would thereby forfeit all its rights and privileges under this franchise or under the franchise of its predecessor company, and the city would have the right to proceed in the courts to have such forfeiture decreed and enforced, if the company's conduct should continue unrectified for sixty days after written notice from the city specifying the particular ground of complaint. But the city and the company agreed "that in any proceeding to enforce such forfeiture, the court before which the cause is pending in the first instance or on appeal, upon finding from the evidence the existence of ground for such forfeiture, may also make a finding from the evidence whether or not the doing of such prohibited act or thing, or such failure, refusal or neglect was willful and without just cause; and if it shall find that the doing of such prohibited act or thing, or such failure, refusal or neglect was willful or without just cause, and that it was not the result of an honest mistake of law or of fact as to its duty in the premises, a final judgment or decree of forfeiture, or an affirmance of such decree of the lower court, may be immediately rendered declaring said rights forfeited." If on the other hand the court should find that the company's default had been due to an honest mistake or was the result of an unavoidable accident, judgment might be deferred until the company had been given an opportunity to mend its ways and make good its default. Moreover, certain important requirements of the franchise were expressly exempted from the provisions of the forfeiture clause just described.

487. Spurs to wharves and warehouses; switching charges limited; joint interest in tracks may be purchased by other companies; sanitary regulations during construction—Seattle.—Many franchises for railroad terminals have been granted at different times by the city of Seattle. Most of these grants contain clauses requiring the construction of spur tracks. For instance, the franchise granted January 27, 1887, to the Seattle, Lake Shore and Eastern Railway Company, contains the following typical provision:[1]

"Said company, its successors and assigns, shall allow each owner and occupant of a wharf contiguous to said railway, or to the street in and along which said railway shall be constructed, a sidetrack connecting said railway with the warehouse upon such wharf; provided, however, that such sidetracks shall be constructed and kept in repair by and at the expense of such wharf owner or occupant, and the same

[1] Charter and Ordinances of Seattle, 1908, *already cited*, p. 414.

shall be subject to such reasonable regulations as to the opening and closing of switches as said company may from time to time establish, and for the purpose of affording such wharf owners and occupants free access to and from their wharves, warehouses and manufactories situated on either side of said railway; such wharf owners and occupants shall have the right to put in and maintain switches and railway crossings over the tracks of said company in such manner as may be reasonable at the expense of the person desiring to use the same."

By the terms of another Seattle terminal franchise, granted July 20, 1900, to the Seattle and International Railway Company, it was provided that the rates chargeable by the grantee "upon empty cars or on carload lots destined over its line to or from any point or points outside of the City of Seattle," to merchants owning sidetracks along the line of this franchise, should "never be greater than schedule or terminal rates to Seattle."[1] At the time of filing its acceptance of the franchise the company was to file with the city clerk "an agreement, for the benefit of whom it may concern, that it will, with due diligence and without preference, handle and switch cars for any consignor or consignee or any other railroad company now operating or that may hereafter construct and operate or operate a railway in the City of Seattle, at charges not in excess" of a schedule fixed in the ordinance. Under this schedule the maximum switching charge allowed between various specified points ranged from $1.50 to $7.50 per loaded car, including the service of returning the empty car or of placing it for its load. In case of empty cars moved both ways the charge was to be the same as for a loaded car. Fifty cents might be added to the regular schedule rates when cars moved "in drayage service only."

In a franchise granted to the Chicago, Milwaukee & St. Paul Railway Company of Washington, May 2, 1906, the city inserted a typical provision authorizing any other standard gauge railway or terminal railway company, operating on the streets covered by this franchise, to acquire "an absolutely equal joint interest with the grantee herein, or with any of the successors or assigns of the grantee . . . in and to the track constructed and operated under this franchise, subject to all the provisions of this ordinance."[2] The purchase price was to be based on cost of construction, but interest at the rate of four per cent per annum was to be

[1] Charter and Ordinances of Seattle, *already cited*, p. 489. [2] *Ibid.*, p. 600.

added to the price unless the new company purchased an interest in the property within a given time. In case of disagreement, the price was to be determined by arbitration, the final arbitrator to be appointed by the board of public works in case of deadlock. In order to preserve the record of the cost of construction the city stipulated that within ninety days after the completion of the track to be built under this ordinance the company should file with the city clerk a sworn statement of such cost, and that, if required by either the city council or the board of public works, the company must submit the items of cost, with its vouchers.

In another franchise to the same company granted December 24, 1906, special provisions were made for protecting the city's water supply at points adjacent to the company's route.[1] While the company's right of way was being cleared and prepared and during the construction of the railroad, "the camps or living quarters of the men engaged in such work, and the accommodations for any animals employed thereon," were to be located at such distance from the river and maintained in such sanitary condition as should be approved by the sanitary engineer having supervision of the work. The railroad was to be constructed in compliance with approved plans and specifications on file with the city clerk, and all the ditches, dykes and filtration areas provided for were to be of sufficient capacity "to amply care for all drainage from said railroad." The expenses of sanitary regulation both before and after construction were to be borne by the company. Special provision was made for regulating the living quarters of the company's employees engaged in the operation of the railroad, and for closing the toilets on the trains during the time the cars were passing over this portion of the company's route.

The company was required under this franchise to pay the city at the rate of $2 per 1000 feet for all merchantable timber, owned by the city, cut or destroyed on the right of way granted to the company. All branches, tops of trees and slashings, and dead and fallen timber, were to be cleared from the right of way and burned or disposed of in some other manner.

488. General terminal facilities for all railroads; cars to

[1] Charter and Ordinances of Seattle, *already cited*, p. 627.