

OPINION
OF THE
ATTORNEY-GENERAL,

RESPECTING

Assembly Bill, No. 388,

IN REPLY TO A RESOLUTION OF THE HOUSE
OF ASSEMBLY.



CAMDEN, N. J.
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To the Honorable the Speaker of the House of Assembly.

MR. SPEAKER: I have carefully considered the question referred to me by the resolution of the House respecting the Assembly Bill 338, and am of opinion that the bill in question is not within the purview of subdivision 9, section 7, of article 4, of the Constitution of the State. The act of incorporation of the Morris and Essex Railroad Company, passed in the year 1835, and also the supplement thereto, passed in the year 1836, reserved to the state the right to repeal such charter whenever the public good should require it. This reservation of the right of repeal was absolute, and to be exercised at the pleasure of the legislature, without notice to the corporation or to the public, and the act now in question is nothing more than the exercise of the right so reserved, which can only be expressed under the form of a legislative act. I am of opinion that the framers of the Constitution did not intend to import into the charter aforesaid, a condition limiting the power of the state, therein reserved, or clothing the corporation with additional privileges not conferred by its charter; and I therefore advise the House of Assembly that public notice of the introduction of Assembly Bill No. 338 was not necessary, under the Constitution of the State.

I have the honor to remain, with great respect,

Your obedient servant,

JOHN P. STOCKTON,

Attorney General.

TRENTON, N. J., March 11th, 1885.

APPENDIX.

EXTRACT FROM THE MORRIS AND ESSEX CHARTER.

AN ACT TO INCORPORATE THE MORRIS AND ESSEX RAILROAD COMPANY.

[Passed January 29, 1835. Pamp. Laws, p. 25.]

15. That as soon as the railroad, with its appendages, shall be finished so as to be used, the president and treasurer of said company shall file, under oath or affirmation, a statement of the amount of the costs of said road, including all expenses, in the office of the Secretary of State; and annually thereafter the president and treasurer of the said company shall, under oath and affirmation, make a statement to the legislature of this state, of the proceeds of said road; and as soon as the net proceeds of said railroad shall amount to seven per centum upon its cost, the said corporation shall pay to the Treasurer of this State a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter, on the first Monday in January of each year; *provided*, that no other tax or impost shall be levied or assessed upon the said company.

16. That at any time after the expiration of fifty years from the completion of said road the legislature of this state may cause an appraisement of the said road, and the appendages thereof, to be made by six persons, three of whom shall be appointed by the Chief Justice of this State, for the time being, the remaining three by the company, who, or a majority of them, shall report the value thereof to the legislature, within one year from the time of their appraisement; or if they cannot agree they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid; or in case the said company shall neglect or refuse to appoint the said three persons on their part, for two months after the said appointment, by the said Chief Justice, then the three persons so appointed by him, shall proceed to make such appraisement, which shall be binding on the said company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then, upon two weeks' notice to the said company, the said Chief Justice shall appoint such seventh man, as aforesaid, to make such appraisement as aforesaid, and thereupon

the state shall have the privilege, for three years, of taking the said road, upon the payment to the company of the amount of the said report, within one year after electing to take said road; which report shall be filed in the office of the Secretary of this State, and the whole property and interest of said road, and the appendages thereof, shall be vested in the state of New Jersey, upon payment of the amount so reported to the said company; and that it shall be the duty of the president of the company to lay before the legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and of all the receipts and disbursements of the company; *provided, always*, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost or valuation of said road, with the appendages thereof.

20. That no part of the funds of this company shall be used for banking or other purposes not plainly indicated by the provisions of this act; and that the legislature reserve to themselves the right to alter, amend, or repeal this act, whenever they think proper.

EXTRACT FROM SUPPLEMENT TO MORRIS AND
ESSEX CHARTER, PASSED MARCH 2, 1836.

[Pamp. Laws of 1836, p. 223.]

6. That the twentieth section of an act to incorporate the Morris and Essex Railroad Company, passed the twenty-ninth day of January, eighteen hundred and thirty-five, be and the same is hereby repealed.

7. * * * * That the legislature reserve to themselves the right to alter or amend this supplement or the act to which this is a supplement whenever the public good may require.

EXTRACT FROM AN ACT CONCERNING CORPOR-
ATIONS, PASSED FEBRUARY 14, 1846.

[Pamp. Laws of 1846, p. 17.]

6. That the charter of every corporation hereafter granted by the legislature shall be subject to alteration, suspension or repeal, in the discretion of the legislature.

EXTRACT FROM SUPPLEMENT TO MORRIS AND
ESSEX CHARTER, PASSED MARCH 23, 1865.

[Pamp. Laws of 1865, p. 555.]

3. That the tax of one-half of one per cent. provided for by their said original act of incorporation to be paid by the said company to the state whenever the net earnings of the said company amount to seven per cent. upon the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg and annually thereafter, which tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever, by or under the authority of this state or any law thereof; *provided*, that this section shall not go into effect or be binding upon the said company until the said company, by an instrument duly executed under its corporate seal and filed in the office of the secretary of state, shall have signified its assent hereto, which assent shall be signified within sixty days after the passage of this act or this act shall be void.

MEMORANDUM.—The Supreme Court of New Jersey, in 1874, held that the above acts did not constitute a contract between the Morris and Essex Railroad Company and the state on the subject of taxation, and that the company was taxable under the general railroad tax act of 1883. *Vide 8 Vroom's Reports, 229.* This decision was unanimously affirmed by the New Jersey Court of Errors and Appeals in 1875. *Vide 9 Vroom's Reports, 472.*

These decisions were reversed by the Supreme Court of the United States in 1877, and that court held that the above act of 1865 constituted a contract between the state and the railroad company on the subject of taxation. *Vide 95, U. S. Reports, 104.*