

SUPPLEMENT  
TO  
**STATUTES OF 1869-70**

CONTAINING AS FOLLOWS:

**CHAPTER 584**

AN ACT TO MAKE, OPEN AND ESTABLISH A PUBLIC STREET IN THE CITY AND COUNTY OF SAN FRANCISCO, TO BE CALLED MONTGOMERY STREET SOUTH, AND TO TAKE PRIVATE LANDS THEREFOR.

**CHAPTER 585**

AN ACT AUTHORIZING THE PARTIES THEREIN NAMED, THEIR ASSOCIATES AND ASSIGNS, TO CONSTRUCT AND MAINTAIN A SHIP CANAL FROM THE CITY OF STOCKTON TO DEEP WATER ON THE SAN JOAQUIN RIVER.

**CHAPTER 586**

AN ACT TO GRANT THE RIGHT TO CONSTRUCT AND MAINTAIN A BRIDGE AND FERRY ACROSS THE RUSSIAN RIVER, AND TO OPEN A PUBLIC HIGHWAY THERETO.

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# SUPPLEMENT

## CHAPTER DLXXXIV.

*An Act to make, open and establish a public street in the City and County of San Francisco, to be called Montgomery Street South, and to take private lands therefor.*

[Became a law by operation of the Constitution, April 1st, A. D. 1879, under a decision of the Supreme Court, filed June 21th, A. D. 1879.]

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

SECTION 1. Montgomery Street South, in the City and County of San Francisco, as at present laid out and opened from Market street to Howard street, shall be and is hereby extended from said Howard street, in a direct line, southeasterly and parallel with Second street, to Townsend street, of said city and county. The width of such extension shall be seventy feet, and the land to be taken therefor is hereby declared to be a tract of land seventy feet in width, extending southeasterly from Howard street to Townsend street of said city and county, the northeasterly side thereof being of a uniform distance of two hundred and fifteen feet from the southwesterly side of Second street, and parallel thereto. Said tract of land is hereby taken and dedicated for an open public street, and when paid for, as hereinafter provided, the title thereof shall vest in said city and county for such purpose forever, as the title of the other public streets in said city and county now is vested; and said street shall thereafter be known and designated as Montgomery Street South. The value of the land so taken for such extension, except so much thereof as belongs to said city and county, shall, as hereinafter provided, be determined, and the amount thereof shall be apportioned and assessed upon the lots and subdivisions of land adjoining the same upon the northeasterly and southwesterly sides thereof, to a uniform depth of one hundred feet; which said lots and subdivisions are hereby declared to be benefited by such extension. The owners of lots and subdivisions of land included within said tract of land to be taken for such extension shall be paid therefor from the fund and in the manner hereinafter provided.

Extension of  
Montgomery  
Street South  
to Townsend  
street.

SEC. 2. The grade of said extension, where the same intersects Folsom street, shall be twenty-six feet above the base line of the said city and county grade; where it intersects Harrison street, it shall be thirty-six feet above said base line;

Grade of  
extension.

where it intersects Perry street, it shall be thirty-four feet above said base line; where it intersects Silver street, it shall be thirty-two feet above said base line; and at its intersection with other cross streets the grade shall be the same as that of such cross streets, as now established at such points of intersection; and the grade of said streets between Brannan and Townsend shall conform to the grades of Brannan and Townsend, as at present established, at the points of intersection of said streets. Such street shall have sufficient rise between the cross streets to allow good and proper drainage, the extent thereof to be determined by the Commissioners appointed under this Act. Until provision shall be made for changing the grade of Harrison street, as now established between Second and Third streets, the crossing thereof on the lines of such extended street shall be by means of a bridge, to be constructed of iron or wood, as said Commissioners may deem best adapted therefor; to be of sufficient strength to sustain the passage of heavily loaded teams, and to rest for its entire support upon piers or abutments, of uniform height with said Harrison street at said crossing. Said bridge to have a double carriage-way, and well guarded and defined passage ways on each side thereof, of even width and elevation with the sidewalks upon Harrison street; and flights of stairs shall descend from diagonally opposite corners thereof to the sidewalks of the street below—not to exceed, however, one-half of the width of such sidewalks.

Bridge.

Appointment of Commissioners.

To take oath.

Salary.

Vacancy.

SEC. 3. Within thirty days after the passage of this Act, the County Court of the City and County of San Francisco shall appoint three persons, who are hereby constituted a Board of Commissioners, for the purpose of carrying out the provisions of this Act. Before entering upon the discharge of their duties, said Commissioners shall each take and subscribe an oath, before the County Judge of said city and county, that he will, to the best of his ability, and without fear or favor, perform all the duties required of him by this Act, and that he has no interest in any of the land designated as taken, or assessed for, or injured by said extension, which oaths shall be filed with the Clerk of the County Court of the said city and county. While serving as such Commissioners, they shall each be entitled to receive, and be paid from the fund, and in the manner hereinafter provided, a salary of three hundred dollars per month, in gold coin of the United States. Said Board is hereby authorized to employ such clerks, attorneys, surveyors, draughtsmen, laborers and other assistance as shall be necessary, and to hire suitable offices for the transaction of its business, at a rental not to exceed one hundred dollars in gold coin per month. Any vacancy occurring in said Board shall be filled by the County Court of the City

and County of San Francisco, by an order to be made on the application of the surviving or remaining member or members of said Board, after ten days notice by advertisement, published in such newspaper as said Court shall direct, of the time and place appointed for the hearing of such application. Upon the day appointed for such hearing, or upon any day to which the same may be adjourned, said Court shall hear all parties interested who may desire to be heard upon or in regard to said application, and shall thereupon appoint some suitable person, who shall be a resident and property owner in said city and county, whose property is not taken, or liable to be injured or assessed, for such extension, to fill such vacancy; and the person so appointed shall thereupon enter upon the duties of his office, as such Commissioner, with like power and authority, and qualified in like manner, as if herein named as such. Either of the Commissioners may be removed by said County Court, for cause, on the application of any party interested. Said Board may examine parties and witnesses in said proceedings, upon oath, and each Commissioner shall be and is hereby authorized to administer oaths for that purpose. Witnesses may be compelled to attend before the Board by subpoena, issued from the said County Court, upon application of either of said Commissioners, or of any party interested.

