

L A W S

OF THE

STATE OF NEW-YORK,

PASSED AT THE

SEVENTY SECOND SESSION

OF THE

LEGISLATURE,

BEGUN THE SECOND DAY OF JANUARY, AND ENDED
THE ELEVENTH DAY OF APRIL, 1849,
AT THE CITY OF ALBANY.



TROY:

ALBERT W. SCRIBNER AND ALBERT WEST, PRINTERS.

1849.

Chap. 324.

AN ACT *in relation to the site of the county jail to be built in the city of Oswego.*

Passed April 10, 1849, "three-fifths being present."

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 1. The committee appointed by the board of supervisors of the county of Oswego at their last session to build a county jail in the city of Oswego, are hereby authorized to accept for the said county a conveyance of a suitable parcel of ground in said city, for a site for said jail, instead of building the same on block number one hundred and one, now used and enclosed as a part of one of the public squares in said city. Jail, on what lot to be built.

§ 2. For the purpose of purchasing such jail site, the common council of said city is hereby authorized to levy a tax for the amount of the purchase money thereof, or of such part thereof as may be necessary for that purpose, which tax may be either general or local, or partly general and partly local, as to the said common council may seem equitable and just. Money to be raised by tax.

§ 3. That in case said building committee accept such jail site so purchased for the county, said block number one hundred and one, shall be set apart and appropriated as a part of the public square in said city, subject to the right of the county to build thereon such other county buildings, except a jail, as may be needed for county purposes. Public square.

§ 4. This act shall take effect immediately.

Chap. 325.

AN ACT *to provide for supplying the city of Brooklyn with water for the extinguishment of fires and for the use of its inhabitants.*

Passed April 10, 1849, "three-fifths being present."

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 1. The mayor and common council of the city of Brooklyn shall appoint three persons, citizens of said city, who shall be known as the "Water commissioners of the city of Brooklyn." Water commissioners to be appointed.

§ 2. The said commissioners shall hold their offices for the term of three years next after their said appointment, unless said offices shall be sooner terminated as hereinafter provided; but they or either of them after having had an opportunity to be heard in his or their defence, may be removed for cause by a vote of two-thirds of the board of aldermen of said city; and in case of a vacancy in the To hold for three years.

board of commissioners by death, resignation or removal, such vacancy shall be filled by the appointment of other commissioners in manner aforesaid. Every commissioner appointed to fill a vacancy shall hold his office for the residue of the term of said three years, with all the powers conferred and subject to all the restrictions imposed by this act. A major part of said commissioners shall be a quorum for the exercise of the powers and the performance of the duties of said office.

Their duty. § 3. It shall be the duty of said commissioners to examine and consider all matters relative to supplying the city of Brooklyn with a sufficient quantity of water for the extinguishment of fires and for the general use of its inhabitants.

To employ engineers. § 3. The said commissioners shall have power to employ employ engineers, surveyors, and such other persons as in their opinion may be necessary to enable them to perform their duties under this act.

To adopt a plan to supply water to extinguish fires. § 5. The said commissioners shall first adopt such plan as in their opinion may be most advantageous for supplying the city of Brooklyn with water for the extinguishment of fires and for manufacturing purposes, and shall ascertain as nearly as may be what amount of money will be necessary to carry the said plan into effect. In devising and adopting such plan they shall have particular reference to a more extended plan, hereinafter mentioned, for supplying by an enlargement of said works the inhabitants of said city with pure and wholesome water for all other uses.

To adopt a general plan for supplying the city with pure water. § 6. The said commissioners shall also adopt such general plan as in their opinion shall be most advantageous for procuring a sufficient supply of pure and wholesome water for all the uses of the inhabitants of said city, and shall ascertain as nearly as may be what will be the expense of carrying said plan into effect. Such general plan may include as a part thereof the more limited plan which shall be adopted under the fifth section of this act.

To report their proceedings under this act. § 7. The said commissioners shall, as soon as practicable after their appointment, make reports of their proceedings under the foregoing sections of this act. The first of said reports shall contain a full description of the plan adopted by them under the provisions of the fifth section of this act, for supplying the said city with a sufficient quantity of water for the extinguishment of fires and shall be accompanied with particular estimates of the cost and expense thereof, with the reasons and calculations upon which their opinions and said estimates may be founded. The second of said reports shall contain a full description and explanation of the more enlarged plan which they shall have adopted, pursuant to the sixth section of this act, for procuring a sufficient supply of pure and wholesome water for all the uses of the inhabitants of said city; and they shall accompany the same with a full estimate of the expense thereof, together with an estimate of the probable amount of revenue to accrue to the said city upon the completion of the work, with the reasons and calculations upon which their

opinions and the said estimates may be founded, with all such other information connected with the object of their appointment as they may deem important.

