matter solely for the determination of the Legislature.

See quotation from opinion of Justice Harlan in *Hamilton Gas and Light Co. v. Hamilton City*, 146 U. S. 258; from opinion of U. S. Supreme Court in *Greenwood v. Freight Co.*, 105 U. S. 13-17.

It is suggested, in the opinion of *D., L. & W. Railroad Company v. Public Utilities Board*, *supra*, that the amendments to section 40 of the General Railroad Law, including the amendment of 1907, and those

passed subsequent to that year, require, by their terms, the railroads to carry the persons therein named free of charge, whether traveling on official business, on private business or for pleasure. And, while it is conceded that there may be some force in the reasoning by which this conclusion was reached, it is submitted that neither section 40 of the General Railroad Law, as amended in 1914, nor the amendment of 1915 to the supplement of 1851 to the charter of the Morris and Essex Railroad Company must necessarily be construed in that way.

If the Court should be of the opinion that the Legislature have power to require the railroad company to carry public officials free of charge, while traveling in the transaction of their official business, and *presumably at public expense*, and have not power to require the railroads to carry the persons who happen to be public officials free of charge while traveling for private business or for pleasure, it is submitted that it is the duty of the Court to construe this section so as sustain its validity if the language will bear such construction. See *Road Com. v. Harrington Tp.*, 55 N. J. L. 327; *In re Application for Drainage*, 35 N. J. L. 497; *Dixon v. Russell*, 78 N. J. L. 296, reversed on another point 79 N. J. L. 490.

It will be noted that the statute requires the railroad to carry the Governor, the Chancellor, the Justices of the Supreme Court, &c., &c., free of charge. The statute refers to the officers, not the individuals, who may, for the time being, be incumbents of such offices. It is insisted that by reference to these offices the Legislature must have meant that such persons when on duty as such officers should be carried free of charge; that the statute necessarily has no reference whatever to the private journeys of the individuals who happen to hold the offices or positions mentioned. When persons who happen to hold public office or employment are traveling on private business or for

pleasure they are not traveling as public officers or employees, but as individuals, and, of course, they do not then carry with them their official character. The purpose of the Legislature was to deal with a matter of public concern, viz., the carriage of public officers and employees as such officers or employees, and the words "while traveling on official business," which appear in the former statute, were therefore redundant.

XVIII.

THE PROVISION FOR A PENALTY IN THE SPECIAL ACT OF 1915 IS SEVERABLE.

If it be contended that section 2 of the special act of 1915 is unconstitutional because it attempts to impose a penalty upon the Morris and Essex Railroad Company, or its lessees, for refusing to perform a duty which, by general law, is obligatory upon other railroad companies of this State, and which duty they may disregard without incurring such penalty, it is submitted that the penal provisions of this act are severable from the body of the act, and if severed the obligation still remains as a part of the charter of the Morris and Essex Railroad Company, as amended, to carry the officers and employees therein named free of charge.

Fagan v. Payne, 75 N. J. L. 851; *Roder v. Twp. of Union*, 10 Vr. 509; *Evernham v. Hulit*, 16 Vr. 53; *Golden Star Fraternity v. Martin*, 30 Vr. 207; *Board of Health v. Schwarz Bros. Co.*, 84 N. J. L. 735. See, also, *Reagan v. Farmers Loan and Trust Co.*, 154 U. S. 362, 394, 396; *Consolidated Gas Co. v. Mayer*, 146 Fed. Rep. 155; *Wilcox v. Consolidated Gas Co.*, 212 U. S., at p. 53.

In the case last above cited it was held that a penalty

provision contained in a rate-fixing statute was severable.

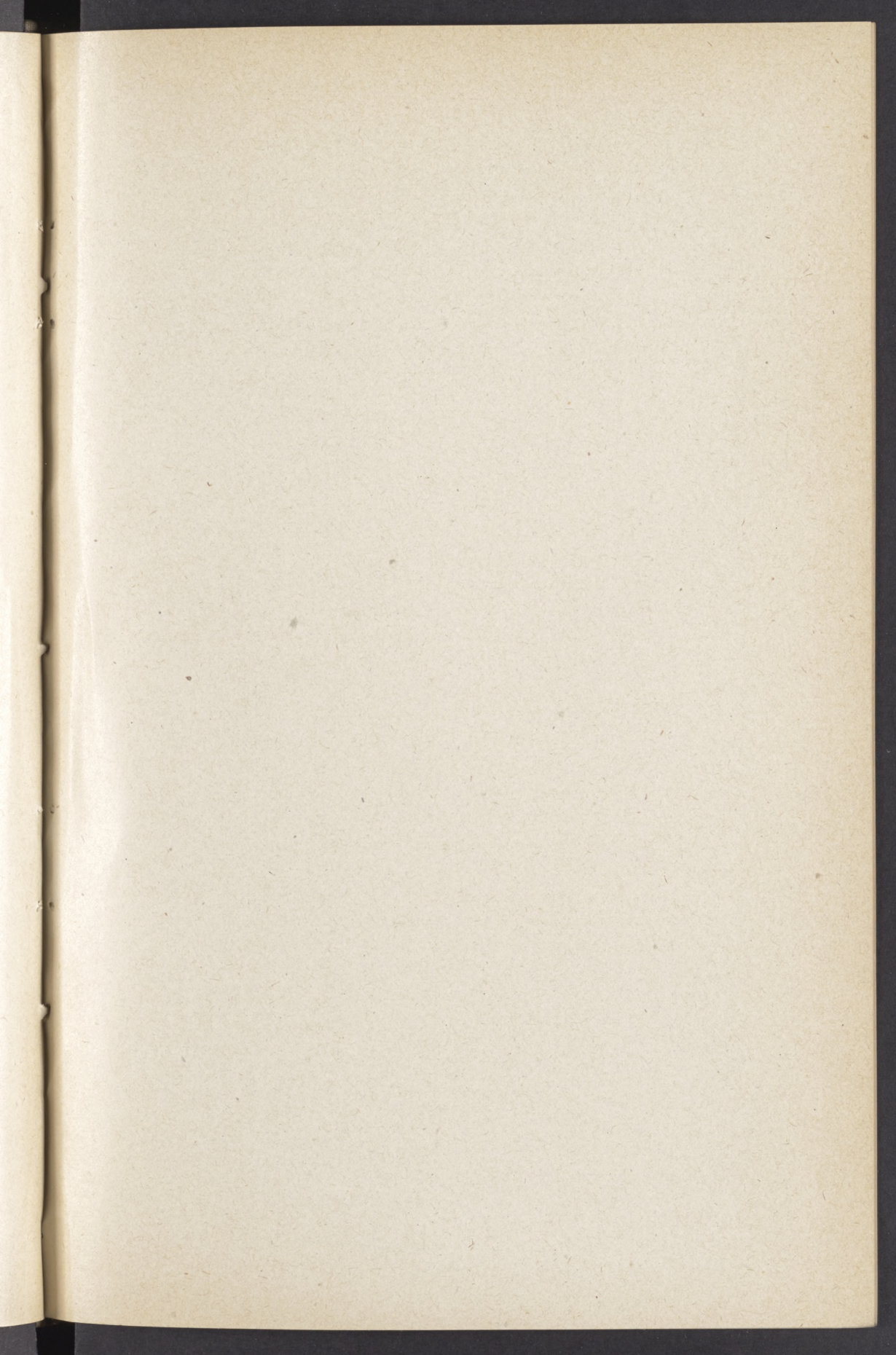
An adjudication that the provision for a penalty in the act of 1915 is invalid would, of course, result in the affirmance of the judgment rendered by the Supreme Court in the case in which the State of New Jersey is plaintiff. The charter as amended would still require the Morris and Essex R. R. Co. to carry the officials therein named free of charge, and the plaintiff in the Napier case would be entitled to prevail.

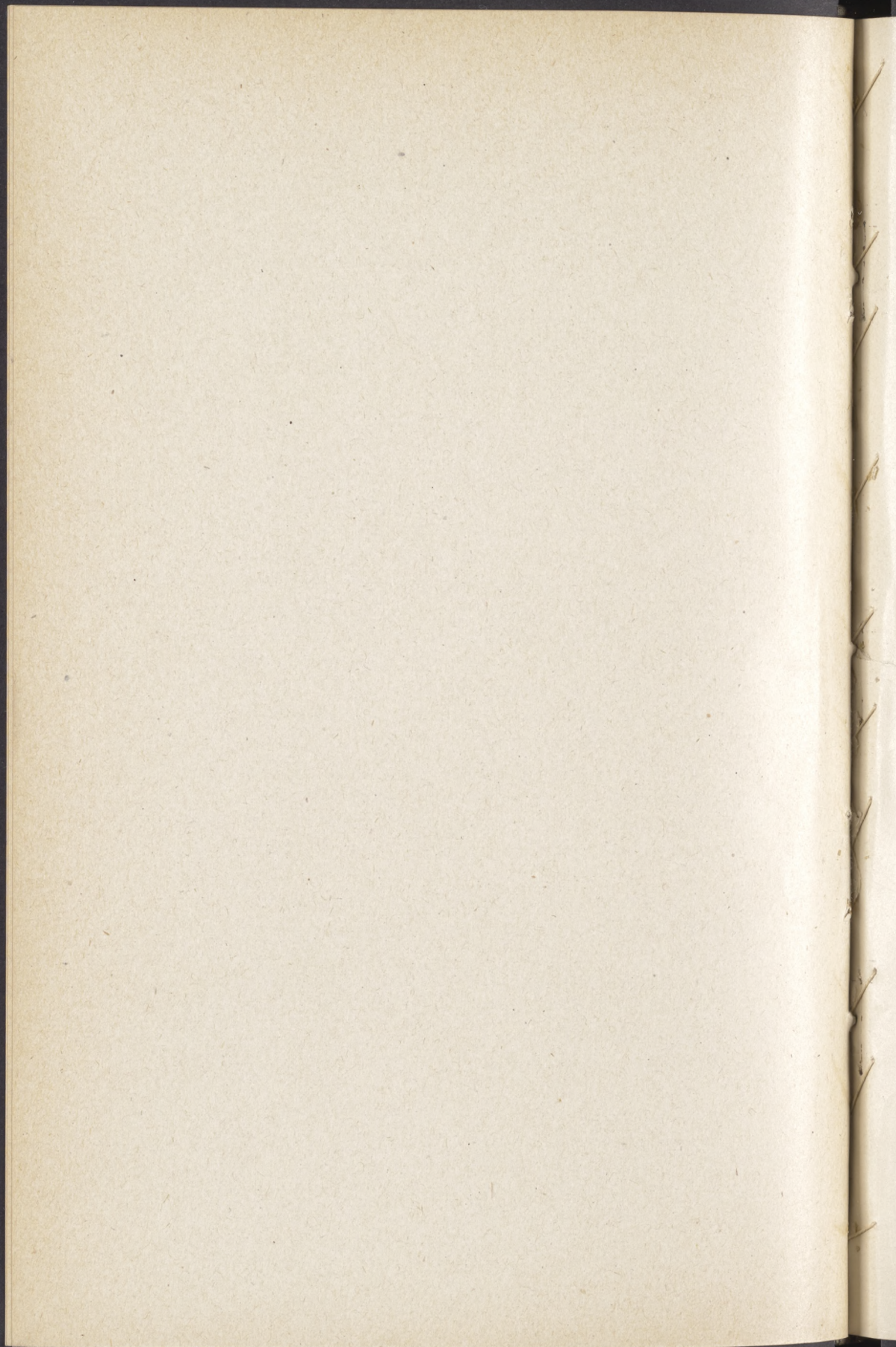
CONCLUSION.

It is respectfully submitted that the amendments in question are valid, so far as they apply to the Morris and Essex Railroad Company, as an exercise of the reserved right of the Legislature to alter, amend or repeal the charter of said company; that this reserved right must of necessity authorize the Legislature to deal with its contract with the corporation subject to such reservation in a way in which it would not be lawful to deal with the charters of corporations not subject to such reservation, otherwise the reservation would be a nullity. If the reservation of such right does not permit the Legislature to deal with the very thing granted by its contract, and to amend the conditions originally annexed to this grant, then it is difficult to see what purpose such reservation can accomplish.

It is respectfully submitted that the judgments under consideration should be reversed and a new trial granted.