SEC. 4. Said Commissioners shall, immediately after qualifying, as hereinbefore provided, by advertisement, to be published daily for twenty days, in two daily papers printed and published in said city and county, notify all persons whom it may concern that said Board has located its office (at a place to be named therein), and that all persons owning land on the line of the said extension, coming within the description of land to be taken or assessed for said improvements, are required, within twenty days from the date of the first publication of said notice, to file with said Board maps of their respective subdivisions of land, and copies of the deeds, leases, mortgages or other instruments, under which they respectively claim, or descriptions of their property, with a specification of their interests therein, and a reference to the place of record of the instruments under which they so claim; and that all persons owning, claiming or occupying property which they consider will be injuriously affected in value by such extension, are also required to file like maps and copies of deeds and other instruments, or specifications and descriptions, with a brief assignment of the reasons why, or respect in which their property will be so affected.

SEC. 5. At the expiration of twenty days, mentioned in section four, if any person shall have failed to file such maps, instruments and descriptions, the said Board shall procure a

Notice to parties affected, to file maps, deeds, etc.

Proceedings of the Board were lands unclaimed.

copy of all remaining and unclaimed subdivisions which shall be affected by this Act, from the books of the Assessor of the City and County of San Francisco; and shall adopt the same subdivisions as are found on the books and plans of said Assessor, and set down such subdivisions as belong to unknown owners, and shall assess the value of the such said subdivisions as are to be taken, and the damages and benefit upon such as are affected by the opening of said street; and in case it be ascertained in any manner by said Board that the owner or owners of any such subdivision is laboring under any disability, such as infancy, coverture, insanity, imprisonment, or any other, it shall be their duty to report the same to the Judge of the County Court of the City and County of San Francisco, who shall appoint a guardian or attorney, as the case may be, to represent such person or persons, laboring under disability. In case where the owner or owners of any subdivision of said land is or are unknown, or so stated in the report of the said Board, and in case where there are liens or encumbrances, or leases, or conflicting claims, or disputes or doubts about the title of any lots or subdivisions of said land, which cannot be adjusted and settled between the parties in interest, in all such cases it shall be the duty of the said Board to draw a warrant on the Treasurer of said city and county, payable out of the hereinafter provided fund, for the amount awarded in each case, as the value of the respective lots of land, or of the damages assessed, and to deposit said warrant with said County Treasurer to the credit of the particular lot of land, by its proper description; and thereupon, and upon proof of the same, the said Board shall be entitled to be put in possession of such lot of land as shall be taken, in the same manner and by the same process as provided in the fourteenth section of this Act; and the title to said lots of land shall thenceforth be vested in said city and county as effectually as if the same had been conveyed by deed executed by the true owners thereof. The said fund so deposited with said Treasurer to the credit of any lot shall stand in lieu and stead of said lot; and the parties interested in or making claim to said lot shall have the same rights in the said fund as they had in said lot, and may proceed against said Treasurer by bill in equity for an adjudication to settle the conflicting claims to the same, or to provide for its just and proper distribution, in which action all parties in interest or disputes shall be made parties, if known. In all such actions, the only requisition upon the Treasurer shall be to answer whether he has the money on deposit to the credit of the lot then in question. If, upon the judgment of the Court, the said Treasurer shall pay over any such fund to the party entitled by such judgment to receive

Conflicting  
claims, etc.

it, such payment shall forever bar any other action upon the part of any person whomsoever against the said Treasurer, for said fund or any part thereof.

Sec. 6. At the expiration of the time limited in section four of this Act for the filing of maps, deeds, descriptions, claims, etc., the said Board shall proceed to ascertain and determine, and separately state and set down in a written report, to be signed by at least a majority of said Board, the description and actual cash value of the several lots and subdivisions of land included in the land taken for said extension from Howard street to Townsend street, and the amount of the damage that will be occasioned to property along the line of said extension, in behalf whereof claims for damages have been duly presented to and filed with said Board. The aggregate amount thus ascertained by said Board, together with the expenses of the proceedings hereby authorized, to be ascertained and estimated as nearly as possible by said Board, shall be assessed upon the lots of land adjoining said tract of land taken for said extension, on either side thereof, to the depth of one hundred feet, being the lots hereinbefore declared to be benefited by such extension. And said Board shall also set down in said report the amount apportioned and assessed upon each of the lots and subdivisions of land hereinbefore declared to be benefited by such extension, in order to defray the cost of indemnifying the owners of land or property taken for said extension and decided to be injuriously affected thereby to the extent of the amounts determined by said Board to be due therefor. In making said report, said Board shall severally specify and describe each lot, subdivision or piece of property taken, injured or assessed, following, where possible, the descriptions shown in the maps, descriptions and deeds, and other instruments, filed with said Board in pursuance of section four of this Act, and shall set against each lot, subdivision or piece of property, the names of the owners, occupants and claimants thereof, or of persons interested therein as lessees, encumbrancers or otherwise, and the particulars of their interests, respectively, so far as the same can be ascertained, and the amount of value or damage, or assessment determined upon for the same, respectively. If in any case said Board shall find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any parcel of land, or of any interest therein, it shall set the same down as belonging to unknown owners. In case it shall happen that an amount shall be assessed on any piece of ground not in conformity to the subdivision lines as shown in the maps, instruments and descriptions so filed, or for any other reason it shall become necessary, after the report has been made and confirmed, as

Report of  
Commission.

hereinafter provided, to apportion any assessment between two lots or subdivisions of a lot or lots, the said Commissioners shall have authority to apportion the same and make such alterations in their report as is thus rendered necessary. Said Board shall also cause to be made an accurate map or plan of said extension from Howard street to Townsend street, and of the lands hereinbefore and hereinafter declared to be benefited thereby, exhibiting in detail thereon each lot and subdivision of land taken for, and property injured by said extension, and each lot and subdivision liable to be assessed to pay the value of land so taken and damages to property so injured, with the dimensions and proper location of said lots and subdivisions, and the names of owners, occupants or claimants of the same, so far as known, marked thereon; and also exhibiting a sectional elevation of said street, so as to show the grades and rise thereof, as herein prescribed and as determined on by said Board. Such report and map shall, as soon as the same are completed, be left at the office of said Board, daily, during ordinary business hours, for thirty days, for the free inspection of all parties interested, and notice that the same are so open for inspection, for such time and at such place, shall be published by said Board, daily, for ten days, in three daily newspapers printed and published in said city and county.

