

the estate; if they shall sell any of such estate for more than the appraised value, they shall account for the excess, and if they shall sell for less than the appraised value, they shall be allowed for the loss, if it appears to the court of insolvency that the sale was expedient and for the interest of all concerned in the estate; and, in either case, the assignees shall exhibit to the court a true account of sales, and they shall sell the estate at public auction unless the court before which the proceedings are pending, shall for sufficient cause upon petition therefor order.

Approved March 28, 1861.

AN ACT FOR SUPPLYING THE CITY OF CHARLESTOWN WITH PURE WATER.

Chap. 105

Be it enacted, &c., as follows:

SECTION 1. The city of Charlestown is hereby authorized to take, hold and convey by steam or other power, to, into and through the said city, by suitable aqueducts or pipes, the waters of Mystic Pond, so called, in the towns of Medford, West Cambridge and Winchester, and the waters which may flow into and from the same, and may also take and hold, by purchase or otherwise, any land, real estate or water-rights necessary for erecting, laying and maintaining, and may erect, lay and maintain, such aqueducts, pipes, dams, gates, pumps, bridges, reservoirs, embankments, water-ways, drains or other structures as may be necessary or convenient to insure the purity of the waters of said pond, or the ponds and streams running into it, or to convey said waters into, and for the use of, the said city of Charlestown: *provided, however,* that said city shall not divert or draw water from any part of said Mystic Pond lying southerly of the "narrows" or "partings," so called, in said pond. And said city of Charlestown shall have power to erect and maintain a dam between the upper and lower portions of said Mystic Pond at the said "narrows" or "partings," so as to exclude the waters of the lower part from those of the upper, and raise the waters of the upper pond as high as they may judge necessary for the purposes of this act, not to exceed, however, the level of "Bacon's dam," so called. And said city of Charlestown shall not erect any dam across Mystic River, or obstruct, or exclude the free flow of the tide into the lower Mystic Pond. Said city of Charlestown shall make and maintain a suitable fish-way in the dam hereby authorized to be constructed by them at the "partings," or "narrows," so called, and upon request in writing made to the mayor of said city by any member of the fish committees

Supply from
Mystic Pond.

Proviso.

Dam may be
erected.

Restriction, &c.

Charlestown to
maintain fish-
way.

of the towns of Medford or West Cambridge, on or after the first day of March in each year, the same shall be forthwith opened for the passage of fish, and left open until the first day of the next September, unless a majority of both of said committees shall sooner consent to have the same closed.

Right to lay pipes.

SECTION 2. For the purposes of distribution, the city may lay down pipes to any house or building in said city, the owner or owners thereof having notice and not objecting thereto, and may make and establish public hydrants in such places as may, from time to time, be deemed proper, and prescribe the purposes for which they may be used, and may change or discontinue the same; may regulate the use of the water within and without the said city, and establish the prices or rents to be paid for the use thereof. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts or other works by them to be made and constructed, over or under any water-course, or any street, turnpike-road, highway or other way, in such manner as not to obstruct or impede travel thereon, or the free flow of the water therein. In carrying the pipes or conduits of said aqueduct across Mystic River, the same shall either be carried below the level of the bed of said river, or the bridge or other structure on which the same is carried over said river shall be elevated at least three feet in the clear above high-water level at the point where the same may cross said river; and may enter upon and dig up any such road, street or way, for the purpose of laying down said aqueducts or other works, and for maintaining and repairing the same.

Regulation of use.
Water rents.
Powers of city.

Aqueducts.

Superintending commissioners.

SECTION 3. Three commissioners shall be appointed by the city council, who shall, during their continuance in office, execute and perform, superintend and direct, the execution and performance of all the works, matters and things mentioned in the preceding sections, which are not otherwise specially provided for in this act; they shall be subject to such ordinances, rules and regulations, in the execution of their said trust, as the city council may, from time to time, ordain and establish, not inconsistent with the provisions of this act and the laws of this Commonwealth; they shall respectively hold their said office for the term of two years next after their said appointment, unless the aqueducts and works aforesaid shall be sooner completed; but they, or either of them, after having had an opportunity to be heard in his or their defence, may be removed at any time by a concurrent vote of two-thirds of each branch of the city council; and, in case of a vacancy in the board of commis-

Tenure of office.

sioners, by death, resignation or removal, such vacancy shall be filled by the appointment of another commissioner, in manner aforesaid, who shall hold his said office for the residue of the said term of two years, with all the powers and subject to all the restrictions aforesaid. A major part of said commissioners shall be a quorum for the exercise of the powers, and the performance of the duties of the said office; they shall, once in every three months, and whenever required by the city council, make and present, in writing, a particular report and statement of all their acts and proceedings, and of the condition and progress of the works aforesaid.