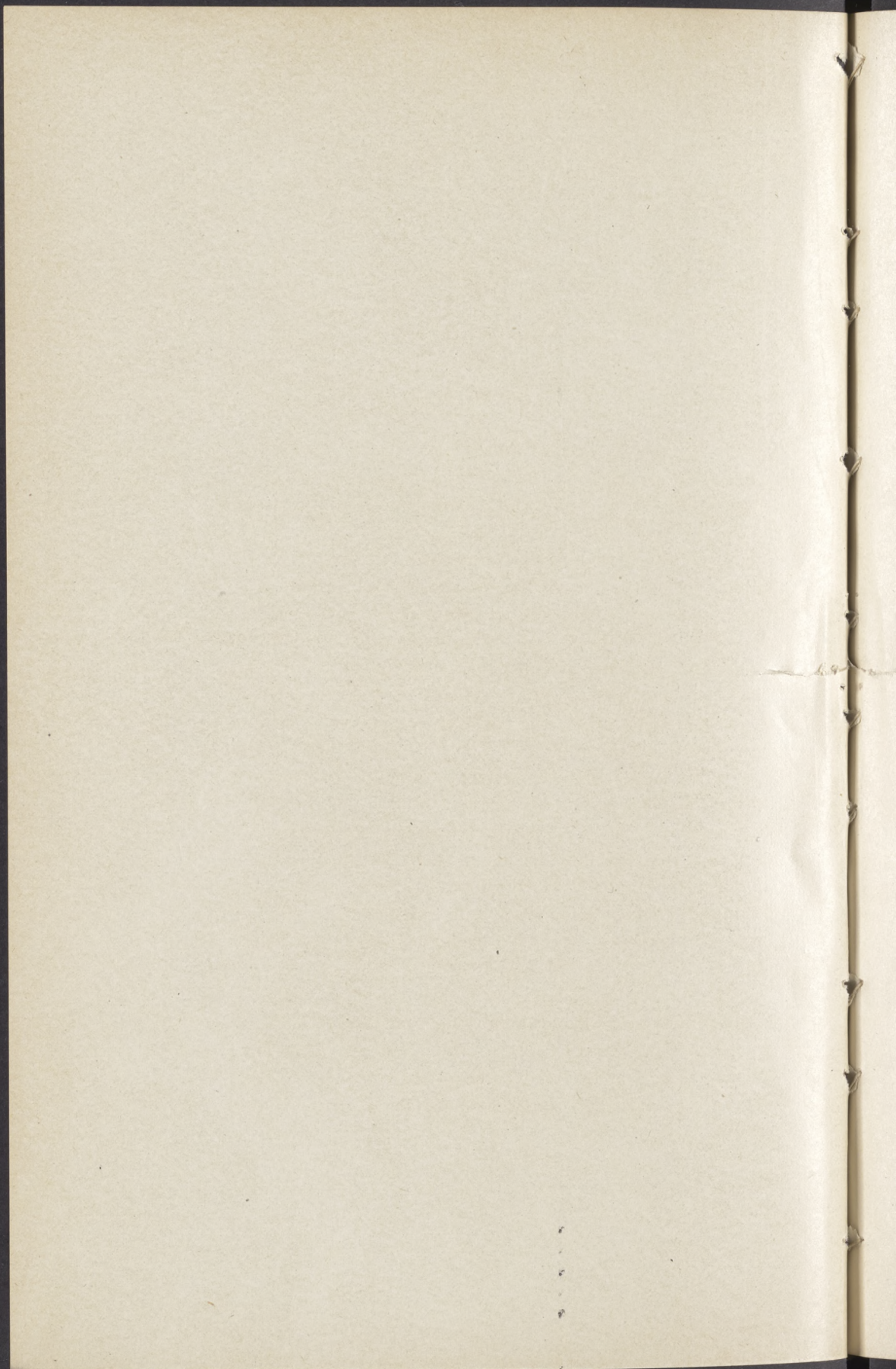
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NEW JERSEY SUPREME COURT, ESSEX COUNTY.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a body corporate,

Respondent.

} at Law.
Action

10

NOTICE OF APPEAL.

To the Delaware, Lackawanna and Western Railroad Company, a body corporate, the above-named respondent, or to Walter J. Larrabee, Esquire, its attorney:

Take notice that the State of New Jersey hereby appeals to the Court of Errors and Appeals of New Jersey from the whole of the judgment entered in the above-entitled matter in the Supreme Court, Essex 20 county, and that the grounds of appeal are as follows:

1. That the said Supreme Court erroneously dismissed the complaint of the plaintiff;
2. That the said Supreme Court refused to find as a matter of law that the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one." 30 approved April 23, 1915, is a valid and constitutional act;
3. That the said Supreme Court erroneously declined to find as a matter of law that the refusal of the defendant company to carry Ernest Napier, a member of the Board of Fish and Game Commissioners, free of charge, under the circumstances set forth in the Agreed State of Facts filed in this cause, was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act en-

titled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five, which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23, 1915;

4. That the said Supreme Court erroneously refused to find that the respondent, as lessee of the said The Morris and Essex Railroad Company, is liable for the penalty imposed by law for the ejection of the said Ernest Napier;

10 5. That the said Supreme Court erroneously refused to find as a matter of law that the respondent has become liable to the plaintiff in the sum of \$1,000 penalty by reason of the ejection of the said Ernest Napier from the said train, as set forth in the Complaint and the Agreed State of Facts filed in this cause, and that the said plaintiff is entitled to recover against the defendant the said sum of \$1,000, one-half of which said sum shall be paid to the plaintiff, and the other half to the said Ernest Napier;

20 6. That the said Supreme Court found as a matter of law that the special act, Chapter 402 of the Session Laws of 1915, so far as it purports to require the Morris and Essex Railroad Company, and the respondent, its lessee, to permit a member of the Board of Fish and Game Commissioners to pass and repass free of charge over the railroad of the said the Morris and Essex Railroad Company, is unconstitutional and void;

30 7. That the said Supreme Court erroneously found as a matter of law that the ejection of the said Ernest Napier, from the train of the defendant company, on May 22, 1916, was lawful.

JOHN W. WESCOTT,
Attorney-General of New Jersey,
Attorney of Plaintiff.

Service of copy of within notice of appeal admitted this 3d day of February, 1917.

W. J. LARRABEE,
Attorney of Defendant.

SUMMONS.

The State of New Jersey to the Delaware, Lackawanna
and Western Railroad
[SEAL OF SUPREME COURT.] Company, a body cor-
porate:

You are summoned to answer the annexed complaint
of the State of New Jersey in an action at law in the 10
Supreme Court, and take notice that unless you file your
answer to said complaint within twenty days after serv-
ice upon you of this writ and the annexed complaint
the plaintiff may proceed in the suit and judgment may
be entered against you.

Witness, William S. Gummere, Esquire, Chief Justice
of the Supreme Court, at Trenton, this fourteenth day
of July, A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,

Clerk. 20

JOHN W. WESCOTT,
Attorney-General,
Attorney.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

STATE OF NEW JERSEY,

*Plaintiff,**vs.*THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, A BODY CORPORATE,

10

Defendant.

COMPLAINT.

The plaintiff, the State of New Jersey, by John W. Wescott, Attorney-General of the State of New Jersey, says:

1. That the defendant is a body corporate existing under and by virtue of the laws of the State of Pennsylvania.
- 20 2. That the Morris and Essex Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th day of January, 1835.
3. That on the 10th day of December, 1868, the defendant leased the railroad of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg, in the State of
- 30 New Jersey, and all branch and other railroads owned, leased, rented or otherwise controlled by the said Morris and Essex Railroad Company, a body corporate, as aforesaid, together with all the lands, real estate, water fronts, water rights, superstructures, piers, docks, wharves, landings, ferries, ferry rights, rights of way, railroads, railways, tracks, bridges, viaducts, culverts, fences, depots, stations, station houses, water, water pipes, water stations and tanks, turntables, shops, build-

ings, structures, tools, machinery, fixtures, locomotive and other engines, cross rolling stock and equipment, and also all other property and rights of every kind and character, real, personal and mixed, whatsoever and wheresoever situate belonging to the said Morris and Essex Railroad Company, a body corporate, as aforesaid, or to which the said Morris and Essex Railroad Company, a body corporate, as aforesaid, were at said time wholly or in part, in any manner, entitled, and also all and singular the franchises, immunities, 10 rights, powers and privileges which they had then or might thereafter be granted to or conferred upon, or which might be used or exercised by the said Morris and Essex Railroad Company, a body corporate, as aforesaid, from the 31st day of December, 1868, for and during the full term of the continuance of the charter of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and during the full term of the continuance of said charter by virtue of any and all renewals thereof that may, at any time 20 whatever, be granted or made as fully and beneficially to all intents and purposes as the said Morris and Essex Railroad Company, a body corporate, as aforesaid, might or could have, hold, use, enjoy, possess or exercise the same had such indenture of lease not been made subject to the provisions contained in said lease, which said lease was approved by act of the Legislature approved February 9th, 1869.

4. That since the said 31st day of December the defendant company has operated its railroad over the railroad and right of way of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and has operated and, on the 22d day of May, did operate railroad trains over said right of way between the City of East Orange, in the County of Essex, and the Town of Hackettstown, in the County of Warren, as lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid. 30

5. That Ernest Napier, of the City of East Orange, County of Essex and State of New Jersey, is and was on the 22d day of May last a member of the Board of Fish and Game Commissioners of the State of New Jersey, and was on said day the President of said Board.

6. That on said 22d day of May, 1915, the said Ernest Napier boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, in the County of Essex and State
10 of New Jersey, and known as the "East Orange Station," said train being then and there operated over the said right of way of the Morris and Essex Railroad Company, a body corporate, as aforesaid, by the defendant company, as lessee of the said Morris and Essex Railroad Company, as aforesaid, and being scheduled to run over said right of way to said Town of Hackettstown, and to stop at said Town of Hackettstown for the discharge of passengers, for the purpose of traveling on said train from said East Orange Station to the Town
20 of Hackettstown, in the County of Warren, the said Ernest Napier undertaking said journey in the performance of his official duties as member and President of the said Board of Fish and Game Commissioners for the purpose of inspecting the fish hatchery operated by said Board of Fish and Game Commissioners at the Town of Hackettstown.

7. At the time and place last mentioned, the said Ernest Napier tendered to the conductor in charge of the train last above mentioned a certificate, in card
30 form, under the seal of the State of New Jersey, bearing the title of the said office of the said Ernest Napier, the date of the issuance of said certificate to the said Ernest Napier, and the date of the expiration of the said Ernest Napier's term of office, showing that the said Ernest Napier was at said time a member of the Board of Fish and Game Commissioners of the State of New Jersey, and signed by the Secretary of State of said State, and endorsed by the said Ernest Napier

on the back thereof, said certificate being tendered in accordance with an act entitled "A supplement to an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," which said supplement was approved April 26th, 1915.

8. That the said Delaware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, acting through its agent, 10
the conductor of the train above mentioned, refused to carry the said Ernest Napier from the said East Orange Station to the Town of Hackettstown, free of charge, over the railroad of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and thereupon ejected the said Ernest Napier from the said train.

9. The refusal of the Delaware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee, as aforesaid, to carry the said Ernest Napier, member of the Board of Fish and Game Com- 20
missioners of the State of New Jersey, as aforesaid, over the line of the Morris and Essex Railroad Company, as aforesaid, under the circumstances above mentioned was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, which 30
said section one provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned the members of the Board of Fish and Game Commissioners of this State, shall, during their respective terms of office and employment, pass and repass, free of charge, over the railroad of the said Morris and Essex Railroad Company. That by reason of said violation the said Dela-

ware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, has become subject to a penalty of \$1,000, one-half of which said sum shall be paid to the State of New Jersey and the remaining one-half to the said Ernest Napier under the provisions of section two of the act last above mentioned, which said section two provides that any violation by the Morris and Essex
 10 Railroad Company, its successors, lessee or lessees, of the provisions of the act last above referred to, shall subject said company, its successors, lessee or lessees, for each such violation, to a penalty of \$1,000, to be recovered in an action of debt in the name of the State of New Jersey, by the Attorney-General, one-half of said sum to be paid to the State and the remaining one-half to the person or official thereinabove designated whom the said Railroad Company, its successors, lessee or lessees, shall refuse to carry.

20 10. Plaintiff demands one penalty of \$1,000.

JOHN W. WESCOTT,
 Attorney-General,
Attorney of Plaintiff.

Filed July 19th, 1915.

WM. C. GEBHARDT,
Clerk.

I hereby deputize Richard Donovan to serve the
 30 within Writ.

Witness my hand and seal this 16th day of July,
 1915.

EUGENE F. KINKEAD,
Sheriff.

By JAS. H. CLARK,
Under-Sheriff.

John W. Wescott, Attorney-General of New Jersey,
 State House, Trenton, N. J.
 Sheriff's fees, \$2.78.