Map.

Open for inspection.

Hearing of parties dissatisfied.

Report and map to be filed in the County Court.

SEC. 7. Any person feeling dissatisfied with the determination of said Board as to the value of, amount of damage to, or assessment upon lands or property owned, claimed or occupied by him, as shown in the report provided for in the last preceding section, may have a summary hearing thereupon before said Board, in person or through counsel, at any time before the filing of said report, as hereinafter provided, and may be examined upon oath and produce and examine witnesses in relation thereto; and the said report and map shall, during that time, be open to revision and correction by said Board. At the expiration of the time allowed for such hearing (the several parties who have, during said period, applied for a hearing, having had an opportunity to be heard), said Board shall proceed to review its said report, and, if necessary, correct or modify the same; and when such revision is completed, shall file its report, as revised, together with said map as corrected, in the office of the Clerk of the County Court of said city and county, with a petition, signed by said Board, or a majority thereof, for the confirmation of said report. Upon the filing of said report, map and petition, the said County Court shall have and take jurisdiction of said proceeding, as a special proceeding, and continue, if necessary, and determine the same after the manner of cases of equitable cognizance; and the Court or Judge shall thereupon



appoint a day, not more than thirty nor less than ten days from the date of filing thereof, for the hearing of said petition. Notice of the filing of said report and map, and petition for the confirmation of said report, and of the time and place appointed for the hearing of said petition, shall then be given, by publication thereof daily, at least one week before said hearing, in three daily papers, published in said city and county. On the day appointed for the hearing of said petition, or on such other day or days as the said hearing may be adjourned to or appointed for that purpose by said Court, all persons interested may be heard before said Court in relation to any of the matters contained in said report; and the Court, after the allegations and proofs of all parties interested, and ascertaining to its satisfaction that notice of such hearing has been duly given, may confirm, set aside or modify said report, and, if necessary, refer the same back for revision and correction to said Board, who shall thereupon, if the same be so referred, after revising and correcting the same, as directed by said Court, file the same, so revised and corrected, and like proceedings shall thereupon be had, as to hearing before the County Court, confirmation, reversal or modification, as hereinbefore in this section provided, until said report, as revised and corrected, shall be finally confirmed by said Court. No objections to said report shall be considered by said Court, except such as are specifically set forth in writing by the parties objecting to the same; and all errors, omissions and irregularities not so specifically set forth, shall be deemed to be waived. Upon the confirmation of said report, said Court shall enter up a separate judgment against each lot or subdivision of land assessed therein for the amount so assessed against the same in said report, describing the same as described in said report, or by a more correct description, if the same be incorrectly described therein. In the proceedings on the said report there shall be but one judgment roll, which shall consist of a copy of the report and map, petition for confirmation, objections thereto and judgments of the Court thereon. All such judgments shall be in favor of the City and County of San Francisco against each particular lot of land described, for the amount assessed upon it; shall be payable only in gold coin of the United States, or by the warrants issued by said Board, as provided in section thirteen of this Act; shall bear interest from the date of filing said report, at the rate of ten per cent. per annum, until satisfied, and shall be a lien upon the respective lots until the same are paid or satisfied.

SEC. 8. Any party dissatisfied with said report, or any part thereof, who shall have filed objections thereto in the County Court, as provided in the last preceding section, may,

Hearing of  
petition for  
confirmation.

Objections  
to be in  
writing.

Confirma-  
tion of  
report.

Judgment  
roll.

Appeal to  
Supreme  
Court.

within thirty days after the entry of the judgments mentioned in the last preceding section, appeal to the Supreme Court to review the matter or matters complained of in the objections so filed; and such appeal shall be taken in the manner, and with the same effect, and in all respects in conformity to sections twelve, thirteen and fourteen of an Act to declare and regulate the power of the Board of Supervisors of the City and County of San Francisco to take private lands for public improvements, and to describe the manner of its execution, approved April fourth, eighteen hundred and sixty-four, and all subsequent proceedings shall be in conformity therewith, except that so far as said sections are used in carrying out this Act, the words "Board of Commissioners" shall be substituted in the place of the words "Board of Supervisors" and "Board of Supervisors of said city and county," where the same occur in said sections.

Board may apply for order of sale.

SEC. 9. At any time after the final confirmation of said report by the said County Court, the time for appealing from the order of confirmation having expired without an appeal having been taken—or if such appeal shall have been taken and the proceedings herein shall not be stayed by undertaking on appeal, as provided in said last mentioned section, and the Act therein referred to—said Board may apply to the said Court for an order or orders of sale to issue to the Sheriff of said city and county, commanding him to collect the amount of the said several judgments, or such or any of them as shall then remain unpaid, together with costs and expenses, by sale of the lots against which the same are respectively entered, in the mode prescribed by law for the sale of real estate under decree of foreclosure; the proceeds to be paid by said Sheriff to the Treasurer of said city and county, who shall place the same to the credit of said Board, to be used solely for the purposes of this Act.

Fees of Clerk of Court.

SEC. 10. The fees of the Clerk of said Court, for his services in any proceedings in said Court under this Act, shall be the sum of two dollars for every judgment entered therein, and shall be collected at the time, and in the manner, that said judgments are collected; and shall be paid to said Clerk by said Board, out of the fund hereinabove provided for, as other expenses are paid. And the said Clerk shall be entitled to collect and receive for each transcript of the record prepared by him, from the party desiring the same, such fees as are now allowed on appeal in civil cases. The fees of said Sheriff shall be five dollars for every lot or subdivision sold by him, and shall be paid to him as the fees of the said Clerk are paid. Neither of said officers shall be entitled to receive any other or further compensation, for any services rendered by him hereunder, than those above provided for; but any

Fees of Sheriff.

expenses lawfully incurred by said Clerk, on any such proceeding, shall be assumed and paid by said Board, as other expenses are provided to be paid.

