

New York Call

L A W S
OF THE
STATE OF NEW-YORK,

PASSED AT THE
SEVENTY-SIXTH SESSION
OF THE
LEGISLATURE.

THE REGULAR SESSION BEGUN ON THE FOURTH DAY OF JANUARY, AND ENDED
THE THIRTEENTH DAY OF APRIL, 1858;
AND THE SPECIAL SESSION BEGUN THE FOURTEENTH DAY OF APRIL, AND (AFTER
A RECESS FROM THE 15TH OF APRIL TO THE 24TH OF MAY) ENDED THE
TWENTY-FIRST DAY OF JULY, 1858, AT THE CITY OF ALBANY.

N. B.—THE LAWS PASSED AT THE SPECIAL SESSION COMMENCE ON PAGE 519.



ALBANY:

WEED, PARSONS AND COMPANY, PRINTERS.
1853.

Chap. 298.

AN ACT for the supply of the city of Brooklyn with water.

Passed June 3, 1853, three-fifths being present.

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

Plan for supply of water.

§ 1. The common council of the city of Brooklyn may determine, provisionally, from what sources and in what manner the said city shall be supplied with water ; but before such plan shall be executed, an intelligible outline of it, with the estimated cost of its execution, shall be published in the corporation papers for fifteen days, and the sense of the electors of said city, upon such plan, shall be taken as hereinafter provided.

Election to be held.

§ 2. The common council shall cause a poll to be opened in each election district of said city, on or after the fifteenth day subsequent to the first publication of said plan, of which poll fifteen days' notice shall be given in said corporation papers. The inspectors of election in the several election districts last elected shall preside at such election ; and any vacancies in the office of such inspectors shall be filled by the common council in the mode prescribed by law. The said electors shall express their approval or disapproval of said plan, by each depositing in the ballot box a ballot containing the words, written or printed thereon, "in favor of the water plan," or "against the water plan," and such ballots shall be endorsed "water plan ;" and the election laws of this state, so far as applicable, shall apply to said election, except as herein otherwise provided. A canvass and return of said votes shall be made by the inspectors of election, in the same manner as is prescribed by law in regard to the canvass and return of votes for charter officers, and the common council, at its next regular meeting thereafter, shall proceed to determine, and shall declare and publish, the result of such poll ; and such determination and publication shall be conclusive evidence in all courts and places that such election was duly held and of the result thereof.

Proceedings in case of approval or disapproval.

§ 3. If a majority of such electors shall be declared to have voted in favor of the water plan, the common council

and commissioners shall proceed to execute said plan in the mode hereinafter prescribed. If a majority of such electors shall be declared to have voted against the water plan, the common council may proceed from time to time, in the mode herein above provided, to submit other plans and estimates to said electors until the approval of a plan by said electors shall be obtained; and the plan so approved shall be carried into effect as herein provided.

§ 4. After any plan submitted to the electors shall have been approved as herein provided, the common council, by a majority vote of all the members elected thereto, shall appoint five commissioners, who shall be known as the "water commissioners of the city of Brooklyn," and shall hold their offices until the water works hereinafter mentioned are constructed and completed and water distributed by them, unless their office should be sooner terminated, as hereinafter provided; but they or either of them may be removed for cause by a vote of two-thirds of the members elected to the common council, after having had an opportunity to be heard in their defence; and any vacancy which may occur in said board from any cause whatever shall be filled by the appointment of other commissioners by the common council, who shall hold office for the residue of said term. A majority of said commissioners shall be a quorum for the exercise of the powers and performance of the duties of said office.

Commissioners.

§ 5. No commissioner shall receive any compensation, fee or perquisite, or be in any manner, directly or indirectly, interested in any contract for any property, work or materials connected with the works authorized by this act, under penalty of forfeiture of his office.

Compensation of commissioners.

§ 6. The said commissioners may employ such counsel and as many clerks, inspectors, superintendents, engineers and surveyors, and such subordinate assistants, as may be necessary for the performance of the duties, under this act, which the commissioners may prescribe.

Commissioners may appoint counsel, clerk, &c.

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

Power to make contracts, &c.

the work and materials required for the construction and completion of said works, subject, in like manner, to ratification by the common council.

Contracts,
how to be
made.

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

Notice of
receiving
proposals.

§ 9. 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 or the security hereinafter mentioned be given, shall be received or acted on.

Proposals.

§ 10. No more than one proposition shall be received from any one person for the same contract; and all the propositions of the person who shall, directly or indirectly, offer, or be in any way interested in more than one proposition, shall be rejected. All bids and proposals for any contract shall be filed in the office of the city clerk, within ten days after such contract shall have been signed, and the security given as hereinafter provided.