§ 8. The said commissioners shall have power to make such experiments as may be necessary to enable them to make the reports aforesaid, and may expend for such purpose a sum not exceeding five thousand dollars; provided, however, that an additional sum may be granted them for that purpose by the said common council, if they shall deem it expedient so to do.

§ 9. Each of the said commissioners shall receive for his services an annual salary of one thousand dollars, which shall be paid to him quarterly, by warrant, drawn by the comptroller upon the treasury of the city; and no commissioner shall receive any other fee, perquisite or compensation whatsoever: and no water commissioner shall be in any manner, directly or indirectly, interested in any contract for any property, work or materials connected with such works, under penalty of forfeiture of his office.

§ 10. The necessary expenses incurred by said commissioners and their salaries up to the time of the making of their report aforesaid, shall be paid, in the first instance, by warrant of the comptroller out of the general treasury of the city, upon the certificate of any two of said commissioners, and shall be charged to the water fund account. If the report shall be adopted, and a loan created pursuant to this act, the said sums so advanced shall be repaid to the treasury out of the proceeds of said loan; but if no loan shall be so created, the said moneys shall be levied and collected with the general taxes of the next succeeding year.

§ 11. The said commissioners shall have power to make conditional contracts, subject to the ratification of the common council of said city with the owner or owners of all lands, tenements and hereditaments, rights and privileges whatsoever, which may be required, according to such plans, for the purchase thereof, at stated prices; which contracts shall be so drawn as to be binding upon the said owners respectively, in case the same shall be ratified by the said common council within one year from the date of said contracts.

§ 12. The said first report of the plan adopted under the fifth section of this act, shall be made and presented to the common council of said city, by the said commissioners, together with all such conditional contracts as may have been made by them by virtue of this act, within ninety days after their appointment; and they shall make their said second report as soon hereafter as practicable.

§ 13. If the said common council shall approve said plan presented in said first report, for supplying the said city with water for the extinguishment of fires, and shall be of opinion that it would be for the best interest of the city to carry the same into effect separately, before proceeding to act upon the said general plan referred to in the sixth section of this act, they may adopt said first mentioned plan, for supplying said city with water for

the extinguishment of fires, with such modification as they may deem proper, and direct the said water commissioners to proceed without delay to carry the same into effect, and to execute the said last mentioned work.

Money when
to be raised
by loan.

§ 14. For the purpose of defraying the expenses of said last mentioned work, the said mayor and common council of the city of Brooklyn shall have power to raise by loan, from time to time, in such amounts as they may think fit, a sum not exceeding one hundred and fifty thousand dollars, by the issue of bonds or the creation of a public fund or stock to be called, "The water fund of the city of Brooklyn," which shall bear an interest of six per cent per annum, and shall be payable or redeemable at a period of time not less than twenty nor more than fifty years from and after the passage of this act. Such stock or bonds may be sold by the mayor and common council at public or private sale, at not less than the par value thereof.

Provision in
case the se-
cond or gen-
eral plan is
approved of.

§ 15. If the said common council shall approve the said general plan to be reported by the said commissioners, for furnishing a sufficient supply of pure and wholesome water for all the uses of the inhabitants of the said city, pursuant to the provisions of the sixth section of this act, and shall become assured of its practicability, they shall appoint a poll to be opened on the day upon which the next annual election for charter officers is by law appointed to be held, or at a special election to be appointed by them for that purpose, by notice of sixty days published in all the corporation newspapers in said city, which special election shall be held by the inspectors of election in the several election districts of said city, and the inspectors of said election shall provide ballot boxes with suitable locks and keys; and the electors of said city shall express their assent or refusal to allow the common council to proceed to raise the money necessary to construct the works as aforesaid, by depositing their ballots in the boxes provided for that purpose in their respective election districts. Those electors who are in favor of granting the necessary power to the common council, shall each deposit a ballot containing the word "Yes," written or printed thereon, and those who are opposed shall each deposit a ballot containing the word "No," written or printed thereon, and all such ballots shall be endorsed "Water Loan." A canvass and return of said votes shall be made by the inspectors of the election in the same manner as is prescribed by law in regard to the canvass and return of votes for charter officers.

Ballots.

Provision in
case a major-
ity is in fa-
vor of the
measure.

