

sixty-two, and the thirtieth day of March in the year one thousand eight hundred and sixty-three, be and they hereby are made valid and confirmed to the same extent as they would have been valid had he been during that interval duly qualified to discharge the duties of the said office.

SECTION 2. This act shall take effect upon its passage.

Approved April 17, 1863.

Chap. 162 AN ACT TO AUTHORIZE S. S. TUCKWELL AND OTHERS TO BUILD A WHARF IN SOUTH AMESBURY.

Be it enacted, &c., as follows :

S. S. Tuckwell, Patten Sargent, Willis P. Sargent, and James Whitten, are hereby authorized to build a wharf opposite the land of said Tuckwell, in the village of South Amesbury, and to extend the same into Merrimack River a distance not exceeding one hundred and fifteen feet from high-water mark, and not beyond a point where the depth of water at mean low tide exceeds seven feet; with the right to lay vessels thereat, and to collect for wharfage and dockage: *provided*, that this grant shall not affect the legal rights of any person.

Approved April 17, 1863.

Chap. 163 AN ACT FOR SUPPLYING THE CITY OF NEW BEDFORD WITH PURE WATER.

Be it enacted, &c., as follows :

May supply from
Acushnet River.

SECTION 1. The city of New Bedford 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 the Acushnet River, and the waters which 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 said waters, or to convey said waters into and for the use of the said city of New Bedford: *provided*, that in the event of the construction of a dam across said River Acushnet, it shall not be located south of a line drawn east and west from the northerly line of buildings now occupied by the New Bedford Copper Company, or north of a line drawn east and west from the southerly line of the town of Acushnet, within the tide waters of said river, but at any point north of tide water in said river; nor in such a manner as to prevent the passage of vessels through the same.

Proviso.

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 price or rents to be paid for the uses thereof. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts or other works, by them to be made or 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.

May lay pipes and regulate use of, and of water.

May construct aqueducts, etc.

SECTION 3. Three commissioners shall be chosen by the city council in convention, who shall during their continuance in office, 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 the whole number of each branch of the city council; and in case of a vacancy in the board of commissioners, by death, resignation or removal, such vacancy shall be filled by the choice 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.

Commissioners to superintend shall be chosen, subject to ordinances of city council.

Tenure of office.

Vacancy, how filled.

Quorum.

Quarterly report.

SECTION 4. Before the choice of the commissioners aforesaid, the city council shall establish and fix the salaries or

Compensation of commissioners.

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 in said office, respectively.

Upon expiration of commission, powers to vest in city council.

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 aqueduct and works mentioned in the preceding sections of this act, all the rights, power and authority given to the city of New Bedford 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.

City liable for damages.

Aggrieved party may apply for adjustment to superior court.

SECTION 6. The said city of New Bedford 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 dams, 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 damage 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 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 New Bedford, returnable, if issued in vacation, to the then next term of said court, and if in term time, returnable on such day as the court shall 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 pre-

Petition and summons.

Upon default of city, court may appoint arbiters.

vailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

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 New Bedford according to the provisions of this act, for the space of twelve months, it shall be lawful for the city of New Bedford 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, without costs, and they shall be forever barred from recovering any damages under this act.

City may commence proceedings in certain cases.

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 respect to proceedings relating to the laying out of highways.

Party dissatisfied with award, may have jury.

Verdict to be final.

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.

Application for assessment of damages.

SECTION 10. In every case of a petition to a superior court for the assessment of damages, as provided in the sixth, seventh, eighth and ninth sections of this act, the city of New Bedford, 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 afterward; and the said city shall be entitled to recover its costs afterward, unless the complainant shall recover greater damages than were so offered.

Adjustment of damages and costs, and suspension of proceedings.

"Water bonds" may be issued to meet expenditures.

Not to exceed \$500,000.

City council may pass ordinances for preservation of works.

Proviso.

Water rates, council may regulate.

Liabilities of landlord and tenant. Use of water without consent, action for damages allowed.

SECTION 11. For the purpose of defraying all the costs and expenses of such lands, estates, water, 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 New Bedford," 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 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.

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 New Bedford 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 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.

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 also be 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.

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.

Diverting or corrupting water, or injuring works, liability for triple of damage.

Further liability upon conviction.

SECTION 15. The provisions of this act shall be void, unless submitted to, and approved by, the voters of the city of New Bedford, at meetings held simultaneously, for the purpose, in the several wards, within one year 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 within one year.

Approved April 18, 1863.

AN ACT IN ADDITION TO AN ACT TO LEVY TAXES ON CERTAIN INSURANCE COMPANIES AND ON DEPOSITORS IN SAVINGS BANKS.

Chap. 164

Be it enacted, &c., as follows:

The tax provided for in section four of chapter two hundred and twenty-four, of the acts of eighteen hundred and sixty-two, shall be increased to three-fourths of one per cent. per annum.

Rate fixed in ch. 224 of 1862, advanced to 3-4 per cent.

Approved April 18, 1863.

AN ACT CONCERNING MARRIED WOMEN CARRYING ON BUSINESS ON THEIR SOLE AND SEPARATE ACCOUNT.

Chap. 165

Be it enacted, &c., as follows:

SECTION 1. The provisions of section three, of chapter one hundred and eight of the General Statutes, authorizing a married woman to carry on any trade or business on her sole and separate account, shall be so construed as not to allow her to enter into copartnership in business with any person.

Copartnership prohibited.

SECTION 2. This act shall take effect upon its passage.

Approved April 18, 1863.