Served within summons and complaint July 16th, 1915, on the defendant, the Delaware, Lackawanna and Western Railroad Company, a corporation, by delivering a true copy thereof to W. G. Cave, Agent of the said defendant company.

EUGENE F. KINKEAD,
Sheriff.
 By RICHARD DONOVAN,
 S. D. S.

NEW JERSEY SUPREME COURT, ESSEX COUNTY. 01

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
 AND WESTERN RAILROAD COM-
 PANY, A BODY CORPORATE,
Defendant.

20

AMENDED COMPLAINT.

The plaintiff, the State of New Jersey, by John W. Wescott, Attorney-General of the State of New Jersey, says:

1. That the defendant is a body corporate existing under and by virtue of the laws of the State of Pennsylvania.

2. That the Morris and Essex Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th of January, 1835. 30

3. That on the 10th day of December, 1868, the defendant leased the railroad of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, extending from the Hudson River at Hoboken to

the Delaware River at Phillipsburg, in the State of New Jersey, and all branch and other railroads owned, leased, rented or otherwise controlled by the said Morris and Essex Railroad Company, a body corporate, as aforesaid, together with all the lands, real estate, water fronts, water rights, superstructures, piers, docks, wharves, landings, ferries, ferry rights, rights of way, railroads, railways, tracks, bridges, viaducts, culverts, fences, depots, stations, station houses, water, water
10 pipes, water stations and tanks, turntables, shops, buildings, structures, tools, machinery, fixtures, locomotive and other engines, cross rolling stock and equipment, and also all other property and rights of every kind and character, real, personal and mixed, whatsoever and wheresoever situate belonging to the said Morris and Essex Railroad Company, a body corporate, as aforesaid, or to which the said Morris and Essex Railroad Company, a body corporate, as aforesaid, were at said time wholly or in part, in any manner,
20 entitled, and also all and singular the franchises, immunities, rights, powers and privileges which they had then or might thereafter be granted to or conferred upon, or which might be used or exercised by the said Morris and Essex Railroad Company, a body corporate, as aforesaid, from the 31st day of December, 1868, for and during the full term of the continuance of the charter of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and during the full term of the continuance of said charter by virtue
30 of any and all renewals thereof that may, at any time whatever, be granted or made as fully and beneficially to all intents and purposes as the said Morris and Essex Railroad Company, a body corporate, as aforesaid, might or could have, hold, use, enjoy, possess or exercise the same had such indenture of lease not been made subject to the provisions contained in said lease, which said lease was approved by act of the Legislature approved February 9th, 1869.

4. That since the said 31st day of December, the defendant company has operated its railroad over the railroad and right of way of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and has operated and, on the 22d day of May, did operate railroad trains over said right of way between the City of East Orange, in the County of Sussex, and the Town of Hackettstown, in the County of Warren, as lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid. 10

5. That Ernest Napier, of the City of East Orange, County of Essex, and State of New Jersey, is and was on the 22d day of May last a member of the Board of Fish and Game Commissioners of the State of New Jersey, and was on said day the President of said Board.

6. That on said 22d day of May, 1915, the said Ernest Napier boarded train No. 403 of the defendant company at the station of said company, located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the "East Orange Station," said train being then and there operated over the said right of way of the Morris and Essex Railroad Company, a body corporate, as aforesaid, by the defendant company as lessee of the said Morris and Essex Railroad Company, as aforesaid, and being scheduled to run over said right of way to said Town of Hackettstown, and to stop at said Town of Hackettstown for the discharge of passengers, for the purpose of traveling on said train from said East Orange Station to the Town of Hackettstown, in the County of Warren, the said Ernest Napier undertaking said journey in the performance of his official duties as member and President of the said Board of Fish and Game Commissioners, for the purpose of inspecting the fish hatchery operated by said Board of Fish and Game Commissioners at the Town of Hackettstown. 20 30

7. At the time and place last mentioned, the said Ernest Napier tendered to the conductor in charge of

the train last above mentioned, a certificate, in card form, under the seal of the State of New Jersey, bearing the title of the said office of the said Ernest Napier, the date of the issuance of said certificate to the said Ernest Napier, and the date of the expiration of the said Ernest Napier's term of office, showing that the said Ernest Napier was at said time a member of the Board of Fish and Game Commissioners of the State of New Jersey, and signed by the Secretary of State
10 of said State, and endorsed by the said Ernest Napier on the back thereof, said certificate being tendered in accordance with act entitled "An act to amend an act entitled 'An act concerning railroads' (Revision of 1903), approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914.

8. That the said Delaware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, acting through its agent,
20 the conductor of the train above mentioned, refused to carry the said Ernest Napier from the said East Orange Station to the Town of Hackettstown, free of charge, over the railroad of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, and, thereupon, ejected the said Ernest Napier from the said train.

9. The refusal of the Delaware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee, as aforesaid, to carry the said Ernest
30 Napier, member of the Board of Fish and Game Commissioners of the State of New Jersey, as aforesaid, over the line of the Morris and Essex Railroad Company, as aforesaid, under the circumstances above mentioned was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which

supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, which said section one provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned the members of the Board of Fish and Game Commissioners of this State, shall, during their respective terms of office and employment, pass and repass, free of charge, over the railroad of the said Morris and Essex Railroad Company. That by reason of said violation, the said Delaware, Lackawanna and Western Railroad Company, a body corporate, as aforesaid, lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, has become subject to a penalty of \$1,000, one-half of which said sum shall be paid to the State of New Jersey, and the remaining one-half to the said Ernest Napier under the provisions of section two of the act last above mentioned, which said section two provides that any violation by the Morris and Essex Railroad Company, its successors, lessee or lessees, of the provisions of the act last above referred to, shall subject said company, its successors, lessee or lessees, for each such violation, to a penalty of \$1,000, to be recovered in an action of debt, in the name of the State of New Jersey, by the Attorney-General, one-half of said sum to be paid to the State, and the remaining one-half to the person or official therein above designated whom the said Railroad Company, its successors, lessee or lessees, shall refuse to carry.

10. Plaintiff demands one penalty of \$1,000.

JOHN W. WESCOTT,
 Attorney-General,
 Attorney of Plaintiff.

Consent is hereby given to the filing of the within Amended Complaint.

W. J. LARRABEE,
 Attorney of Defendant.

Service of the within Amended Complaint is hereby acknowledged this 16th day of July, A. D. nineteen hundred and fifteen.

W. J. LARRABEE,
Attorney of Defendant.

Filed August 23d, 1915.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

10	STATE OF NEW JERSEY,	Plaintiff,
	<i>vs.</i>	
	THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, ETC.,	Defendant.

ANSWER TO AMENDED COMPLAINT.

20

(Filed August 3, 1915.)

The Delaware, Lackawanna and Western Railroad Company, defendant herein, answering the plaintiff's amended complaint, says:

1. It admits the allegations contained in paragraph "1" of said complaint.
2. It admits the allegations of paragraph "2" of said complaint.
3. It admits the allegations of paragraph "3" of said complaint.
- 30 4. It admits the allegations of paragraph "4" of said complaint.
5. It admits the allegations of paragraph "5" of said complaint.

6. It admits so much of paragraph "6" of said complaint as alleges "that on said 22d day of May, 1915, the said Ernest Napier boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the 'East Orange Station,' said train being then and there operated over the said right of way of the Morris and Essex Railroad Company, a body corporate, as aforesaid, by the defendant company as lessee of the said 10 Morris and Essex Railroad Company, as aforesaid, and being scheduled to run over said right of way to said Town of Hackettstown, and to stop at said Town of Hackettstown for the discharge of passengers, for the purpose of traveling on said train from said East Orange station to the Town of Hackettstown, in the County of Warren." It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of said paragraph "6," and, in so far as they shall be deemed 20 material, it demands due proof thereof.

7. It admits the allegations of paragraph "7" of said complaint.

Further answering said paragraph "7," defendant says and alleges that said act approved April 15th, 1914, entitled "An act to amend an act entitled 'An act concerning railroads' (Revision of 1903), approved April 14th, 1914, one thousand nine hundred and three," in so far as it purports to entitle the plaintiff herein as a member of the Board of Fish and Game Commis- 30 sioners of the State of New Jersey or otherwise, upon presentation of said certificate to the conductor or person in charge of defendant's train or trains, to pass and repass without the payment of fare over the railroad of the Morris and Essex Railroad Company, is void and of no force or effect, because repugnant to and in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it

deprives said Morris and Essex Railroad Company and the defendant, its lessee, of property without due process of law, and denies to them the equal protection of the laws, and repugnant to and in conflict with Article I, Paragraph 16, of the Constitution of the State of New Jersey, in that it takes the private property of said Morris and Essex Railroad Company and of the defendant, its lessee, for public use without just compensation, and repugnant to and in conflict with
10 divers other provisions of the Constitutions of the United States and of the State of New Jersey.

8. It admits the allegations of paragraph "8" of said complaint.

9. Answering paragraph "9" of said complaint defendant denies that its refusal to carry the said Ernest Napier, member of the Board of Fish and Game Commissioners of the State of New Jersey, under the circumstances mentioned in said complaint, was in violation of the act referred to in said paragraph "9" or
20 in violation of any other act of the State of New Jersey. It admits so much of said paragraph as alleges that "said section one provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned the members of the Board of Fish and Game Commissioners of this State, shall, during their respective terms of office and employment, pass and repass, free of charge, over the railroad of said Morris and Essex Railroad Company." It denies that it has become subject to a penalty of
30 \$1,000, as alleged in said paragraph, or to any penalty whatsoever because of its refusal to transport the plaintiff free of charge under the circumstances set forth in said complaint.

Further answering said paragraph "9" defendant says and alleges that said act approved April 23d, 1915, entitled "An act to amend an act entitled 'A further supplement to the act entitled 'An act to incorporate the Morris and Essex Railroad Company,' passed Jan-

uary twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," in so far as it purports to require the Morris and Essex Railroad Company and the defendant, as lessee thereof, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office and employment, to pass and repass, free of charge, over the railroad and railroads of said the Morris and Essex Railroad Company, is void 10 and of no force or effect because repugnant to and in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives said the Morris and Essex Railroad Company and the defendant, its lessee, of property without due process of law and denies to them the equal protection of the laws, and repugnant to and in conflict with Article 1, Paragraph 16, of the Constitution of the State of New Jersey, in that it takes the private property of said the Morris and Essex Railroad Company 20 and of the defendant, its lessee, for public use without just compensation, and repugnant to and in conflict with divers other provisions of the Constitutions of the United States and of the State of New Jersey.

Further answering said paragraph "9" defendant says and alleges that said act approved April 23d, 1915, in so far as it purports to subject the Morris and Essex Railroad Company and the defendant, its lessee, to a penalty of one thousand dollars for violation of its provisions, or to any penalty whatsoever which is not 30 imposed upon all other railroad companies operating railroads in the State of New Jersey for refusal to transport the officers and employees of the State of New Jersey named in said act, during their respective terms of office or employment over said railroads, within the borders of said State, is void and of no force or effect because repugnant to and in conflict with Section 1 of the Fourteenth Amendment to the Con-

stitution of the United States, in that it denies to the Morris and Essex Railroad Company and the defendant, its lessee, the equal protection of the laws.

10. Defendant demands that the complaint be dismissed.

W. J. LARRABEE,
Attorney of Defendant.

10 NEW JERSEY SUPREME COURT, ESSEX COUNTY.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, A BODY CORPORATE,
Defendant.

20 AGREED STATEMENT OF FACTS.

(Filed September 28, 1916.)

The above parties submit the following agreed statement of facts.

1. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania.

2. That the Morris and Essex Railroad Company is
30 a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th day of January, 1835.