SEC. 11. Any owner of, or person interested in, any lot or subdivision of land assessed in said report, against which judgment has been so entered by said County Court, may, at any time before the issuance of an order of sale thereon, pay the amount of said judgment, and interest, and Clerk's fees, to the Treasurer of said city and county, who shall receipt for the same; and on presentation to said Clerk of said receipt, such judgment shall be by him satisfied of record.

Satisfaction of judgment before issue of order of sale.

SEC. 12. In case the owner of any lot or parcel of land taken for said extension, or of property in respect to which damages have been awarded for injury sustained thereby, shall also be the owner of any lot or parcel of land assessed hereunder, said Board shall, on request of said person, deliver to him a certificate of such fact, stating the amount awarded him as the value of, or extent of, injury to such land or property taken or injured, and the amount assessed upon the land owned by him; and upon presenting such certificate to said Treasurer or to said Sheriff, the receipt of such person for the amount or any part of the amount so certified as due to him, shall be received in payment, or satisfaction, or on account of, or in part satisfaction, as the case may be, of any assessment made or judgment entered hereunder, against land of which such person is the owner.

In case person assessed owns land taken for extension.

SEC. 13. Any person owning land, included within the description of land to be taken for said extension, may, at any time after confirmation of the report provided for in section six of this Act, on executing and delivering to the said Board a deed of the land so owned by him, in form to be approved by it, conveying the same to said city and county for the purpose declared in this Act, be at once entitled to a warrant for the amount awarded in said report as the value of such land; such warrant to be drawn by said Board upon the Treasurer of said city and county to the order of such person, and payable out of the fund in the hands of said Treasurer to the credit of said Board; whereupon said land shall be taken possession of by said Board for said city and county, and for said purpose only. Said Board is also authorized to receive from any person any sum or sums of money in advance of the proceeds of the assessment herein authorized, and may issue like warrants therefor in favor of such person. All said warrants shall be payable in United States gold coin, by the Treasurer of said city and county, in the order of their presentation to and registry by him, out of said fund and as fast as it suffices; shall bear interest at the rate of ten per cent. per annum from their respective dates until paid, and shall

When warrants to issue for damages awarded.

Payment in gold coin.

be receivable by the Sheriff and Treasurer of said city and county in payment and satisfaction of any judgments rendered by said County Court in pursuance of the provisions of this Act.

When Commissioners may take possession.

SEC. 14. On tendering to the owner, or paying into Court for account of the owner or owners of any lot of land to be taken for the said extension, the amount awarded in the report provided for in section six of this Act, as the value of such lot of land or on so tendering or paying into Court a warrant drawn by said Board upon the Treasurer of said city and county, in favor of such owner or owners, or in favor of the Clerk of said Court, in case of payment into Court, for the amount so awarded, accompanied by the certificate of said Treasurer that such warrant has been presented to him, and by him registered and will be paid on demand, said Commissioners shall be entitled to an order of the County Court authorizing them to enter upon such piece of land and remove obstructions therefrom, and to throw open the lot so described, as part of said street; and thereupon an execution may issue to the Sheriff of said city and county, in the nature of a writ of habere facias possessionem, commanding him to put the said Commissioners in possession of such lot for the said city and county; and thereafter, upon delivering to the said County Court a sufficient deed, conveying said lot of land to the said city and county, the party so dispossessed shall be entitled to receive the value of the land so conveyed, or the said warrant of the Board therefor; provided, that the Treasurer of said city shall not give any certificate, as aforesaid, unless the money actually be in the treasury to pay the warrant or warrants so certified.

Expenses of Commission, how paid.

SEC. 15. The amounts due to any persons, for rent, labor, services or other expenses of the Commission, shall be paid by said Board by warrants drawn on said Treasurer, payable only out of the fund in his hands to the credit of said Board, in the mode provided in section thirteen of this Act; and like warrants may be drawn by said Board in favor of the persons entitled thereto, for the amounts which have been awarded to them as the value of their lands and improvements taken for said extension, or for damage to property thereby. Should said Board be in doubt as to the ownership of any of such lands, or in case the owners thereof be unknown to the Commissioners, or married women, infants, idiots or lunatics, it may pay the amount of such value or damage into said County Court, by warrant certified as aforesaid, describing the land in respect to which said amount is payable, to be awarded by said Court, on application by or in behalf of the parties claiming the same, to the person whom it may, after due hearing and consideration, adjudge to be rightfully entitled

Damages to unknown owners.

thereto. Any adjudication of said Court in respect to such ownership shall be subject to appeal in like manner as appeals are now taken from judgments of District Courts. Upon payment by said Board to the respective owners of land and improvements taken for said extension, of the amounts so awarded to them, as provided in this section, or on payment of said amounts into Court in the manner provided in section fourteen of this Act, said lands shall be and become thereby vested in said city and county forever, and shall be taken possession of by said Board for said city and county, for the purpose of extending said street; but no land shall be taken possession of by said Board without the consent of the owner thereof, unless upon payment or tender of the amount awarded therefor in pursuance of this Act.

SEC. 16. Should the owners of any land taken for said extension fail or neglect, within the space of sixty days after the final confirmation of said report, to remove the buildings and improvements from their said lands, and deliver possession of said lands to said Board, on tender from said Board to them respectively of the sums awarded to them respectively by said Board as the value of such lands, buildings or improvements, then the said Board may at any time thereafter sell such buildings and improvements at public auction to the highest bidder, to be removed by the respective purchasers thereof when and as soon as the value of such lands, buildings and improvements, as determined by said Board, shall have been paid to such owner by said Board or paid into Court, as provided in sections fourteen and fifteen of this Act. The sums so bid at such sales shall be paid in cash or in such warrants of said Board.