§ 16. If a majority of the said electors are found to be in favor of the measure, it shall then be lawful for the mayor and common council to instruct the commissioners to proceed in the work of procuring a sufficient supply of pure and wholesome water for all the uses of the inhabitants of said city, according to the plan so adopted, with such alterations in the details of such plans as may be proposed by said commissioners and ratified by the common council. And it shall also be lawful for the said common council to raise, by loan, from time to time, in addition to the amount au-

thorized by the fourteenth section of this act, a sum not exceeding eight hundred and fifty thousand dollars, by the issue of additional bonds or scrip of the said public fund or stock, to be called "The water fund of the city of Brooklyn."

§ 17. In addition to the sums of money authorized to be pro-^{Additional} cured by loan under the fourteenth and sixteenth sections of this ^{sums of mo-} act, the said mayor and common council may, whenever and so ^{ney, how to} far as may be necessary, issue and dispose of other bonds or scrip, ^{be raised.} in the manner prescribed in said sections, as part of said water fund, to meet all payments of interest which may accrue upon any bonds or scrip by them issued under said sections: Provided, however, that no bond or scrip shall be issued for the payment of interest as aforesaid, after the expiration of one year from the completion of said works; but, payment of all interest that shall accrue after that time, shall be made as hereinafter provided.

§ 18. In case the said common council shall not approve either ^{Provision in} of the said plans contained in the said commissioners' report, they ^{case the} may either reject the same absolutely, or they may refer the sub- ^{plans are not} ject back to the said commissioners for a new report; and upon ^{approved of.} the coming in of such new report, the said common council may either adopt or reject the plans contained therein, as in the first instance; and before such adoption, they may amend the details of the same as they may deem expedient. If both the said plans are finally rejected, the powers and duties of the said commissioners shall thereupon cease. If the said first plan for the extinguishment of fires shall be adopted, and the said general plan for furnishing a sufficient supply of water for all the uses of the said inhabitants shall be rejected, either by the common council or by the decision of the electors at the election aforesaid, then the powers and duties of the said commissioners shall cease, upon the completion of the first mentioned work for the extinguishment of fires; and if both said plans shall be adopted by said common council and electors, the duties of said commissioners shall continue till the completion of the entire works, provided that said term of office shall not extend beyond three years from and after the passage of this act, unless extended as hereinafter provided.

§ 19. If the said works should not be completed at the expiration of three years after the passage of this act, the said common council may, by a resolution, extend the term of said commissioners for such period as they may deem expedient; or they may appoint new commissioners in their places, who shall proceed to complete the said works. ^{Time may be} ^{extended for} ^{completing} ^{works.}

§ 20. The moneys to be raised by virtue of this act, shall be exclusively applied and expended to and for purposes specified herein, under the direction of the said commissioners, and shall be appropriated or diverted to no other use or purpose whatsoever. ^{Moneys raised,} ^{how applied.}

§ 21. The said commissioners and their agents are hereby authorized to enter upon any land or water for the purpose of making surveys, and to agree with the owner of any property which may be required for the purposes of this act, as to the amount of com- ^{Lands may} ^{be entered} ^{upon and} ^{surveys} ^{made.}

compensation to be paid to such owner. But no contract for real estate or water rights shall be valid and binding until the same shall have been ratified and approved by the said common council.

Damages
how to be
paid for.

§ 22. The mayor and common council of said city shall be liable to pay all damages that may be sustained by any persons in their property by 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 required for the purposes aforesaid, or any other person who shall sustain damage as aforesaid, shall not agree with the said commissioners upon the damages, or compensation to be paid therefor, or in case such owner or person shall be an infant, a married woman, or insane, or shall be absent from this state, application may be made in the premises by the said water commissioners to one of the justices of the supreme court, at any special term thereof, held in the county of Kings, or in the city of New-York, upon a notice of ten days served upon the other party, or parties. Upon such application, the said justice shall appoint three judicious and disinterested freeholders of this state, who shall, after reasonable notice to all the parties, take testimony if offered, examine such property, estimate the value thereof, or the damage sustained thereby, and make up a report thereon without delay. Upon completing their said report, the said freeholders shall file the same in the office of the clerk of the county of Kings, where it shall be open to the inspection of all parties interested therein; and the said freeholders shall give notice to all the parties of the completion and filing of said report.

Parties
when and
how to ap-
peal.