Reports of commissioners.

SECTION 4. Before the appointment of the commissioners aforesaid, the city council shall establish and fix the salaries, or compensation, to be paid to the commissioners for their services; and the said salaries of the said commissioners, so established and fixed as aforesaid, shall not be reduced during their continuance, respectively, in said office.

Compensation.

SECTION 5. Whenever the said office of commissioners shall cease, either by the expiration of the said term of two years from the original appointment, or by the completion of the aqueducts and works mentioned in the preceding sections of this act, all the rights, powers and authority given to the city of Charlestown by this act, shall be exercised by the said city, subject to all the duties, liabilities and restrictions herein contained, in such manner and by such agents as the city council shall, from time to time, ordain, appoint and direct.

Powers and duties vested in city council.

SECTION 6. The said city of Charlestown shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land, water or water-rights, or by the constructing of any aqueducts, reservoirs, or other works, for the purposes of this act. And if the owner of any land, water or water-rights, which shall be taken as aforesaid, or other person who shall sustain damage as aforesaid, shall not agree upon the damages to be paid therefor, he may apply, by petition, for the assessment of his damages, at any time within three years from the taking of the said land, water or water-rights, or sustaining damage as aforesaid, and not afterwards, to the superior court in the county in which the same are situate, unless sooner barred, as provided in the seventh section of this act. Such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the city of Charlestown, returnable, if issued in vacation, to the then next term of the said court, and if in term time, returnable on such day as the said court shall

Damages.

order, to appear and answer to the said petition; the said summons shall be served fourteen days at least before the return day thereof, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the mayor or clerk of said city; and the said court may, upon default or hearing of the said city, appoint three disinterested freeholders of this Commonwealth, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid; and the award of the said freeholders, or of the major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

City to prosecute
in certain cases.

SECTION 7. Whenever any damages shall have been sustained by any persons as set forth in the sixth section of this act, and such persons shall neglect to institute proceedings against the city of Charlestown, according to the provisions of this act, for the space of twelve months, it shall be lawful for the city of Charlestown to commence such proceedings, which shall go on and be determined in the same manner as if commenced by the persons who shall have sustained such damage; and if such persons, on receiving due notice, shall not come in and prosecute the proceedings so instituted, judgment shall be entered against them, and they shall be forever barred from recovering any damages under this act.

Appeal to a jury.

SECTION 8. If either of the parties mentioned in the sixth section shall be dissatisfied with the amount of damages awarded as therein expressed, such party may, at the term at which such award was accepted, or the next term thereafter, claim, in writing, a trial in said court, and have a jury to hear and determine, at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of such jury, being accepted and recorded by the said court, shall be final and conclusive, and judgment shall be rendered and execution issued thereon, and costs shall be recovered by the said parties, respectively, in the same manner as is provided by law, in regard to proceedings relating to the laying out of highways.

Verdict to be
final.

Appropriation for
assessment of
damages.

SECTION 9. No application shall be made to the court for the assessment of damages for the taking of any water-rights, until the water shall be actually withdrawn or diverted by the said city, under the authority of this act.

SECTION 10. In every case of a petition to the superior court for the assessment of damages, as provided in the sixth, seventh, eighth and ninth sections of this act, the city of Charlestown, by any of its officers, may tender to the complainant, or his attorney, any sum that they shall think proper, or may bring the same into court, to be paid to the complainant for the damages by him incurred or claimed in his petition; and if the complainant shall not accept the same, with his costs up to that time, but shall proceed in the suit, he shall be entitled to his costs up to the time of the tender, or such payment into court, and not afterwards; and the said city shall be entitled to recover its costs afterwards, unless the complainant shall recover greater damages than were so offered.

Recovery of damages and costs.

SECTION 11. For the purpose of defraying all the costs and expenses of such lands, estates, waters and water-rights as shall be taken, purchased or held for the purposes mentioned in this act, and of constructing all aqueducts and works necessary and proper for the accomplishment of the said purposes, and all expenses incident thereto, heretofore incurred or that may be hereafter incurred, the city council shall have authority to issue, from time to time, scrip, notes or certificates of debt, to be denominated on the face thereof, "Water Bonds of the City of Charlestown," to an amount not exceeding five hundred thousand dollars, bearing interest at a rate not exceeding the legal rate of interest in this Commonwealth, which shall be redeemable at a period of time not less than ten, nor more than fifty years from and after the issue of the said scrip, notes or certificates, respectively; and the said city council may sell the same, or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as the said city council shall judge proper; and the said city council may, for the purpose of meeting payments of such interest as may accrue upon any certificate of debt, make such further issue of scrip, notes or certificates of debt as may be necessary therefor.