3. That section 14 of an act entitled "A further supplement to the act entitled 'An act to incorporate the Morris and Essex Railroad Company,' passed Jan-

uary twenty-ninth, eighteen hundred and thirty-five," approved February 19th, 1851, provides as follows:

"14. And be it enacted, That the Governor, the Chancellor, the justices of the Supreme Court, and the judges of the Court of Errors of this State, when traveling for the purpose of discharging the duties of their offices, and the members of both Houses of the Legislature of this State, during their annual or other sessions, shall pass and repass over the railroad and railroads of said company, in their cars, free of charge." 10

4. On the 10th day of December, 1868, the defendant leased the railroad of the said Morris and Essex Railroad Company, extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg, in the State of New Jersey, and all branch and other railroads, owned, leased, rented, or otherwise controlled by the said Morris and Essex Railroad Company, a body corporate, as aforesaid, together with all the lands, real estate, water fronts, water rights, superstructures, piers, docks, wharves, landings, ferries, ferry rights, rights of way, railroads, railways, tracks, bridges, viaducts, culverts, fences, depots, stations, station houses, water, water pipes, water stations and tanks, turntables, shops, buildings, structures, tools, machinery, fixtures, locomotives and other engines, cars, rolling stock and equipment, and also all other property and rights of every kind and character, real, personal and mixed, whatsoever and wheresoever situate, belonging to the said Morris and Essex Railroad Company, or to which the said Morris and Essex Railroad Company were, at said time, wholly or in part, or in any manner entitled, and also all and singular the franchises, immunities, rights, powers and privileges which then had been or might thereafter be granted to or conferred upon, or which might be used or exercised by the said Morris and Essex Railroad 20 30

Company from the 31st day of December, 1868, for and during the full term of the continuance of the charter of the said Morris and Essex Railroad Company, and during the full term of the continuance of said charter by virtue of any and all renewals thereof, that may at any time be granted or made, as fully and beneficially to all intents and purposes as the said Morris and Essex Railroad Company, a body corporate, as aforesaid, might or could have, hold, use, enjoy, possess
10 or exercise the same, had said indenture of lease not been made subject to the provisions contained in said lease, which said lease was validated and confirmed in all things by an act of the Legislature approved February 9th, 1869.

5. That since the said 31st day of December, the defendant has operated the railroad of the said Morris and Essex Railroad Company, and has operated and, on the 22d day of May, 1915, did operate railroad
20 trains over the tracks of said railroad between the City of East Orange, in the County of Essex, and the Town of Hackettstown, in the County of Warren, as lessee of the said Morris and Essex Railroad Company, a body corporate, as aforesaid.

6. That Ernest Napier, of the City of East Orange, County of Essex, and State of New Jersey, is and was on the 22d day of May last a member of the Board of Fish and Game Commissioners of the State of New Jersey, and was on said day the President of said
30 board.

7. That on said 22d day of May the said Ernest Napier boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the "East Orange Station," said train being then and there operated over the said right of way of the said Morris and Essex Railroad Company by the defendant company, as lessee of the said Morris and Essex Railroad Company, as afore-

said, and being scheduled to run over said right of way to said Town of Hackettstown, and to stop at said Town of Hackettstown, for the discharge of passengers.

8. That said Ernest Napier boarded said train for the purpose of traveling thereon from said East Orange Station to the Town of Hackettstown, in the County of Warren.

9. That said Ernest Napier undertook said journey in the performance of his official duties as member and 10
President of the said Board of Fish and Game Commissioners, for the purpose of inspecting the fish hatchery owned by the State of New Jersey, and operated by the Board of Fish and Game Commissioners at the Town of Hackettstown.

10. That upon boarding said train, as aforesaid, the said Ernest Napier tendered to the conductor in charge of said train, who was an employee of the defendant company, a certificate, in card form, under the seal of the State of New Jersey, bearing the title of 20
the said office of the said Ernest Napier, the date of the issuance of said certificate to the said Ernest Napier and the date of the expiration of the said Ernest Napier's term of office, showing that the said Ernest Napier was at said time a member of the Board of Fish and Game Commissioners of the State of New Jersey; that said certificate was signed by the Secretary of State of New Jersey, and was endorsed by the said Ernest Napier on the back thereof, and was 30
tendered in accordance with an act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April fifteenth, nineteen hundred and fourteen.

11. That the defendant, acting through its agent and servant, the conductor of said train, refused to carry the said Ernest Napier free of charge from said East Orange Station to the Town of Hackettstown, over

the railroad of the said the Morris and Essex Railroad Company, and then and there demanded from the plaintiff the payment of the regular railroad fare from the City of East Orange to the Town of Hackettstown, namely, the sum of one dollar and twenty cents (\$1.20).

12. That plaintiff refused to pay said fare, whereupon when said train reached the station of said company known as the "Orange Station," the conductor thereof, acting under general instructions received from
10 the defendant, laid his hands on the plaintiff and ejected him from the train, using no more force in so doing than was necessary.

13. That all of the special acts of the Legislature referring to either the Morris and Essex Railroad Company, or to the defendant, its lessee, may be referred to by counsel and the Court without proof of their contents, as though the same were public, general acts.

14. Plaintiff claims that the refusal of the defendant to carry the said Ernest Napier over the line of
20 the said Morris and Essex Railroad Company, as aforesaid, under the circumstances above mentioned, was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, which said
30 section one provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned the members of the Board of Fish and Game Commissioners of the State of New Jersey, shall during their respective terms of office and employment pass and repass free of charge over the railroad of the said the Morris and Essex Railroad Company.

15. Plaintiff further claims that the refusal of the said defendant to carry the said plaintiff free of charge,

under the circumstances above mentioned, was a violation of section one of said act, by reason of which said violation the said defendant, as lessee of the said Morris and Essex Railroad Company, has become subject to a penalty of \$1,000, one-half of which said sum shall be paid to the State of New Jersey and the remaining one-half to said Ernest Napier, under the provisions of section two of the act last above mentioned, which said section two provides that any violation by the Morris and Essex Railroad Company, 10 its successors, lessee or lessees, of the provisions of the act last above referred to, shall subject said company to a penalty of \$1,000 to be recovered in an action of debt in the name of the State, by the Attorney-General, one-half of said sum to be paid to the State, and the remaining one-half to the person or official therein designated, whom the said Railroad Company, its successors, lessee or lessees, shall refuse to carry.

16. The plaintiff requests the Court to find as a matter of law: 20

(a) That the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, imposed the duty upon the defendant to carry the said Ernest Napier from the City of East Orange to the Town of Hackettstown, free of charge, upon the occasion above referred to. 30

(b) That the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, is a valid and constitutional act.

(c) That the refusal of the defendant to carry the said Ernest Napier free of charge, under the circumstances above set forth, was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved
10 April 23d, 1915.

(d) That the defendant, as lessee of the Morris and Essex Railroad Company, is liable for the penalty imposed by law for said violation.

17. The plaintiff moves that the Court find that the defendant has become liable to the plaintiff in the sum of \$1,000 penalty, by reason of the aforesaid violation, and that the plaintiff is entitled to recover against the defendant the said sum of \$1,000, one-half of which
20 said sum shall be paid to the plaintiff, and the other half to the said Ernest Napier.

18. The defendant requests the Court to find as a matter of law:

(a) That the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, in so far as it purports to
30 require the said the Morris and Essex Railroad Company and this defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office or employment, to pass and repass free of charge over the railroad of said the Morris and Essex Railroad Company, is unconstitutional and void, because in conflict with the Fourteenth Amendment to

the Constitution of the United States and Article I, Paragraph 16, of the Constitution of the State of New Jersey.

(b) That said act approved April 23d, 1915, in so far as it imposes a penalty of one thousand dollars, or any penalty whatsoever, upon said the Morris and Essex Railroad Company and this defendant, its lessee, for violation of the provisions of said act, is unconstitutional and void, because in conflict with the Fourteenth Amendment to the Constitution of the United States. 01

(c) That said act approved April 23d, 1915, imposed no legal obligation on the defendant to carry the said plaintiff, Ernest Napier, from the City of East Orange to the Town of Hackettstown free of charge on the occasion referred to in the complaint filed in this cause.

(d) That the said ejection of the plaintiff, Ernest Napier, from the train of the defendant, by the conductor of said train, was lawful, and that the defendant has incurred no liability by reason of said ejection. 20

19. Defendant moves for a dismissal of the complaint.

20. It is agreed that the above cause shall be submitted for trial before the Circuit Court judge without a jury, but that both parties hereby expressly reserve the right of appeal.

JOHN W. WESCOTT, 30
 Attorney-General,
Attorney of Plaintiff.

W. J. LARRABEE,
Attorney of Defendant.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

	STATE OF NEW JERSEY,	} Action at Law.
	<i>Plaintiff,</i>	
	<i>vs.</i>	
10	THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, A BODY CORPORATE,	}
	<i>Defendant.</i>	

POSTEA.

(Filed October 9, 1916.)

This case was tried on April 8th, 1916, before Judge Frederic Adams, sitting without a jury, at the Essex Circuit, upon an agreed statement of facts, which is filed herein.

- 20 The said Judge, having heard the arguments of counsel and considered the facts upon which the case was submitted and the respective requests to find on questions of law, finds as to matters of law as follows:
1. That the special act approved April 23d, 1915, entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eight-
- 30 teen hundred and fifty-one" (the same being Chapter 402 of the Laws of 1915), so far as it purports to require the Morris and Essex Railroad Company and the defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass, free of charge, over the railroad of the Morris and Essex Railroad Company, is unconstitutional and void, because said statute deprives the defendant company, without due process

of law, of its property right to collect fare from the members of said Board of Fish and Game Commissioners, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, and because it takes the property of the defendant without just compensation, contrary to Paragraph 16 of Article 1 of the Constitution of the State of New Jersey.

2. That the ejection of the said Ernest Napier, a member of said Board of Fish and Game Commissioners of the State of New Jersey, from the train of **10** the defendant on May 22d, 1916, was lawful, and that the defendant has incurred no liability to the plaintiff by reason of said ejection.

The Court finds for the defendant and against the plaintiff.

FREDERICK ADAMS,
Circuit Court Judge.

Dated September 23d, 1916.

Whereupon it is adjudged that the complaint of the **20** plaintiff be dismissed.

Judgment entered October 9th, 1916.

WM. S. GUMMERE, C. J.

No costs.

EXCEPTIONS.

30

(Filed February 1, 1917.

The Court declines to find as a matter of law that the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February

nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, is a valid and constitutional act, to which refusal the plaintiff prays an exception, which is allowed

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The Court declines to find as a matter of law that the refusal of the defendant company to carry Ernest Napier, a member of the Board of Fish and Game
10 Commissioners, free of charge, under the circumstances set forth in the complaint filed in this cause, was a violation of section one of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, to which refusal the plaintiff prays an exception, which is allowed.

20

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The Court declines to find as a matter of law that the defendant, as lessee of the Morris and Essex Railroad Company, is liable for the penalty imposed by law for said violation, to which refusal the plaintiff prays an exception, which is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The Court declines to find as a matter of law that
30 the defendant has become liable to the plaintiff in the sum of one thousand dollars penalty by reason of the ejection of the said Ernest Napier from the said train, as set forth in the Agreed State of Facts filed in this cause, and that the said plaintiff is entitled to recover against the defendant the said sum of one thousand dollars, one-half of which said sum shall be paid to the plaintiff and the other half to the said Ernest Napier,

to which refusal the plaintiff prays an exception, which is allowed.

FREDERICK ADAMS, [L. S.]

Circuit Court Judge.

The plaintiff prays an exception to the finding of the Court as a matter of law that the special act—Chapter 402 of the Session Laws of 1915—so far as it purports to require the Morris and Essex Railroad Company and the defendant, its lessee, to permit a member of the Board of Fish and Game Commissioners to pass and repass, free of charge, over the railroad of the said Morris and Essex Railroad Company, is unconstitutional and void, which exception is allowed. 10

FREDERICK ADAMS, [L. S.]

Circuit Court Judge.

The plaintiff prays an exception to the finding of the Court as a matter of law that the ejection of the said Ernest Napier from the train of the defendant on May 22d, 1916, was unlawful, which exception is allowed.

FREDERICK ADAMS, [L. S.]

20

Circuit Court Judge.

The plaintiff prays an exception to the action of the Court in dismissing the Complaint of the plaintiff, which exception is allowed.

FREDERICK ADAMS, [L. S.]

Circuit Court Judge.

to whom said action was referred for trial by His Honor William S. Gummere, Chief Justice.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

ERNEST NAPIER,

Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a body corporate,
Respondent.} Action
} at Law.

10

NOTICE OF APPEAL.