Failure to  
remove  
buildings or  
improve-  
ments.

SEC. 17. Unless provision shall be otherwise made for changing the grade of Harrison street, between Second and Third streets, and for compensating owners of property for consequent injury thereto, the damage to property resulting from the grading herein required to be done shall be ascertained, assessed and paid as herein provided; and for that purpose, as soon as possession of all lands to be taken for the extension of said street has been obtained by said Board, it shall again advertise as directed in section four of this Act, notifying all persons owning, claiming or occupying property which they consider will be injuriously affected in value by such grading, of its intention to grade such street, and requiring them, within twenty days after the first publication of said advertisement, to file with said Board such maps and copies of deeds or other instruments under which they respectively claim, and such specifications, descriptions and assignments of reasons as are required in section four, and the provisions of section five of this Act shall

Grade of  
Harrison  
street.

Notice to  
parties  
injuriously  
affected.

apply in respect to all property in favor of which such claims shall not be filed in pursuance of this section.

Proposals  
for grading.

SEC. 18. Said Board shall immediately thereafter advertise for proposals for grading said street from Folsom street to Townsend street, according to the lines and grades prescribed in section two of this Act; and whenever the grading thereof shall be sufficiently advanced to warrant the same, it shall also, unless provision shall have been made for changing the grade of Harrison street, between Second and Third streets, advertise for separate proposals for building the bridge at the crossing of Harrison street, as prescribed in said section, and for the regrading of Silver street, between Second and Third streets, and its restoration on the new grade to as good condition as it is now in. Said advertisements shall be published daily for twenty days, in three daily papers printed and published in said city and county, and shall require that all bids shall be handed in to said Board within fifteen days after the first publication of said advertisements, accompanied with bonds, with sureties satisfactory to the said Board, that the bidders will, if the contract be awarded to them, enter into the same as provided in this section; said advertisements shall also state that said Board reserves the right to reject any and all bids, and shall refer to specifications which shall be prepared by said Board and filed in its office, specifying in detail the material of which and manner in which said bridge shall be constructed. All proposals handed in to said Board in pursuance of said advertisements, shall be publicly opened by said Board at the time and place specified therefor in the advertisements mentioned in the last preceding section, and the Board shall thereupon award said contracts for grading and said contract for building said bridge to the lowest bidders therefor, respectively, provided their bids and sureties are satisfactory to said Board. The parties to whom said contracts respectively shall be awarded, shall then enter into written contracts with said Board for the performance of said work, in accordance with the stipulated specifications and conformably with the requirements of section two of this Act and with said advertisements for proposals, and for the completion of the said work within the period fixed therefor. Such contracts shall be accompanied with bonds on the part of the said contractors respectively, in sums equal to one-half of the contract price, with sufficient sureties, to be approved by said Board, conditioned for the faithful performance of the same; and shall specify the dates, to be fixed by said Board, at which the respective works shall be commenced and the length of time allowed for completion thereof. Upon the execution of contracts and bonds, the work shall be commenced

Award.

Written  
contract.

Bonds.

at the dates so fixed therefor, and prosecuted diligently to completion. In case the parties to whom such contracts shall be awarded, or either of them, shall fail, within ten days after notice of said award, to enter into the contract prepared by said Board, he or they shall forfeit the amount fixed in the bond accompanying his or their proposals, and said Board shall proceed to advertise again for proposals in like manner as before, or may accept the next lowest bid, within their discretion, and so on, toties quoties.

Failure to enter into contract.

Sec. 19. The said Board shall ascertain and determine the damages occasioned by such grading, to all property on behalf whereof claims have been duly made, as hereinbefore provided, and when the said grading shall be completed, and the said bridge finished and ready for use, shall assess such damages, together with the cost of such grading, and of such bridge, and the incidental expenses attending the proceedings of said Board under this Act, on the land fronting on Montgomery Street South, from Market street to Townsend street. The mode of making such assessment, of reporting the same to the County Court and of confirming and collecting the same, shall be the same as hereinbefore prescribed, in relation to the assessment to pay for land taken for said street, and all the provisions of this Act in relation to the said assessment last mentioned, the confirmation of the report of the Commissioners, objections thereto, and appeals from the order of confirmation, and also those as to the collection of assessments and payments for lands, shall apply to the assessment and report herein provided for, so far as the nature of the case will admit.

Assessment of damages.

Mode of assessing, etc.

Sec. 20. Said Board is hereby authorized to draw its warrants in like manner as provided in section thirteen of this Act, upon the Treasurer of said city and county, for any amount in his hands, collected under the judgments for the assessments levied in pursuance of section nineteen of this Act, and placed to the credit of said Board, for the purpose of making payments, under the contracts entered into for the grading of said streets and building of said bridge, and for the purpose of paying the incidental expenses incurred by said Board, including the amounts due the members thereof, for their services, as hereinbefore provided; provided, however, that all warrants drawn by said Commissioners for their own services, in pursuance of this section, shall first be audited, and allowed and countersigned by said County Judge. All warrants drawn upon said Treasurer by said Board pursuant to this section, shall be paid by him, in the order of registration, if then due, out of any fund in his hands to the credit of said Board.

Expense of grading, etc., how paid.

Sec. 21. Montgomery Street South, as laid out and now

Montgomery Street South, as extended to Howard, to be a public street.

Lands to be assessed for expense of work.

Provisions of Act to apply to extension to Howard street.

