

condemnation of property, necessary to the construction and repair of the road is concerned, is confessedly made a part of the charter of this company, directs that these inquisitions shall describe the property taken, or the bounds of the land condemned, &c., these inquisitions, thus describing the property, or the bounds of the land condemned, are directed by the same section, to be returned by the sheriff, to the clerk of the county, and by him to be filed, and unless sufficient cause to the contrary is shown, the court is directed to confirm the inquisition at the next ensuing session.

All this was done in the present case. The property condemned was described in the inquisition, which was returned to the clerk of the proper county court, was by him filed, and no cause to the contrary having been shown, the inquisition was duly confirmed by the court, and recorded by the clerk, as directed by the statute. These proceedings took place in year 1838, from which time to the filing of this bill, in 1846, they have remained without objection from any quarter. It seems to me, impossible to contend successfully, that under these circumstances, and in this incidental collateral proceeding, the propriety of the condemnation, and use of this property, can be drawn in question.

A cause of forfeiture of a charter of incorporation, cannot certainly be taken advantage of collaterally, or incidentally. It must be enforced by *scire facias*, or *quo warranto*, at the instance of the government, and until the government so interferes the franchise continues.

*Canal Company vs. Rail Road Company*, 4 G. & J., 1, and as the charter of the company cannot be forfeited, unless proceedings for that purpose be instituted by the government, I am at a loss to conceive how their property can be taken from them as forfeited, so long as the charter remains in existence. By the condemnation of the property in question, and the confirmation of that condemnation by the county court, it has been ascertained by the proper authority that such property was required for the purposes of the company. And yet whilst that judgment stands, and the corporate franchises of the company,