To the Delaware, Lackawanna and Western Railroad Company, a body corporate, the above-named respondent, or to Walter J. Larrabee, Esquire, its attorney:

Take notice that Ernest Napier hereby appeals to the Court of Errors and Appeals of New Jersey from the whole of the judgment entered in the above-entitled matter in the Supreme Court, Essex county, and that

20 the grounds of appeal are as follows:

1. That the said Supreme Court erroneously dismissed the complaint of the plaintiff;

2. That the said Supreme Court erroneously found and determined as a matter of law that Chapter 100 of the Session Laws of 1910, so far as it purports to require the Morris and Essex Railroad Company and the respondent, its lessee, to permit a member of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over the railroad of the said The Morris and Essex Railroad Company, is unconstitutional and void;

30 3. That the said Supreme Court erroneously found and determined as a matter of law that Chapter 129 of the Session Laws of 1911, so far as it purports to require The Morris and Essex Railroad Company and the respondent, its lessee, to permit a member of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over

the railroad of the said The Morris and Essex Railroad Company, is unconstitutional and void;

4. That the said Supreme Court erroneously found and determined as a matter of law that Chapter 194 of the Session Laws of 1914, so far as it purports to require The Morris and Essex Railroad Company, and the respondent, its lessee, to permit a member of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over the railroad of the said The Morris and Essex Rail- 10
road Company, is unconstitutional and void;

5. That the said Supreme Court erroneously found and determined as a matter of law that Chapter 402 of the Session Laws of 1915, so far as it purports to require The Morris and Essex Railroad Company and the respondent, its lessee, to permit a member of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over the railroad of the said The Morris and Essex Rail- 20
road Company, is unconstitutional and void;

6. Because the said Supreme Court erroneously found as a matter of law that the ejection of the plaintiff from the train of the respondent on May 22, 1916, was lawful;

7. Because the said Supreme Court erroneously refused to find as a matter of law that the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate The Morris and Essex Railroad Company," passed January twenty- 30
ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23, 1915, imposed a duty upon the respondent to carry the plaintiff from the city of East Orange to the town of Hackettstown, free of charge on the occasion named in the complaint filed in this cause;

8. Because the said Supreme Court erroneously refused to find as a matter of law that the act entitled "An act to amend an act entitled 'An act concerning

railroads (Revision of 1903),’ approved April fourteenth, one thousand nine hundred and three,” approved April 15, 1914, required the respondent to carry the plaintiff from the city of East Orange, in the county of Essex, to the town of Hackettstown, in the county of Warren, free of charge on the occasion named in the said complaint;

9. Because the said Supreme Court erroneously refused to find as a matter of law that the act entitled
10 “An act to amend an act entitled ‘A further supplement to the act entitled “An act to incorporate The Morris and Essex Railroad Company,” passed January twenty-ninth, eighteen hundred and thirty-five,’ which supplement was approved February nineteenth, eighteen hundred and fifty-one,” approved April 23, 1915, is a valid and constitutional act;

10. Because the said Supreme Court erroneously refused to find that the act entitled “An act to amend an act entitled ‘An act concerning railroads (Revision of
20 1903),’ approved April fourteenth, one thousand nine hundred and three,” approved April 15, 1914, is a valid and constitutional act;

11. Because the said Supreme Court erroneously refused to find that the ejection of the plaintiff from the train of the respondent, under the circumstances set forth in the complaint and in the Agreed State of Facts, was a violation of the rights of the plaintiff;

12. Because the said Supreme Court erroneously refused to find as a matter of law on the Agreed State
30 of Facts that the plaintiff was entitled to recover damages from the respondent because of said ejection.

JOHN W. WESCOTT,
Attorney-General of New Jersey,
Attorney of Plaintiff.

Service of copy of within notice of appeal admitted this 3d day of February, 1917.

W. J. LARRABEE,
Attorney of Defendant.

SUMMONS.

Ernest Napier to the Delaware, Lackawanna and Western Railroad Company,
 [SEAL OF SUPREME COURT.] a body corporate:

You are summoned to answer the annexed complaint of Ernest Napier in an action at law in the Supreme Court, and take notice that unless you file your answer to said complaint within twenty days after service upon 10 you of this writ and the annexed complaint the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, William S. Gummere, Esquire, Chief Justice of the Supreme Court, at Trenton, this fourteenth day of July, A. D. nineteen hundred and fifteen.

W.M. C. GEBHARDT,

JOHN W. WESCOTT,

Clerk.

Attorney-General,

Attorney.

20

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

ERNEST NAPIER,
Plaintiff,

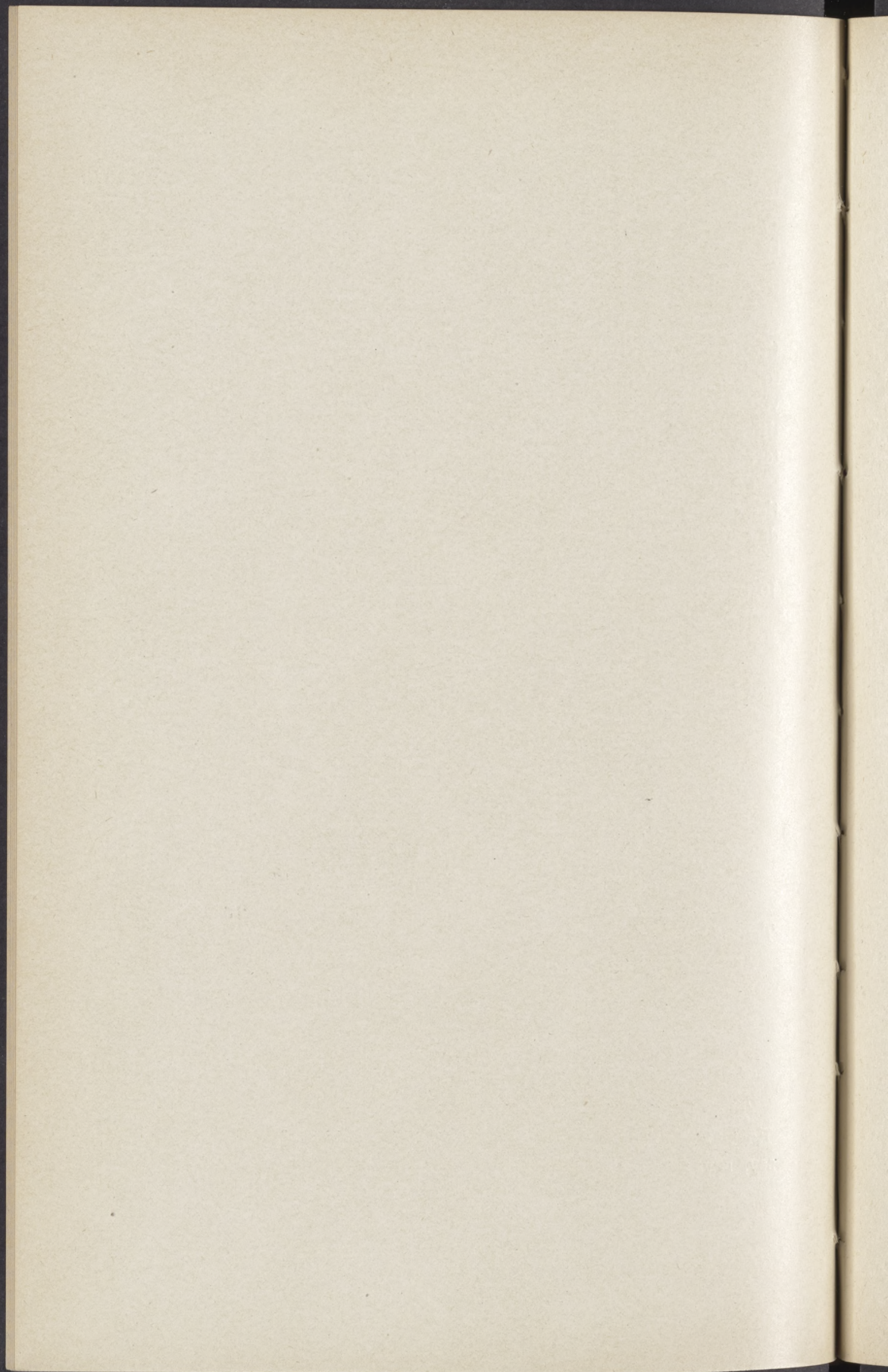
vs.

THE DELAWARE, LACKAWANNA
 AND WESTERN RAILROAD COM-
 PANY, A BODY CORPORATE,
Defendant.

30

COMPLAINT.

The plaintiff, Ernest Napier, residing in the City of East Orange, County of Essex and State of New Jersey, says:



1. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and is and was on the 22d day of May last engaged in operating a railroad in the States of New Jersey, Pennsylvania, and elsewhere; that the said railroad operated by defendant runs in part over the tracks of the Morris and Essex Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th day of January, 1835; that the defendant operates its said railroad over the tracks of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg, in the State of New Jersey, under a lease bearing date December 10th, 1868, whereby the said Morris and Essex Railroad Company, a body corporate, as aforesaid, leased its railroad, its franchises and all of its property, both real and personal, to the defendant from the 31st day of December, 1868, during the life of the franchises of the said Morris and Essex Railroad Company, a body corporate, as aforesaid. That the defendant operates railroad trains over the tracks of the Morris and Essex Railroad Company, a body corporate, as aforesaid, between the City of East Orange, in the County of Essex, and the Town of Hackettstown, in the County of Warren.

2. That the plaintiff now is, and on the 22d day of May last was, a member of the Board of Fish and Game Commissioners of the State of New Jersey; that he now is, and was on the last-mentioned day, the President of said Board.

3. That on said 22d day of May plaintiff boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the "East Orange Station," for the purpose

of traveling on said train from said East Orange station to the Town of Hackettstown, in the County of Warren, plaintiff undertaking said journey in the performance of his official duties as member and President of the said Board of Fish and Game Commissioners, for the purpose of inspecting the fish hatchery operated by said Board of Fish and Game Commissioners at the Town of Hackettstown.

4. That at the time and place last mentioned, plaintiff
10 tendered to the conductor in charge of the train last above mentioned a certificate, in card form, under the seal of the State of New Jersey, bearing the title of the office of the plaintiff, the date of the issuance of such certificate to the plaintiff, and the date of the expiration of plaintiff's term of office, showing that the plaintiff was at said time a member of the Board of Fish and Game Commissioners of the State of New Jersey, and signed by the Secretary of State of said State, and endorsed by said plaintiff on the back there-
20 of, such certificate being tendered in accordance with act entitled "A supplement to an act entitled 'An act concerning railroads' (Revision of 1903), approved April 14th, 1903," which said supplement was approved April 26th, 1915.

5. That the said defendant, acting through its agents and servants employed on the train above mentioned, refused to carry plaintiff from the said East Orange station to the Town of Hackettstown free of charge, and then and there demanded from the said Ernest
30 Napier payment of the regular railroad fare from East Orange to the Town of Hackettstown, and upon the refusal of plaintiff to pay said fare the defendant, through its agents and servants employed on said train, forcibly assaulted plaintiff and forcibly ejected him from the said train at the station of said company located in the City of Orange, in said County of Essex, and known as the "Orange Station."

6. Plaintiff says that the defendant was required to carry the plaintiff from the said City of East Orange

to the said Town of Hackettstown free of charge by the provisions of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, which said act provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned 10 the members of the Board of Fish and Game Commissioners of this State, shall, during their respective terms of office and employment pass and repass, free of charge, over the railroad of the said Morris and Essex Railroad Company.

7. Plaintiff further says that the defendant company was required to carry plaintiff, free of charge, from the said City of East Orange to the said Town of Hackettstown under the provisions of an act entitled "A supplement to an act entitled 'An act concerning railroads' 20 (Revision of 1903), approved April fourteenth, one thousand nine hundred and three," which said supplement was approved April 26th, 1915.

8. Plaintiff says that by reason of the above mentioned unlawful ejection from the said railroad train of the defendant he suffered great humiliation, was inconvenienced in his attempt to perform his official duties.

9. Plaintiff claims the sum of \$5,000 damages for the unlawful acts of the defendants above referred to. 30

JOHN W. WESCOTT,
Attorney-General,
Attorney of Plaintiff.

Filed July 19th, 1915.

WM. C. GEBHARDT,
Clerk.

I hereby deputize Richard Donovan to serve the within writ.

Witness my hand and seal this 16th day of July, 1915.

EUGENE F. KINKEAD,
Sheriff.

By JAS. H. CLARK,
Under-Sheriff.

JOHN W. WESCOTT,
10 State House, Trenton, N. J.,
Attorney of Plaintiff.
Sheriff's fees, \$2.78.

Served within Summons and Complaint July 16th, 1915, on the defendant, the Delaware, Lackawanna and Western Railroad Company, a corporation, by delivering a true copy thereof to W. G. Cave, Agent of the said defendant company,

EUGENE F. KINKEAD,
Sheriff.
20 By RICHARD DONOVAN,
S. D. S.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

	ERNEST NAPIER,	}
	<i>Plaintiff,</i>	
	<i>vs.</i>	
30	THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, A BODY CORPORATE,	}
	<i>Defendant.</i>	

AMENDED COMPLAINT.