Surplus, how disposed of.

opened from Market street to Howard street, and as shown on the map of the survey of said street, made by William P. Humphreys, City and County Surveyor of the City and County of San Francisco, for the Montgomery Street Real Estate Company, is hereby taken and dedicated for an open public street, and when paid for, the title thereof shall vest in said city and county for such purpose forever, as the title of the other public streets in said city is now vested. The value of the land so taken for such street, and the damage to lots injured thereby, shall be determined, and the amount thereof, together with the expenses incident to carrying out the provisions of this section, in respect thereto, shall be assessed upon the land adjoining the said street, upon its northeasterly and southwesterly sides, from Market street to Howard street, to a uniform depth of one hundred feet (said lots and subdivisions being hereby designated as those benefited by said improvements), and the owners of the lots and parcels of land taken for the opening of said street, from Market street to Howard street, or injured thereby, shall be paid therefor from the fund to be assessed and collected for the purposes of this section, in the same manner as hereinbefore provided for the payment of the amounts awarded to owners of land taken for the extension of said street, from Howard street to Townsend street; and all the provisions of this Act in relation to said extension, as regards assessments for lands taken therefor, the mode of making such assessments, or reporting the same to the County Court, of confirming and collecting the same, the confirmation of the report of the Commissioners, objections thereto, and appeals from the order of confirmation, and also those as to the collection of assessments, payments for lands and acquiring titles thereto, shall apply to the portion of said street taken and dedicated by this section; and the said Commissioners shall, in all respects, pursue the same course of proceedings in reference to the subject of this section, so far as the nature of the case will admit, as is directed to be pursued in the foregoing sections of this Act, in reference to the extension of said street, from Howard street to Townsend street; provided, however, that the fund to be assessed and collected for the purposes of this section shall be a separate fund from that provided for in the previous sections of this Act, and shall be devoted solely by the said Commissioners to the purposes provided in this section.

Sec. 22. In case a surplus should remain in the hands of the County Treasurer to the credit of the said Board, after paying all the warrants issued by said Board hereunder, said Treasurer shall pay the same into the general treasury of said city and county. Upon the payment by the said Treasurer upon the order of said Board, or into the general treasury, of



the total amount of said fund, all the said warrants having been paid, and all the provisions of this Act having been fully carried out, the functions of said Board shall cease and determine.

SEC. 23. This law, and all acts and proceedings hereunder, shall be liberally construed, and the judgments and proceedings of the County Court hereunder shall be construed like judgments and proceedings of Courts of general jurisdiction. The word "persons," when used in this Act, shall be held and construed to include "corporations."

How construed.

SEC. 24. This Act shall take effect from and after its passage.

This bill having remained with the Governor ten days (Sundays excepted), and the Senate and Assembly being in session, it has become a law, this first day of April, A. D. eighteen hundred and seventy. This certificate is made in pursuance of a decision of the Supreme Court, filed June twenty-fourth, A. D. eighteen hundred and seventy.

H. L. NICHOLS,  
Secretary of State.

## CHAPTER DLXXXV.

*An Act authorizing the parties therein named, their associates and assigns, to construct and maintain a ship canal from the City of Stockton to deep water on the San Joaquin River.*

[Became a law by operation of the Constitution, April 1st, A. D. 1870, under a decision of the Supreme Court, filed June 24th, A. D. 1870.]

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

SECTION 1. The right is hereby granted to Frank Stewart, John Schrick, J. M. Kelsey, George W. Kidd, George Gray, Wm. Henry Knight, Joseph D. Peters, John Sedgwick, Samuel Eldridge, Chas. M. Weber, W. S. Montgomery, Geo. S. Evans, their associates and assigns, to construct and maintain a ship canal from Stockton Slough, near or within the westerly boundary of the City of Stockton, County of San Joaquin, to deep water upon the San Joaquin River, to be constructed along such route and terminate at such point on the San Joaquin River or one of its branches, within seven miles of the northern junction of the east and middle channels of said river, as shall be selected and determined upon by the said grantees herein named, their associates and assigns.

Authorized to construct a ship canal

SEC. 2. The said grantees and their assigns are hereby granted a right of way for said ship canal, five hundred feet wide, from its intersection with Stockton Slough to the westerly terminous of the same, on the San Joaquin River or one of its branches, and also such other land in excess of five hundred feet in width as shall be necessary for the construc-

Right of way.

tion of all such basins, turnouts, wharves and embankments as may be required for the construction and operation of the canal; and the owners of the land so granted to, and appropriated by, the parties named in section one of this Act, shall be indemnified for land taken in the same way that parties are indemnified for land taken for railroad purposes. The said grantees and their assigns shall have the right to construct and maintain wharves at any point along the route of said ship canal, or at either of its termini, that they may select, and shall have the right to collect tolls and wharfage at such wharves, subject to such regulations of the maximum rates thereof as may be prescribed by the Board of Supervisors of the counties in which the respective wharves may be located, or by the Common Council of the City of Stockton for any wharves that may be located within its jurisdiction. The said grantees and their assigns are hereby authorized to use for the said wharves and for the right of way above specified, any swamp and overflowed lands or tide lands belonging to the State of California.

Wharves.

Survey and plot of route.

SEC. 3. The said grantees and their assigns shall designate by survey and plot the lands condemned by them for the right of way for said ship canal, a copy of which survey and plot shall be filed in the office of the Surveyor-General of the State of California and in the Recorder's office of the county or counties in which the lands so condemned may lie, on or before the first of July, eighteen hundred and seventy-one.

Stockton terminus.

SEC. 4. The said grantees and their assigns shall have the right to cause the Stockton terminus of said ship canal to intersect Stockton Slough within or near the City of Stockton, but the channel of said slough shall be protected from injury and its waters shall be protected from waste by the construction of a lock or locks, if necessary, at the confluence of said ship canal with said Stockton Slough. The said grantees and their assigns shall have the right to deepen and straighten the channel and improve the navigation of the San Joaquin River, or either of its branches, below the intersection of the westerly terminus of said ship canal with the said San Joaquin River or either of its branches; provided, that they shall not have the right to levy or collect any toll, tax or duty upon any passengers or freight for passing through the said river channel so deepened, straightened or improved.

May improve channel of San Joaquin River.

Dimensions of canal.

SEC. 5. The dimensions of said ship canal shall be as follows: The channel, throughout its entire length, shall be at least one hundred feet wide at the top and fifty feet wide at a depth of eighteen feet, and the depth of the water in said canal shall be at least eighteen feet at ordinary neap tide.

When work to be commenced.