"Water bonds."

SECTION 12. The city council may, from time to time, pass such by-laws and ordinances as they may deem proper for the preservation and protection of all or any of the works connected with the supplying of the city of Charlestown with pure and wholesome water, under and by virtue of this act: *provided*, such by-laws and ordinances are not inconsistent with any laws of this Commonwealth, or with the constitution thereof, subject at any time to be repealed or modified

Water regulations.

Proviso.

by the legislature, and may also organize a department, with full powers for the management of such works, and the distribution of the said water.

Water rents.

SECTION 13. The city council shall, from time to time, regulate the price or rent for the use of the water, with a view to the payment, from the net income and receipts, not only of the semi-annual interest, but ultimately of the principal of said debt so contracted, so far as the same may be practicable and reasonable. And the occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement; and the owner thereof shall be also liable, if, on being notified of such use, he does not object thereto; and if any person or persons shall use any of the said water, either within or without the said city, without the consent of the city, an action of tort may be maintained against him or them for the recovery of damages therefor: *provided, however*, that this act shall not be so construed as to prevent the inhabitants of Medford, West Cambridge and Winchester, from using so much of the water hereby granted as shall be necessary for extinguishing fires, and for all ordinary household purposes, under such regulations of the said city council as may be essential for the preservation of the purity of the said water.

Liabilities of occupants and owners.

Proviso.

Penalties for misdemeanors, and injuries to water works, &c.

SECTION 14. If any person or persons shall wilfully or maliciously divert the water, or any part thereof, of any of the ponds, streams or water-sources, which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery or other property, held, owned or used by the said city, by the authority and for the purposes of this act, such person or persons shall forfeit and pay to the said city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action. And such person or persons may, moreover, on indictment and conviction of either of the wilful and malicious acts aforesaid, be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year.

Extinguishment of fires.

SECTION 15. The said city of Charlestown is also authorized to supply with water for the extinguishment of fires or for other purposes, the cities of Chelsea and Boston, and the towns through which the line of aqueduct may pass, and for this purpose may erect and maintain such structures as may be requisite and necessary therefor: *provided*, that such supply to Boston shall not deprive the towns on the line of the aqueduct of a sufficient supply of water.

Proviso.

SECTION 16. The said city of Charlestown shall erect and maintain proper hydrants at such points along the line of the aqueduct as the selectmen of the towns of Somerville and Medford shall direct: *provided, however*, the said city of Charlestown shall not be required to erect and maintain such hydrants at points nearer together than five hundred feet; and said towns of Somerville and Medford may at all times draw water from said hydrants without charge therefor, for the extinguishment of fires, under such regulations as the city of Charlestown may, from time to time, establish under authority of this act; and the rates of water supplied to the inhabitants of said towns of Somerville and Medford for other purposes than the extinguishment of fires, as provided in section fifteen, shall not exceed the rates charged for like uses in said city of Charlestown, and the payment or rental for the use of such water shall be made and collected in the same manner as herein before provided for the water distributed in the said city of Charlestown. In case the pipes for distributing said water shall be laid without expense to said city of Charlestown, such charge or rental shall be made for the use of said water, as may be agreed upon by and between said towns respectively and said city of Charlestown.

Hydrants.

Proviso.

SECTION 17. The provisions of this act shall be void unless submitted to and approved by the voters of the city of Charlestown, at meetings held simultaneously for that purpose in the several wards, within three years from the passage of this act, upon notice duly given, at least seven days before the time of holding said meetings.

Act to be accepted by legal voters.

SECTION 18. This act shall take effect from and after its passage.

Approved March 28, 1861.

AN ACT TO INCREASE THE CAPITAL STOCK OF THE EAST BOSTON WHARF COMPANY.

Chap. 106

Be it enacted, &c., as follows:

SECTION 1. The East Boston Wharf Company is hereby authorized to increase its capital stock by adding thereto five hundred thousand dollars, and to invest the same in the purchase of real estate adjoining the land now owned by said corporation, a description of which real estate is hereafter set forth, to be used as may be necessary and convenient to carry on the business for which the said company was incorporated: *provided*, that no shares in the capital stock hereby authorized shall be issued for a less sum or amount than the par value of the shares in the original capital stock of said corporation.

Amount of increase.

Investment.

Proviso.