The plaintiff, Ernest Napier, residing in the City of East Orange, County of Essex and State of New Jersey, says:

1. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and is and was, on the 22d day of May last, engaged in operating a railroad in the States of New Jersey, Pennsylvania and elsewhere; that the said railroad operated by defendant runs in part over the tracks of the Morris and Essex Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th day of January, 1835; that the defendant operates its said railroad over the tracks of the said Morris and Essex Railroad Company, a body corporate, as aforesaid, extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg, in the State of New Jersey, under a lease bearing date December 10th, 1868, whereby the said Morris and Essex Railroad Company, a body corporate, as aforesaid, leased its railroad, its franchises and all of its property, both real and personal, to the defendant from the 31st day of December, 1868, during the life of the franchises of the said Morris and Essex Railroad Company, a body corporate, as aforesaid. That the defendant operates railroad trains over the tracks of the Morris and Essex Railroad Company, a body corporate, as aforesaid, between the City of East Orange, in the County of Essex, and the Town of Hackettstown, in the County of Warren.

2. That the plaintiff now is, and on the 22d day of May last was, a member of the Board of Fish and Game Commissioners of the State of New Jersey; that he now is, and was on the last mentioned day, the President of said Board.

3. That on the said 22d day of May, plaintiff boarded train No. 403 of the defendant company at the station of said company, located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the "East Orange Station," for the purpose

of traveling on said train from said East Orange Station to the Town of Hackettstown, in the County of Warren, plaintiff undertaking said journey in the performance of his official duties as member and President of the said Board of Fish and Game Commissioners, for the purpose of inspecting the fish hatchery operated by said Board of Fish and Game Commissioners at the Town of Hackettstown.

4. That at the time and place last mentioned, plaintiff
10 tendered to the conductor in charge of the train last
above mentioned a certificate, in card form, under the
seal of the State of New Jersey, bearing the title of the
office of the plaintiff, the date of the issuance of such
certificate to the plaintiff, and the date of the expiration
of plaintiff's term of office, showing that the plaintiff
was at said time a member of the Board of Fish and
Game Commissioners of the State of New Jersey, and
signed by the Secretary of State of said State, and
20 endorsed by said plaintiff on the back thereof, such cer-
tificate being tendered in accordance with act entitled
"An act to amend an act entitled 'An act concerning
railroads (Revision of 1903),' approved April four-
teenth, one thousand nine hundred and three," approved
April 15th, 1914.

5. That the said defendant, acting through its agents
and servants employed on the train above mentioned,
refused to carry plaintiff from the said East Orange
Station to the Town of Hackettstown free of charge,
and then and there demanded from the said Ernest
30 Napier payment of the regular railroad fare from East
Orange to the Town of Hackettstown, and, upon the
refusal of plaintiff to pay said fare, the defendant,
through its agents and servants employed on said train,
forcibly assaulted plaintiff and forcibly ejected him
from the said train at the station of said company
located in the City of Orange, in said County of Essex,
and known as the "Orange Station."

6. Plaintiff says that the defendant was required to carry the plaintiff from the said City of East Orange to the said Town of Hackettstown free of charge by the provisions of an act entitled "An act to amend an act entitled 'A further supplement to the act entitled 'An act to incorporate the Morris and Essex Railroad Company,'" passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, which said act provides that the various officers and employees of the State of New Jersey enumerated therein, among which are mentioned the members of the Board of Fish and Game Commissioners of this State, shall, during their respective terms of office and employment, pass and repass, free of charge, over the railroad of the said Morris and Essex Railroad Company. 10

7. Plaintiff further says that the defendant company was required to carry plaintiff free of charge from the said City of East Orange to the said Town of Hackettstown under the provisions of an act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914. 20

8. Plaintiff says that by reason of the above mentioned unlawful ejection for the said railroad train of the defendant, he suffered great humiliation and was inconvenienced in his attempt to perform his official duties. 30

9. Plaintiff claims the sum of \$5,000 damages for the unlawful acts of the defendants above referred to.

JOHN W. WESCOTT,
Attorney-General,
Attorney of Plaintiff.

Consent is hereby given to the filing of the within Amended Complaint.

W. J. LARRABEE,
Attorney of Defendant.

Service of the within Amended Complaint is hereby acknowledged this 16th day of July, A. D. nineteen hundred and fifteen.

W. J. LARRABEE,
Attorney of Defendant.

10 Filed August 23, 1915.

JOHN W. WESCOTT,
Attorney-General of New Jersey,
State House, Trenton, N. J.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

20	ERNEST NAPIER, <i>Plaintiff,</i>	}
	<i>against</i>	
	THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, ETC., <i>Defendant.</i>	

ANSWER TO AMENDED COMPLAINT.

30

(Filed August 3d, 1915.)

The Delaware, Lackawanna and Western Railroad Company, defendant herein, answering the plaintiff's amended complaint, says:

1. It admits the allegations contained in paragraph "1" of said complaint.

2. It admits the allegations of paragraph "2" of said complaint.

3. It admits the allegation contained in paragraph "3" of said complaint "that on said 22d day of May, plaintiff boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, in the County of Essex and State of New Jersey, and known as the 'East Orange Station,' for the purpose of traveling on said train from said East Orange Station to the Town of Hackettstown, in 01 the County of Warren." It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of said paragraph "3," and in so far as they shall be deemed material, it demands due proof thereof.

4. It admits the allegations contained in paragraph "4" of said complaint.

5. It admits so much of paragraph "5" as alleges 20 "that the said defendant, acting through its agents and servants employed on the train above mentioned, refused to carry plaintiff from the said East Orange Station to the Town of Hackettstown free of charge, and then and there demanded from the said Ernest Napier payment of the regular railroad fare from East Orange to the Town of Hackettstown." It denies all other allegations in said paragraph contained.

6. It denies so much of paragraph "6" as alleges 30 "that the defendant was required to carry the plaintiff from the said City of East Orange to the said Town of Hackettstown free of charge by the provisions of an act entitled 'An act to amend an act entitled 'A further supplement to the act entitled 'An act to incorporate the Morris and Essex Railroad Company,' passed January twenty-ninth, eighteen hundred and thirty-five," which supplement was approved February nineteenth, eighteen hundred and fifty-one,' approved April 23d.

1915." It admits the allegations contained in the remainder of said paragraph.

Further answering said paragraph, defendants says and alleges that the act approved April 23d, 1915, entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, 10 eighteen hundred and fifty-one," referred to in paragraph "6" of the complaint, in so far as it purports to require the Morris and Essex Railroad Company and this defendant, as lessee thereof, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office and employment, to pass and repass, free of charge, over the railroad and railroads of said the Morris and Essex Railroad Company, is repugnant to and in conflict with Section 1 of the Fourteenth Amend- 20 ment to the Constitution of the United States, in that it deprives said the Morris and Essex Railroad Company and its lessee, this defendant, of property without due process of law, and denies to them the equal protection of the laws; also repugnant to and in conflict with Article 1, Paragraph 16, of the Constitution of the State of New Jersey, in that it takes the private property of said the Morris and Essex Railroad Company and of this defendant, its lessee, for public use without just compensation; and in divers other respects is unconstitutional and void. 30

7. It denies the allegations contained in paragraph "7" of said complaint.

Further answering said paragraph, defendant says and alleges that the said act, approved April 15th, 1914, entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," in

so far as it purports to require the Morris and Essex Railroad Company and this defendant, as lessee thereof, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office and employment, to pass and repass, free of charge, over the railroad and railroads of said the Morris and Essex Railroad Company, is repugnant to and in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives said 10
the Morris and Essex Railroad Company and its lessee, this defendant, of property without due process of law and denies to them the equal protection of the laws; also repugnant to and in conflict with Article 1, Paragraph 16 of the Constitution of the State of New Jersey, in that it takes the private property of said the Morris and Essex Railroad Company and of this defendant, its lessee, for public use without just compensation; and in divers other respects is unconstitutional and void. 20

8. It denies the allegations contained in paragraph "8" of said complaint.

Wherefore, defendant demands that the complaint be dismissed, with costs to be taxed.

W. J. LARRABEE,
Attorney of Defendant.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

ERNEST NAPIER,
Plaintiff,

against

THE DELAWARE, LACKAWANNA
 AND WESTERN RAILROAD COM-
 PANY, A BODY CORPORATE,
Defendant.

10

AGREED STATEMENT OF FACTS.

(Filed October 9, 1916.)

The above parties submit the following agreed statement of facts:

1. That the defendant is a corporation organized and existing under and by virtue of the laws of the
 20 State of Pennsylvania, and is, and was on the 22d day of May last, engaged in operating a railroad in the States of New Jersey, Pennsylvania and elsewhere; that said railroad operated by defendant consists in part of the railroad of the Morris and Essex Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been created by a special act of the Legislature approved the 29th day of January, 1835.

2. That section 14 of an act entitled "A further sup-
 30 plement to the act entitled 'An act to incorporate the Morris and Essex Railroad Company,' passed January twenty-ninth, eighteen hundred and thirty-five," approved February 19th, 1851, provides as follows:

"14. And be it enacted, That the Governor, the Chancellor, the justices of the Supreme Court, and the judges of the Court of Errors of this State, when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of

this State, during their annual or other sessions, shall pass and repass over the railroad and railroads of said company, in their cars, free of charge."

3. That the defendant operates the railroad of said the Morris and Essex Railroad Company, extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg, in the State of New Jersey, under lease bearing date December 10th, 1868, by the terms of which lease the said the Morris and Essex Railroad 10 Company leased its railroad, its franchises and all of its property, both real and personal, to the defendant from the 31st day of December, 1868, during the life of the franchises of the said Morris and Essex Railroad Company, which lease was validated and confirmed in all things by an act of the Legislature approved February 9th, 1869.

4. That defendant operates railroad trains over the tracks of said the Morris and Essex Railroad Company between the City of East Orange, in the county of 20 Essex, and the Town of Hackettstown, in the County of Warren.

5. That the plaintiff now is, and on the 22d day of May last was, a member of the Board of Fish and Game Commissioners of the State of New Jersey; that he now is, and was on the last-mentioned date, the President of said Board.

6. That on said 22d day of May plaintiff boarded train No. 403 of the defendant company at the station of said company located in the City of East Orange, 30 County of Essex and State of New Jersey, and known as the "East Orange Station," for the purpose of traveling on said train from said East Orange station to the Town of Hackettstown, in the County of Warren, said train being run over the tracks of said the Morris and Essex Railroad Company, leased by the defendant company, as above set forth, to said Town of Hackettstown, and being scheduled to stop at said Town of Hackettstown.

7. That plaintiff undertook said journey in the performance of his official duties as member and President of said Board of Fish and Game Commissioners for the purpose of inspecting the fish hatchery owned by the State of New Jersey and operated by said Board of Fish and Game Commissioners.

8. That upon boarding the aforesaid train plaintiff tendered to the conductor in charge of said train a certificate, in card form, under the seal of the State of
10 New Jersey, bearing the title of the office of the plaintiff, the date of the issuance of such certificate to the plaintiff and the date of the expiration of the plaintiff's term of office, showing that the plaintiff was at said time a member of the Board of Fish and Game Commissioners of the State of New Jersey, which certificate was signed by the Secretary of State of said State, and endorsed by said plaintiff on the back thereof, and was tendered in accordance with the provisions of an
20 act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914.

9. That the defendant, acting through its agent and servant, the conductor of said train, refused to carry the plaintiff free of charge from said East Orange station to the Town of Hackettstown, over the line of the Morris and Essex Railroad Company, and then and there demanded from the plaintiff payment of the regular railroad fare from the City of East Orange to
30 the Town of Hackettstown, namely, the sum of \$1.20.

10. That plaintiff refused to pay said fare, whereupon when said train reached the station of said company known as the "Orange Station" the conductor of said train, acting pursuant to general instructions received from the defendant, laid his hands on the plaintiff and ejected him from the train, using no more force than was necessary to eject said plaintiff.

11. That all of the special acts of the Legislature referring to either the Morris and Essex Railroad

Company or to the defendant, its lessee, may be referred to by counsel and the Court without proof of their contents as though the same were public, general acts.

12. Plaintiff claims that an act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, imposed a 10
duty upon the defendant company to carry the plaintiff from the City of East Orange to the Town of Hackettstown, free of charge.

13. The plaintiff further contends that an act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914, required the defendant company to carry the plaintiff from said City of East Orange, in Essex County, to Hackettstown, in Warren 20
County, free of charge.

14. The plaintiff claims that his ejection from the train of the defendant was wrongful and that he is entitled to damages.

15. Defendant claims that the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and 30
fifty-one," approved April 23d, 1915, is unconstitutional because in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it deprives the Morris and Essex Railroad Company and the defendant, its lessee, of property without due process of law, and denies to them the equal protection of the laws; and, further, that it is unconstitutional because in conflict with Article 1, Paragraph 16, of the Constitution of the State of New Jersey, in that

it takes the private property of the Morris and Essex Railroad Company and of the defendant, its lessee, for public use, without just compensation.