§ 23. After said report shall have been so filed, as aforesaid, either party may, upon a notice of not less than twenty days, to all the other parties interested therein, present said report to the supreme court, at any special term thereof, for confirmation. Any party or parties may within twenty days after notice, to him or them, of the filing of such report, appeal from the same. Such appeal shall be by notice to be served upon the other party or parties, at least ten days before the time at which the said report is to be presented to the said court for confirmation; which notice shall be accompanied by copies of the affidavits, if any, which it shall be intended to use on such appeal, and also with a brief statement in writing, of the grounds of objection to such report, and of the manner in which it is contended that the same ought to be altered. Such appeal shall be heard by the court to which the said report shall be presented for confirmation, at the time it shall be so presented. No affidavits shall be read against confirming said report, except those, copies of which shall have been served as aforesaid; but affidavits may be read in support of said report. Upon such hearing, the court may confirm such report, or may send it back to the same or to other freeholders, for a further or new report. Such new report shall be made, filed,

presented for confirmation, and appealed from, in all respects as above provided; and as often as any such report shall be referred back, the like proceedings shall be thereupon had. In cases, however, where the said court can, from the nature of the case, and shall direct specific alterations to be made therein, and such alterations shall be made during the same term, the said report may be thereupon absolutely confirmed. Such report, when confirmed, shall be conclusive upon all parties. If neither party shall notice the said report for confirmation, within thirty days after notice shall have been given of its filing as aforesaid, the same shall be dull and void, and the said water commissioners may apply for the appointment of a new board of freeholders, under the twenty-second section of this act, who shall proceed in the same manner as if no others had been appointed.

§ 24. All costs of said proceedings shall be paid by the said commissioners, except where an appeal is taken, in which case the court shall have power to award costs against the appellant in cases where the appeal shall not be prosecuted or sustained. All costs and reasonable counsel fees in such proceedings shall be taxed and certified by one of the justices of the supreme court. After such report shall have been confirmed, the said water commissioners shall within three months thereafter pay or tender to such owner, or to such person or persons as the court may direct, the sum mentioned in such report, in full compensation for the property so required, or for the damages sustained; and thereupon the said mayor and common council shall become seised in fee of such property so required, and shall be discharged from all claim by reason of such damages. All parties having liens upon such premises may be made parties to the above proceedings, and the amounts payable to each shall be designated in said report.

Costs by whom paid.

§ 25. In all cases where personal notice cannot be served, pursuant to the preceding sections of this act, by reason of the absence of any party or parties, it shall be sufficient to publish such notice directed to such party or parties by name, for the number of days which such notice is above required to be given, in each of the corporation newspapers of the city of Brooklyn. The said court shall on application of any party, appoint guardians ad litem, to protect the interests of parties under legal incapacity, and thereupon such parties shall be in all respects concluded by the proceedings as they would be if they could and had personally appeared.

Notice how to be given in certain cases.

§ 26. The said commissioners, in behalf of the mayor and common council of the city of Brooklyn, and all persons acting under their authority, shall have the right to use the ground or soil under any street, highway or road within this state for the purpose of introducing water into the city of Brooklyn, on condition that they shall cause the surface of such street, highway or road to be restored to its original state and all damages done

Ground under streets may be used for conveying water.

thereto to be repaired, and in general may do any acts and things necessary or convenient and proper for effecting the purposes of this act.

Penalty for
injuring prop-
erty.

§ 27. If any person shall wilfully do, or cause to be done, any act whereby any work, materials, or property whatsoever, erected or used, or hereafter to be erected or used, within the city of Brooklyn or elsewhere by the said commissioners, or by the mayor and common council of the city of Brooklyn, or by any person acting under their authority, for the purpose of procuring or keeping a supply of water, shall in any manner be injured, or shall corrupt said water, or render it impure, every such person or persons shall forfeit and pay to the city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action; and every such person or persons shall moreover, on indictment and conviction thereof, be deemed guilty of misdemeanor.

By-laws.

§ 28. The said common council are hereby authorized to pass such by-laws and ordinances as to them shall seem meet, for the preservation and protection of the works constructed under and by virtue of this act; provided that such by-laws and ordinances are not inconsistent with any law of this state, subject, at any time, to be repealed or modified by the legislature; and also to organize a department, with full powers for the management of such works and the distribution of the said water.

Contracts to
be in writing.

§ 29. All contracts for materials, or for the construction of the said works, shall be made in writing, and of each contract three copies shall be taken, which shall be numbered with the same number, and endorsed with the date of the contract and with the name of the contractor, and a summary of the work to be done or materials furnished. One of such copies shall be retained by the commissioners, another shall be deposited with the comptroller of the city.

Sealed prop-
osals how
received.

§ 30. Public notice shall be given of the time and place at which sealed proposals will be received for entering into contracts. All such proposals for contracts shall be for a sum, certain as to the price to be paid or received, and no proposition which is not thus definite or certain, or which contains any alternative condition or limitation, as to price, shall be received or acted on.

Propositions
how to be
made.