Work on the said ship canal shall be commenced before the first day of July, eighteen hundred and seventy-one, and

excavations equal in extent to at least two miles of a canal of the above dimensions, shall be made before the first day of January, eighteen hundred and seventy-three, and excavations equal in extent to at least three miles of a canal of the above dimensions shall be made each year thereafter until a section of said canal shall be completed, connecting Stockton Slough with Disappointment Slough, and this franchise and the rights hereby granted shall last for fifty years after the completion of said section of said ship canal; provided, that if said section of said ship canal shall not be completed at the time and in the manner above specified, then all the rights and privileges herein granted shall be forfeited to the State; and it is further provided, that the said ship canal may be further extended in length, to a point not exceeding the limits prescribed in section one of this Act, and any portion or all of it may be further widened and deepened at any time, without impairing the rights granted by this franchise.

SEC. 6. The earth excavated from said ship canal shall be deposited upon its bank so as to form a levee; and wherever the canal crosses a slough, the waters of the slough on the river side of the canal may be shut off by a dam; and, after its completion, the said ship canal must be kept in good repair by said grantees and their assigns, and in a proper condition for the safe navigation of vessels.

SEC. 7. The said grantees and their assigns shall have the right to collect tolls upon all vessels plying upon said canal, and for all passengers transported on such vessels. The maximum rates of toll shall be fixed by a Board of five Commissioners, who shall be appointed for a term of three years, as follows: One by the Governor of the State, one by the Board of Supervisors of San Joaquin County, one by the Common Council of the City of Stockton, and two by the company who will organize under this Act to construct this canal. Upon the completion of the section of the canal aforesaid connecting Stockton Slough with Disappointment Slough, and triennially thereafter, unless as hereinafter provided, the said Commissioners shall meet at the City of Stockton and affix the rates of toll, as hereinbefore provided.

Right to collect tolls.

Commission to regulate.

SEC. 8. The rates of toll fixed by the Board of Commissioners provided for by this Act shall be the legal rates to be charged by the canal company; but the maximum rates of toll for the first ten years after the completion of a working section of the canal shall not be fixed by the said Commissioners at less than three cents per ton per mile for any class of vessels, reckoned on their registered tonnage, and not less than two cents per mile for each passenger transported through said canal; provided, that such rates of toll shall not, without the consent of the canal company, ever be fixed at

Rates of toll.

such low rates as to prevent the yield of an income of less than the usual rates of interest upon the cost of construction, extension, enlargement, improvements and repairs of said canal; provided also, that all vessels, under like conditions, shall have the right to navigate the said ship canal on equal terms; and no discrimination shall be exercised against particular vessels that shall not apply to all vessels of the same class, draught or capacity.

SEC. 9. Before the said grantees and their assigns acquire any rights under this Act, they shall incorporate themselves into a company under the provisions of the general law in regard to railroad incorporations; and shall have the same rights, privileges and immunities accorded to railroad corporations, so far as these can be made applicable to a franchise for a ship canal, and in so far as they do not conflict with the previous sections of this Act.

SEC. 10. This Act shall take effect and be in force from and after its passage.

This bill having remained with the Governor ten days (Sundays excepted), and the Senate and Assembly being in session, it has become a law this first day of April, A. D. eighteen hundred and seventy. This certificate is made in pursuance of a decision of the Supreme Court, filed June twenty-fourth, A. D. eighteen hundred and seventy.

H. L. NICHOLS,  
Secretary of State.

## CHAPTER DLXXXVI.

*An Act to grant the right to construct and maintain a bridge and ferry across Russian River, and to open a public highway thereto.*

[Became a law by operation of the Constitution, February 24th, A. D. 1870, under a decision of the Supreme Court, filed June 21th, A. D. 1870.]

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

Survey for  
public  
highway.

SECTION 1. It is hereby made the duty of the Board of Supervisors of the County of Sonoma, at their first regular meeting after the passage and approval of this Act, by their order, to be entered of record, to require the Commissioner of Public Highways and County Surveyor of said county to survey and lay out over the lands now belonging to W. S. M. Wright, in said county, immediately south of Russian River, near its mouth, a public highway, sixty feet wide, leading from some point on the south bank of said river, opposite Jenner Island, to be by John Rule designated as the south end of the bridge to be by him constructed; and running thence by the most direct and practicable route to intersect

the county road, where the same adjoins the said Wright's land at or near Duncan's shipping point; and the right to enter upon said lands for the purpose of survey and appraisal is hereby given to said Commissioner, County Surveyor, and appraisers to be appointed as hereinafter provided.

SEC. 2. At the meeting mentioned in section one, the Board of Supervisors shall also appoint six disinterested citizens and freeholders, not of kin to said Wright or John Rule, and who shall be residents of either Salt Point or Bodega Townships, in said county, who shall take an oath before some magistrate authorized to administer oaths, well, truly, faithfully and impartially to appraise the damage which will be sustained by the said W. S. M. Wright by the opening of said highway over his said land, as also said Jenner Island. The said appraisers shall then proceed to view the proposed highway, and shall estimate and appraise the damages aforesaid, and make an award to said Wright as compensation for the right of way over his said land, as also over said Jenner Island: which award shall be in gold and silver coin of the United States, and shall certify the same, over their signatures, to the Board of Supervisors.

Appoint-  
ment of  
appraisers.

SEC. 3. At the first meeting of the Board of Supervisors of said county to be holden after the certificate of appraisal shall have been filed, the Board of Supervisors shall appropriate out of any moneys then in the Road Fund of said county, and if not sufficient in said fund, then out of the General Fund not otherwise appropriated, the amount fixed in said appraisalment as damages to said W. S. M. Wright, or his grantee, if he in the meantime sell said land or island, and draw their warrant therefor on the Treasurer of said county, in favor of the Commissioner of Highways, who shall take said sum of money and tender the same to said W. S. M. Wright or his grantee, for the right of way aforesaid; and should the said Wright or his grantee refuse to accept the same, he shall place the same in the county treasury, subject to the order of the District Court or the Board of Supervisors of said county, and any portion thereof, not paid out on any judgment of the District Court at the termination of the suit herein authorized and required to be brought, to be returned to that fund in the county treasury from which the same was taken.