16. Defendant further claims that the act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914, in so far as it purports to require the Morris and Essex Railroad Company and the defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office and employment, to pass and repass, free of charge, over the railroad of said the Morris and Essex Railroad Company, is unconstitutional, because in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives said the Morris and Essex Railroad Company, and its lessee, the defendant, of property without due process of law, and denies to them the equal protection of the laws; that it is also unconstitutional because in conflict with Article 1, Paragraph 16, of the Constitution of the State of New Jersey, in that it takes the private property of the Morris and Essex Railroad Company and of the defendant, its lessee, for public use without just compensation.

17. The plaintiff requests the Court to find as a matter of law:

(a) That the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, imposed the duty upon the defendant company to carry the plaintiff from the City of East Orange to the Town of Hackettstown, free of charge, on the occasion named in the Complaint filed in this cause.

(b) That the act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914, required the defendant company to carry the plaintiff from said City of East Orange, in the County of Essex, to the Town of Hackettstown, in the County of Warren, free of charge, on the occasion named in said Complaint.

(c) That the act entitled "An act to amend an act 10 entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, is a valid and constitutional act.

(d) That the act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine 20 hundred and three," approved April 15th, 1914, is a valid and constitutional act.

(e) That the ejection of the plaintiff from the train of the defendant, under the circumstances above set forth, was a violation of the rights of the plaintiff.

(f) That the plaintiff is entitled to recover damages from the defendant because of said ejection.

18. The plaintiff moves that the Court find that the defendant has become liable to the plaintiff in damages by reason of the above-mentioned ejection and that the 30 Court fix the amount of such damages.

19. The defendant requests the Court to find as a matter of law:

(a) That the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved Feb-

ruary nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, in so far as it purports to require the said the Morris and Essex Railroad Company and this defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass, free of charge, over the railroad and railroads of said Morris and Essex Railroad Company, is unconstitutional and void, because in conflict with the Fourteenth Amendment to
10 the Constitution of the United States.

(b) That said act approved April 23d, 1915, in so far as it imposes a penalty of one thousand dollars, or any penalty whatsoever, upon said the Morris and Essex Railroad Company and this defendant, its lessee, for violation of the provisions of said act, is unconstitutional and void, because in conflict with the Fourteenth Amendment of the Constitution of the United States.

(c) That said act approved April 23d, 1915, in so
20 far as it purports to require the said the Morris and Essex Railroad Company and this defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners to pass and repass, free of charge, over the railroad and railroads of said the Morris and Essex Railroad Company, is unconstitutional and void, because in conflict with Article 1, Paragraph 16, of the Constitution of the State of New Jersey.

(d) That the act approved April 15th, 1914, entitled
30 "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," in so far as it purports to require the Morris and Essex Railroad Company and this defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey, during their various respective terms of office and employment, to pass and repass, free of charge, over the railroad of said the Morris and Essex Railroad Company, is un-

constitutional and void, because in conflict with the Fourteenth Amendment to the Constitution of the United States and Article 1, Paragraph 16, of the Constitution of the State of New Jersey.

(e) That neither the act approved April 23d, 1915, nor the act approved April 15th, 1914, hereinabove referred to, imposed upon the defendant any legal obligation to transport the said Ernest Napier free of charge from the City of East Orange to the Town of Hackettstown on the occasion referred to in said Ernest Napier's complaint filed in this cause. **10**

(f) That the said ejection of the plaintiff, Ernest Napier, from the train of the defendant by the conductor of said train was lawful.

(g) That the defendant has incurred no liability to the plaintiff by reason of said ejection.

20. The defendant moves for the dismissal of the complaint.

21. It is agreed that the above cause shall be submitted for trial before the Circuit Court Judge without a jury, but that both parties hereby expressly reserve the right of appeal. **20**

JOHN W. WESCOTT,
 Attorney-General,
Attorney of Plaintiff.

W. J. LARRABEE,
Attorney of Defendant

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

ERNEST NAPIER,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
 AND WESTERN RAILROAD COM-
 PANY, A BODY CORPORATE,
Defendant.

Action at Law.

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(Filed October 9, 1916.)

This case was tried on April 8th, 1916, before Judge Frederic Adams, sitting without a jury, at the Essex Circuit, upon an agreed statement of facts which is filed herein.

The said judge, having heard the arguments of counsel and considered the facts upon which the case was submitted and the respective requests to find on questions of law, finds as to matters of law as follows:

- 20 1. That the general acts, viz., Chapter 100 of the Laws of 1910, Chapter 129 of the Laws of 1911, and Chapter 194 of the Laws of 1914, and the special act, viz., Chapter 402 of the Laws of 1915, so far as they purport to require the Morris and Essex Railroad Company and the defendant, its lessee, to permit the members of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over the railroad of the Morris and Essex Railroad Company, are, and each of them is,
 30 unconstitutional and void, because said statutes deprive the defendant company, without due process of law, of its property right to collect fare from the members of said Board of Fish and Game Commissioners, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, and because they take the property of the defendant without just compensa-

tion, contrary to Paragraph 16 of Article 1 of the Constitution of the State of New Jersey.

2. That the ejection of the plaintiff, Ernest Napier, one of the members of said Board of Fish and Game Commissioners of the State of New Jersey, from the train of the defendant on May twenty-second, 1916, was lawful, and that the defendant has incurred no liability to the plaintiff by reason of said ejection

The Court finds for the defendant and against the plaintiff.

10

FREDERIC ADAMS,
Circuit Court Judge.

Dated September 23d, 1916.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed, and that the defendant recover of the plaintiff its costs, which are taxed at the sum of \$.....

Judgment entered October 9th, 1916.

WM. S. GUMMERE. C. J.

Costs.

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EXCEPTIONS.

(Filed February 1, 1917.)

The Court declines to find as a matter of law that 30
the act entitled "An act to amend an act entitled 'A further supplement to the act entitled "An act to incorporate the Morris and Essex Railroad Company," passed January twenty-ninth, eighteen hundred and thirty-five,' which supplement was approved February nineteenth, eighteen hundred and fifty-one," approved April 23d, 1915, is a valid and constitutional act, to

which refusal the plaintiff prays an exception, which is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The Court declines to find as a matter of law that the act entitled "An act to amend an act entitled 'An act concerning railroads (Revision of 1903),' approved April fourteenth, one thousand nine hundred and three," approved April 15th, 1914, is a valid and constitutional
10 act, to which refusal the plaintiff prays an exception. which is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The Court declines to find as a matter of law that the ejection of the plaintiff from the train of the defendant, under the circumstances above set forth, was a violation of the rights of the plaintiff, to which refusal the plaintiff prays an exception, which is allowed.

FREDERIC ADAMS, [L. S.]

20

Circuit Court Judge.

The Court declines to find as a matter of law that the plaintiff is entitled to recover damages from the defendant because of said ejection, to which refusal the plaintiff prays an exception, which is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The plaintiff prays an exception to the finding of the Court that the general acts—Chapter 100 of the Session Laws of 1910, Chapter 129 of the Session Laws of
30 1911, and Chapter 194 of the Session Laws of 1914, so far as they purport to require the Morris and Essex Railroad Company, and the defendant, its lessee, to permit a member of the Board of Fish and Game Commissioners to pass and repass free of charge over the railroad of the said the Morris and Essex Railroad Company, are unconstitutional. which exception is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The plaintiff prays an exception to the finding of the Court as a matter of law that the Special Act—Chapter 402 of the Session Laws of 1915, so far as it purports to require the Morris and Essex Railroad Company, and the defendant, its lessee, to permit a member of the Board of Fish and Game Commissioners to pass and repass free of charge over the railroad of the said the Morris and Essex Railroad Company, is unconstitutional and void, which exception is allowed.

FREDERIC ADAMS, [L. S.] 10

Circuit Court Judge.

The plaintiff prays an exception to the finding of the Court as a matter of law that the ejection of the plaintiff, Ernest Napier, from the train of the defendant, on May 22d, was lawful, which exception is allowed.

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

The plaintiff prays an exception to the action of the Court in dismissing the Complaint of the Plaintiff, which exception is allowed. 20

FREDERIC ADAMS, [L. S.]

Circuit Court Judge.

to whom said action was referred for trial by
His Honor, William S. Gummere, Chief Justice.

NEW JERSEY SUPREME COURT, ESSEX CIRCUIT,
SATURDAY, September 23d, 1916.

ERNEST NAPIER

vs

THE DELAWARE, LACKAWANNA AND } No. 1.
WESTERN RAILROAD COMPANY. }

10

THE STATE OF NEW JERSEY

vs

THE DELAWARE, LACKAWANNA AND } No. 2.
WESTERN RAILROAD COMPANY. }

(Filed October 7, 1916.)

For the plaintiffs—John W. Wescott, Esq., Attorney-General.

For the defendant—Walter J. Larrabee, Esq.

20

The two above entitled cases were submitted for trial without a jury before Frederic Adams, a Circuit Court Judge, sitting at Newark, Essex County, both parties expressly reserving the right of appeal. Certain matters hereinafter recited and found appear from an agreed statement of facts, which is filed herewith.

FINDINGS OF FACT AND FINDINGS AND
CONCLUSIONS OF LAW.

30

I. FINDINGS OF FACT.

Ernest Napier, the plaintiff in one case, is, and was on May 22d, 1916, a member and President of the Board of Fish and Game Commissioners of the State of New Jersey, and on that day, at the East Orange station of the defendant company, boarded a west-bound train of said company for the purpose of travel-

ing over said railroad to Hackettstown, in the County of Warren. This train was operated over the right of way of the Morris and Essex Railroad Company, by its lessee, the defendant, and was scheduled to run over said right of way to Hackettstown and to stop there for the discharge of passengers. It was a part of the official duty of Mr. Napier, as a member and President of the Board of Fish and Game Commissioners, to inspect a fish hatchery, owned by the State of New Jersey and operated by said Board, at Hackettstown, 01 and he took the train above mentioned in order to make a visit of inspection. Mr. Napier, after boarding the train, tendered to the conductor in charge of it, who was an employee of the defendant company, a certificate, admitted to be in regular statutory form (P. L. 1912, p. 162), under the seal of the State of New Jersey, signed by the Secretary of State and indorsed by Mr. Napier, bearing the title of the office held by Mr. Napier, the date of the issuance of the certificate 20 to him and the date of the expiration of his term of office, from which it appeared that Mr. Napier was then a member of the Board of Fish and Game Commissioners. The defendant, acting through its agent and servant, the conductor of the train, refused to carry Mr. Napier free of charge from East Orange to Hackettstown, and demanded payment of one dollar and twenty cents, the regular railroad fare for a ride 30 between those points. Mr. Napier refused to pay this fare, whereupon, when the train reached the station of said company known as the "Orange Station," the conductor, acting under general instructions received from the defendant, laid his hands on Mr. Napier and ejected him from the train, using no more force in so doing than was necessary.

Out of this occurrence these two actions have arisen against the Delaware, Lackawanna and Western Railroad Company, the defendant in each case. Mr. Napier, the plaintiff in one of the cases, which may be called

Case No. 1, asserts, as is apparent from the claims made in the agreed statement of facts, that he had a statutory right, created both by general and special legislation, to ride free of charge on the train and at the time above mentioned, and a statutory right, created by special legislation, to be paid by the defendant company one-half of a penalty of one thousand dollars for the violation by the defendant company of his right to ride as aforesaid. The State of New Jersey, the
10 plaintiff in the other case, which may be called Case No. 2, has brought its action of debt, to recover such penalty of one thousand dollars, for such violation, one-half of that sum to be paid to the State and the other half to Mr. Napier, the official whom the defendant company refused to carry.

In opposition to these claims the railroad company insists, as appears from the requests submitted on behalf of the defendant in the agreed statement of facts, that the expulsion of Mr. Napier from the defendant's
20 train was a lawful act, because the general and special legislation relied on by the plaintiffs to confer upon him a right to ride free is unconstitutional and that the special legislation imposing a penalty is unconstitutional. The unconstitutional feature of this legislation is said to be that it deprives the defendant company, without due process of law, of its property right to collect a fare from Mr. Napier, contrary to Section one of the Fourteenth Amendment of the Constitution of the United States, and takes property without just
30 compensation, contrary to Paragraph 16 of Article 1 of the Constitution of the State of New Jersey. The defendant does not urge that the fact that it has a charter exempts it from general legislation. Nor does it say that the Legislature of New Jersey could confer upon no person the right to ride free over the defendant's railroad. On the contrary, the defendant admits that certain officials have a statutory right to free transportation. The defendant's allegation is this: that

Mr. Napier, as a member of the Board of Fish and Game Commissioners, had no such right.