§ 31. No more than one proposition shall be received from any one person for the same contract, and all the propositions of the person offering more than one shall be rejected. All bids and proposals for any contract shall be filed in the office of the clerk of the common council or of the city clerk, within ten days after such contract shall have been made.

Security to
be given.

§ 32. Every person who shall enter into any contract for the supply of materials or the performance of labor, shall give satisfactory security to the commissioners for the faithful performance of his contract, according to its terms.

§ 33. All materials procured, or partially procured, under a contract with the commissioners, shall be exempt from execution; but it shall be the duty of the commissioners to pay the moneys due for such materials to the judgment creditors of the contractor under whose execution such materials might otherwise have been sold, upon his producing to them due proof that his execution would have so attached; and such payment shall be held a valid payment on the contract.

Materials to be exempt from execution.

§ 35. The common council shall authorize the commissioners to draw upon the comptroller of the city for any sum in favor of, and to be paid to the owner of any lands, waters, streams, or property acquired by virtue of this act, and in favor of, and to be paid to any contractor, for any sum due upon his contract, and also for their incidental expenses. Such drafts shall specify the objects for which they are drawn, as nearly as may be; and the common council shall make it the duty of the comptroller to pay such drafts, in every case where a deed or other voucher is delivered to him, or a copy of a contract has been filed in his office; and a duplicate receipt of the contractor for such draft shall be presented therewith.

Money how to be drawn for to pay owners of lands and waters.

§ 36. They shall also require the comptroller to report to them a list of all the payments made by him upon the orders of the commissioners, once in every month; and previous to such reports shall have the accounts of the commissioners and of the comptroller examined by the finance committee of board of aldermen.

Comptroller to make list of payments.

§ 36. The said commissioners shall report to the said common council quarterly, or at any time when required by them, a general exhibition of the state of the works, including a full detail of the amount expended, and of the progress made by them.

Commissioners to report quarterly.

§ 37. The common council shall, from time to time, regulate the price or rents for use of the water, with a view to the payment from the net income, rents, and receipts therefor, not only of the semi-annual interest but ultimately the principal also of the "Water fund" of the city of Brooklyn, so far as the same may be practicable and reasonable. And the said net surplus income, rents and receipts, after deducting all expenses and charges of distribution, shall be set apart as a sinking fund, and shall be appropriated for and towards the payment of the principal and interest of the said water fund, and shall be under the management, control and direction of the mayor, treasurer, and comptroller of the said city, or the major part of them for the time being, who shall be trustees of said sinking fund, to be applied solely to the use and purpose aforesaid, until the principal and interest of the said water fund shall be fully paid and discharged.

Rents for water how to be regulated.

§ 38. The said mayor and common council shall lay out a district in said city, to be called "The water district," which shall include all such portions of said city as may have been brought into use by the regulating and grading of the streets, and the

Water district to be laid out.

laying down therein the necessary water pipes; and they may from time to time alter and extend such water district, as they may deem expedient and just.

Amount to be paid into the sinking fund to be determined.

§ 39. The said mayor and common council shall ascertain and determine from time to time what sum will be required to be paid annually into such sinking fund, to meet the semi-annual accruing interest, and also to provide for the payment of the principal of said water fund, when the same shall become payable, and if it shall appear in any year after the said works shall have been put in operation, and the water distributed thereby, that the net surplus income, rents and receipts mentioned in the thirty-seventh section of this act, shall not amount to the sum so ascertained and determined to be the proportion which should be paid in such year, such deficiency shall be levied and collected, by tax upon the estates real and personal, of the freeholders and inhabitants of, and situated within the said water district, together with the next annual taxes of said city.

Powers conferred by this act to be exercised and continued.

§ 40. All powers conferred and duties imposed by this act upon the mayor and common council of the city of Brooklyn, shall continue to be exercised and performed by the corporation of said city, in and by any corporate name by which it may hereafter be known and designated; and all provisions of this act which apply to the common council of said city, shall also apply in the same manner and with the same effect to the legislative body or bodies of said city, by whatever name it or they may be hereafter constituted by law.

Saving clause.

§ 41. Nothing in this act contained shall authorize the taking of water from the Croton river or the Croton aqueduct without the consent of the mayor, aldermen and commonalty of the city of New-York.

• § 42. This act shall take effect immediately.

Chap. 326.

AN ACT to amend the act entitled "*An act to alter the charter of the village of Rome.*"

Passed April 10, 1849, "three-fifths being present."

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Amendment.

§ 1. Section nine of the act entitled "*An act to alter the charter of the village of Rome,*" passed April 21, 1835, is hereby amended by striking out the words "five hundred," where they occur in the third line of said section, and inserting in the place thereof, the words "one thousand."

§ 2. This act shall take effect immediately.