Supervisors  
to appropri-  
ate money  
for payment  
of damages.

SEC. 4. In case the award and the money to pay the same is not accepted by the said Wright or his grantee, and a conveyance of the right of way aforesaid to said county is not by him or his grantee made, executed, acknowledged and delivered to said Commissioner within twenty days from the day the tender is made, as hereinbefore provided, the Commissioner of Roads and Highways of said county shall com-

In case  
award and  
money not  
accepted.

mence an action to condemn said right of way over said Wright's land and Jenner Island, as is now provided by sections sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine and seventy of an Act entitled an Act in relation to roads and highways in the County of Sonoma, to provide for the election of one County Commissioner of Roads and Highways and prescribe his duties, and to repeal all other Acts so far as they conflict with the provisions thereof, approved March eighth, eighteen hundred and sixty-six, and in strict conformity with the provisions of each of said sections, save and except the provisions of section sixty-four, in regard to the disagreement of the claimant and the Board, which disagreement need not be alleged or proved on the trial; and whatever award in said action shall, by the judgment of the said District Court, be made to said Wright or his grantee, shall, by the Treasurer of Sonoma County, be paid to said Wright or his grantee, on the order and judgment of said Court; and whether the same be accepted or not, the Commissioner of Roads and Highways shall proceed to open said highway so condemned.

Right of  
way over  
land of  
John Rule.

SEC. 5. Whenever said right of way over the lands of said Wright or his grantee, including his claim to said Jenner Island, shall be vested in said county, either by voluntary deed or by the order and decree of the District Court, finally made, operative and binding, and the road opened over the same, John Rule or his grantee shall make, execute, acknowledge and deliver to the County of Sonoma, by and through the Commissioner of Roads and Highways, a deed conveying to said county, for road purposes, the right of way over his land immediately above and north of Russian River, sixty feet wide and extending up the coast from Russian River to his northern boundary line, and shall within one year thereafter, open and construct, at his own expense, a good and substantial highway over the same.

Authority  
to construct  
bridge and  
ferry.

SEC. 6. John Rule, and any others he may associate with him, and his and their assigns, are hereby authorized and empowered to construct and maintain a wire suspension or truss bridge from the terminus of the highway hereinbefore provided for, on the south bank of Russian River, to, and if necessary over Jenner Island in said river, and there to connect with a good substantial ferry, to consist of good substantial boat or boats, of sufficient capacity to transport over said river a six horse loaded wagon and team, and a good and substantial wire rope, with all the usual and necessary blocks, tackle and appropriate apparatus and fixtures used in and about ferries. Said bridge and ferry to be located at a point more than one mile distant from the present ferry of said W. S. M. Wright, following the meanderings of the stream:

Location.

and the right to maintain, keep and take toll for crossing the said bridge and ferry shall be vested in the said Rule and associates, and his and their assigns and grantees, and the franchise hereby granted to them shall continue for the term of twenty years from and after the passage of this Act. Said Rule and his associates shall incorporate themselves under the general laws of this State regulating incorporations and providing for the incorporation of bridge companies, and shall take the name of the "Russian River Bridge and Ferry Company," and shall commence the construction of said bridge and ferry within six months after the right of way over said Wright's land shall be finally vested in said county, by the decree of a competent Court or otherwise, and shall be completed and ready for use within two years after the same is commenced; if not so completed this franchise to be forfeited and this Act to be void; and the said Rule shall reimburse the county for all moneys paid out for the condemnation of the lands of the said Wright, and should he fail, neglect or refuse to reimburse the county as aforesaid, said county may recover the same from him by suit in any Court of competent jurisdiction; and should said Rule fail or refuse to convey the right of way over his land, as provided for in section five of this Act, he shall take no franchise by this Act.

To incorporate.

When to commence construction.

SEC. 7. The said bridge shall be constructed of durable and substantial materials, not less than fourteen feet wide in the clear, with railing four feet high; and the ferry at all times manned with a sufficient force to operate the same successfully, and the same shall be kept in good order and repair; and the said company, their grantee or assigns, shall be liable for all damages caused by negligence in not providing proper repairs or alterations to said bridge or ferry.

SEC. 8. The said company, their grantees or assigns, shall have the power to demand and collect from all persons or property crossing said bridge and ferry such rate of tolls as shall from time to time be fixed by the Board of Supervisors of Sonoma County, which said rates shall raise a sufficient amount annually to pay ten per cent. per annum on the cost of constructing the said bridge and ferry, over and above necessary repairs and expenses of running the ferry, which rates shall be posted in a conspicuous place on the bridge or near the ferry.

Rate of tolls.

SEC. 9. Said company, their assigns or grantees, may fix the rate of speed over said bridge, and recover a fine not exceeding twenty-five dollars for each violation of such regulation, and damages sustained by reason of such violation, from any one violating the same, by suit in any Court of competent jurisdiction, such rule or regulation to be posted on the bridge so as to be readily seen by any one approaching the bridge either way.

Rate of speed over bridge.

Purchase of  
bridge by  
county.

SEC. 10. If, at any time after the completion of the bridge, the County of Sonoma shall desire to purchase the same from said company, the said company shall convey to the said county the bridge, at the actual cash cost of constructing the same, and thereafter the tolls shall be so regulated for ferrriage as to pay no more than ten per cent. per annum, over and above repairs and the cost of running the same, on the original cost of construction and maintenance of the ferry.

Acts not  
to apply.

SEC. 11. The Acts concerning public ferries and toll bridges, approved April eighteenth, eighteen hundred and fifty-five, and those amendatory thereof, shall not in any manner apply to the ferry and toll bridge hereby established.

SEC. 12. This Act shall take effect and be in force from and after its passage.

This bill having remained with the Governor ten days (Sundays excepted), and the Senate and Assembly being in session, it has become a law, this twenty-fourth day of February, A. D. eighteen hundred and seventy. This certificate is made in pursuance of a decision of the Supreme Court, filed June twenty-fourth, A. D. eighteen hundred and seventy.

H. J. NICHOLS,  
Secretary of State.