The facts above found are those agreed upon by the parties and appearing in the agreed statement of facts.

II. FINDINGS AND CONCLUSIONS OF LAW.

As to the questions of law involved in these issues, the findings and conclusions of the Court are as follows:

Those statutes only have been considered which bear directly on the precise questions raised. 10

Several acts of general legislation are to be noticed.

Section 40 of the revised Railroad Act, in the Revision of 1903 (P. L. 1903, pp. 666, 667), reads as follows:

“The Governor, Chancellor, Vice-Chancellors, Justices of the Supreme Court, Judges of the Court of Errors and Appeals, Secretary of State, State Treasurer, State Comptroller, Clerk in Chancery, Clerk of the Supreme Court, Adjutant-General, Quartermaster-General, State Librarian, State Prison Keeper and State Superintendent of Public Schools, while traveling for the purpose of discharging the duties of their offices, and the members and officers of both houses of the Legislature of this State, shall pass and repass free of charge on the railroad of any company organized under this act.” 20

The next general statute to be noticed is chapter 100 of the Laws of 1910 (P.L. 1910, p. 151). This act of 1910 amends, in certain respects, section 40 of the Railroad Act in the Revision of 1903. In form it is an act to further amend an amendatory act passed in 1909 (P. L. 1909, p. 291). The effect of this act of 1910 and of certain prior amendatory acts, not necessary now to be mentioned, was to enlarge the list of officials entitled to free transportation, to omit the qual- 30

ification as to traveling on official duty and to make the provision apply to all railroads in the State. Among the officers named in this enlarged list, who were not mentioned in section 40 of the Revision of 1903, or in other general legislation prior to the act of 1910, are members of the Board of Fish and Game Commissioners.

The enlarged list of favored officials contained in chapter 100 of the Laws of 1910 was again enlarged in 10 1911 and 1914 by acts similar to that of 1910. (1911, chapter 129, P. L. 1911, p. 185; 1914, chapter 194, P. L. 1914, p. 358.) These two acts of 1911 and 1914 are in form direct amendments to section 40 of the Railroad Act in the Revision of 1903. Each one of these statutes enumerates members of the Board of Fish and Game Commissioners among those entitled to free transportation. The act of 1914 provides for the issuance by the Secretary of State of such a certificate in card form as has been mentioned. This provi- 20 sion as to a certificate was substantially a reënactment of chapter 115 of the Laws of 1912 (P. L. 1912, p. 162). This act of 1914 contains also this provision:

“Nothing herein contained shall in any way modify or alter any charter or statute obligation already existing imposed upon any railroad to pass and repass, free of charge, any officer or employee of this State.”

Two acts of special legislation are to be noticed. The earlier act was passed in 1851, and is a supplement to 30 the act incorporating the Morris & Essex Railroad Company (P. L. 1851, p. 28). The fourteenth section of the supplement of 1851 enacts

“That the Governor, the Chancellor, the Justices of the Supreme Court and the Judges of the Court of Errors, of this State, when traveling for the purpose of discharging the duties of their offices, and the members of both houses of the Legislature of this State, during their

annual or other sessions, shall pass and repass over the railroad and railroads of said company, in their cars, free of charge."

It may be remarked that the brief filed by counsel for the defendant company admits that this section of the act of 1851 created an obligation binding on the Morris & Essex Railroad Company and now binding on the defendant as its lessee. The language of the brief is as follows:

"We desire, however, by way of explanation 10
of the defendant's attitude, to say that it has always taken the position, as it still does, that the extent of its obligation to carry State officers and employees free of charge is expressed in the supplement to its lessor's act of incorporation, passed in 1851."

This concession seems to be founded upon the idea that this act of 1851 had a contractual character.

The following is a further quotation from the defendant's brief on this phase of the case: 20

"In 1851 (P. L. 28) the Morris & Essex Railroad Company (defendant's lessor) obtained from the Legislature certain additional franchises, and in the act granting them it was provided that the Governor, the Chancellor, the Justices of the Supreme Court and the Judges of the Court of Errors, when traveling in the performance of their official duties, and the members of both houses of the Legislature during its annual or other sessions, should pass and 30
repass over its railroad free of charge. The defendant and its lessor have always recognized and complied with their obligations to transport the officers above named in accordance with the provisions of said act."

The later act of special legislation to be noticed was passed in 1915. By chapter 402 of that year (P. L. 1915, p. 772), the fourteenth section of the act of 1851

was amended in certain respects. It is in form an act amending the act of 1851, which was a supplement to the act incorporating the Morris & Essex Railroad Company. The list of officers entitled to free transportation was enlarged, the qualification as to traveling on official duty was omitted, and the right was conferred upon the persons enumerated "and such other officials as shall be from time to time designated" to pass and re-pass free of charge over the railroad or railroads of said company in their cars. Among the officers named in this enlarged list, who were not mentioned in the act of 1851, are members of the Board of Fish and Game Commissioners. This act of 1915, by its second section, imposes on the Morris & Essex Railroad Company, its successors, lessee or lessees, the before mentioned penalty of \$1,000 for a violation of the act.

There is an obvious parallelism between the course of the general and the course of the special legislation which affects the case of Mr. Napier. Section 40 of the revised Railroad Act much resembles section 14 of the special act of 1851. The general acts of 1910, 1911 and 1914, amending section 40 of the revised Railroad Act, much resemble the special amendatory act of 1915.

The question now to be determined is whether these statutes are, for the reasons previously assigned, unconstitutional, so far as they assume to confer upon the plaintiff, Mr. Napier, as a member of the Fish and Game Commission, a right of free transportation over the railroad of the defendant company and impose upon that company the penalty in question for a violation of such right.

The Supreme Court of New Jersey has in two recent decisions dealt with the matter of free transportation on lines of reasoning, which, so far as they are fairly applicable to the case of Mr. Napier, are binding on the Court. These cases are *Delaware, Lackawanna & West-*

ern Railroad Company, Prosecutor, v. Board of Public Utilities Commissioners, 85 Law (56 Vroom), p. 28, decided November 2, 1913, and *Pennsylvania Railroad Company v. Herrmann*, 96 *Atlantic Reporter*, p. 665, decided February 28, 1915. A brief reference to these cases will be all that is necessary to ascertain what is their bearing upon the matter in hand.

The one of these two cases which more closely resembles that of Mr. Napier is that reported in 85 Law. It came up on *certiorari*. The sole question considered 10 by the Supreme Court was whether Mr. Mahlon L. Hoagland, a member of the State Water Supply Commission, who held and presented a certificate like the one issued to Mr. Napier, was entitled on January 21, 1913, to free passage over the road of the Delaware, Lackawanna & Western Railroad Company. Mr. Hoagland's claim rested on general legislation alone. In 1913, when his case arose, no supplement to the charter of the Morris & Essex Railroad Company had been passed conferring upon a member of the State 20 Water Supply Commission the right or privilege of free transportation, although the subsequent special act of 1915 has this feature. In this respect, therefore, the claim of Mr. Hoagland, which rested on a general act passed in 1908, which was reënacted as to his office in 1909, 1910 and 1911 (P. L. 1908, p. 61; P. L. 1909, p. 291; P. L. 1910, p. 151; P. L. 1911, p. 185), differs from that of Mr. Napier, who relies, not only on the general acts above mentioned, passed in 1910, 1911 and 1914, but also on the special act of 1915 (P. 30 L. 1915, p. 772), which was in force when Mr. Napier's case arose in 1916.

Mr. Justice Garrison, therefore, in writing the opinion of the Supreme Court in the Hoagland case, was dealing with a question which closely resembled the question as to general legislation which is now before this Court. The sole question then before the Supreme Court was whether section 40 of the revised Railroad

Act, as it stood in the Revision of 1903, as amended in 1908, 1909, 1910 and 1911, gave to Mr. Hoagland, as a member of the State Water Supply Commission, a right of free passage over the line of the Delaware, Lackawanna & Western Railroad Company in the State of New Jersey on January 21st, 1913. One of the questions now before this Court is whether section 40 of the revised Railroad Act, as it stood in the Revision of 1903, as amended in 1910, 1911 and 1914, gave to

10 Mr. Napier, as a member of the Board of Fish and Game Commissioners, a right of free passage over the same line on May 22, 1916. Both inquiries have the same beginning point. The amending acts affecting the two cases closely resemble one another, and, indeed, are for the most part the same. The offices held by Mr. Hoagland and Mr. Napier were alike. Each official was a member of a board of conservation having only an incidental relation to railroad transportation. The decision of the Supreme Court was adverse to Mr.

20 Hoagland. The line of decision is fully indicated in the opinion by Mr. Justice Garrison. It is enough to say that the court examined the subject historically and decided the case upon the ground that the free transportation of public officials as a gratuity from railroad corporations had assumed proportions which required regulation and restriction in the interest of the public welfare; that the settled policy of the State is fairly expressed in section 40 of the Revision of 1903,

30 which confers the right or privilege of free transportation upon a small number of State officers, whose official duties have or may have some relation to railroad affairs and upon whom some responsibility for them is or may be thus imposed. In the opinion delivered in the Hoagland case there is no suggestion that the test of the validity of such an exemption from the common duty of paying fare is to be found in its tendency to gratify, placate or propitiate the person who is exempted. The evil of the old gratuity was that it did

or might do just this. It was to correct this evil that the Legislature put the matter on a statutory basis and adopted as a test the nature of the office of the recipient of the privilege. As between a gratuity given by a railroad company and such a bare inducement sanctioned by statute, the latter would be the worse, because it would implicate the State. Such an inducement, to use the expressive term employed by Mr. Justice Garrison, would be an "alien" inducement; that is, an inducement foreign to the considerations 10 which should influence, in the performance of official duty, one who serves the State.

The Court in the Hoagland case, taking section 40 of the Railroad Act as revised in 1903, not indeed as containing a final and exclusive list of privileged persons, but rather as an authoritative illustration of State policy, proceeded to inquire whether Mr. Hoagland's claim, based on legislation subsequent to the revision, had a sound legal foundation. The conclusion was that the claim was invalid. The police power did not support it, and the claimant's official position did not concern railroad affairs. The legislation which denied 20 to the railroad company the exercise of its property right to collect passage money from Mr. Hoagland was, therefore, as to him, unconstitutional. The parallel between the official character of Mr. Hoagland and that of Mr. Napier is so close that it is impossible, on legal principle, to distinguish the two cases.

In *Pennsylvania Railroad Company v. Herrmann*, 30 96 *Atlantic Reporter*, p. 665, the rule which includes the Governor was held to embrace his personal representative, the secretary to the Governor.

So much for general legislation. The further question remains whether the special legislation affecting Mr. Napier, namely, chapter 402 of the Laws of 1915, which is substantially the same as the general legislation, is, as to him, unconstitutional. This Court, of

course, follows and adopts the reasoning of Mr. Justice Garrison in the Hoagland case, at page 32 of the opinion, and holds that the railroad company is affected only by such subsequent legislation, whether general or special, as was properly enacted under the reserved right of the Legislature to regulate corporations in the interest of the public.

This is equivalent to saying that in this case the rule which applies to general legislation applies also
10 to special legislation. Therefore, as Mr. Napier's claim fails under general legislation, so also it fails under special legislation.

As to matters of law, the findings are specifically as follows:

That the general acts, chapter 100 of the Laws of 1910, chapter 129 of the Laws of 1911 and chapter 194 of the Laws of 1914, and the special act, chapter 402 of the Laws of 1915, so far as they purport to require the Morris & Essex Railroad Company and the
20 defendant, its lessee, to permit a member of the Board of Fish and Game Commissioners of the State of New Jersey to pass and repass free of charge over the railroad of the Morris & Essex Railroad Company, are, and each of them is, unconstitutional and void, because said statutes deprive the defendant company, without due process of law, of its property right to collect a fare from Mr. Napier, contrary to section 1 of the Fourteenth Amendment of the Constitution of the
30 United States, and because they take property without just compensation, contrary to paragraph 16 of Article 1 of the Constitution of the State of New Jersey;

That the ejection of the plaintiff, Ernest Napier, one of said commissioners, from the train of the defendant on May twenty-second, 1916, was lawful, and that the defendant has incurred no liability to the plaintiff by reason of said ejection.

It results from the foregoing findings of fact and conclusions of law that the complaint of the plaintiff in

each of the above-entitled cases should be dismissed, with costs to the defendant against the plaintiff in each case to be taxed, and it is accordingly so ordered. •

Circuit Court Judge.

Dated September 23, 1916.