Security by
contractor.

§ 11. 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.

Materials
contracted
for, to be ex-
empt from
execution.

§ 12. All materials procured or contracted for, to be used in the construction of the said works, shall be exempt from execution; but the common council shall pay the money, due for such materials, to the judgment creditors of the contractor or their assigns out of any moneys due upon such contract from the city of Brooklyn at the time of the receipt of a written notice of such execution, and under which execution such materials might otherwise have been sold, upon production to them of due proof that such execution would have attached, and such payment shall be held a valid payment on the contract and on the judgment.

Assignment
of contracts.

§ 13. Every voluntary assignment of any contract made with the said commissioners for labor or materials to be

employed upon said works, shall be absolutely void, unless ratified by the common council, and shall also subject such contract to forfeiture at the option of the common council.

§ 14. The common council shall authorize the commissioners, with the sanction of the mayor and chairman of the water committee and the chairman of the finance committee of said common council, or any two of them 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, water rights and privileges or other 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 any other expenses incurred by them under section six of this act; 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, with said sanction, 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.

Drafts to pay owners of lands, water, streams, &c.

§ 15. The comptroller shall, once in each month, report to the common council a list of all the payments made by him upon the drafts of the commissioners; and previous to such monthly report the accounts of the commissioners and of the comptroller, in respect of such payments, shall be examined by the water and finance committees of the common council.

Monthly report by comptroller.

§ 16. The commissioners shall report to the said common council quarterly, and at all other times 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 in the construction.

Commissioners to report quarterly.

§ 17. The said common council may, in the manner hereinafter provided, take any lands, tenements, hereditaments, rights and privileges whatsoever, which may be required for said works in pursuance of such plan as they shall adopt; and may use the ground or soil under any street, turnpike, or railroad, or other road or highway within this state, for the purpose of introducing water into said city, on condition that they shall cause the surface of the street, highway or road to be restored to its original state, and all damages done thereto to be repaired; and in general may do any other act or thing necessary or convenient and proper for effecting the purpose of this act.

Lands to be taken.

Surveys to be made and agreements for property taken.

§ 18. 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 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 by the common council.

Damages.

§ 19. The said common council shall be liable to pay all damages that may be sustained by any persons or corporation 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 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 citizens of this state, as commissioners of estimate, 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 a report thereon without delay. Upon completing such report, they shall file the same in the office* of the county of Kings, where it shall be open to the inspection of all parties interested therein; and the said commissioners of estimate shall give notice to all the parties of the completion and filing of said report.

Commissioners' report to be filed.

Appeal from Commissioners' report.

§ 20. After said report shall have been so filed, either party may, upon a notice of not less than twenty days to all the other parties interested therein, present the said report to the supreme court, at any special term thereof, for confirmation. Any party or parties may, within twenty days after receiving such notice, appeal from the said report, by serving a notice thereof upon the other party or parties, at least ten days before the time at which the said report is to be presented to said court for confirmation; which notice shall be accompanied by copies of any affidavits which

* So in the original.

have been presented to said commissioners of estimate, and which the appellant shall intend 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 when the said report shall be presented to the court for confirmation. No affidavits shall be read against confirming said report, except those of which copies 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 other commissioners 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, the like proceedings shall thereupon be had. In every case, however, where the court can 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 null and void; and the said water commissioners may apply for the appointment of new commissioners of estimate, as hereinbefore provided, who shall proceed in the same manner as if no others had been appointed.

§ 21. All costs of said proceedings shall be paid by the said water 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, and in the construction of said water works, and generally in the execution of this act, shall be taxed and certified by the county judge of Kings county, or one of the justices of the supreme court, and be paid by the comptroller to the parties and persons on whose behalf such costs and fees have been taxed, upon presentation of the taxed bill or bills. 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

Costs of proceedings.

Payment of compensation to owners.

thereupon the city of Brooklyn shall become seized 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.

Proceedings
in case of ab-
sence of
parties.

§ 22. 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 herein required to be given, in each of the corporation newspapers of the city of Brooklyn. The said court shall, on the 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 to the same extent as if they could have, and had, personally appeared.

City map
may be
altered.

§ 23. The common council may, by a vote of two-thirds of the members elected thereto, close, and strike from the city map, such streets and avenues and such parts of streets and avenues as may be required in the construction, equipment and operation of said water works.

Loan.

§ 24. For the purpose of paying the cost of said water works, together with all incidental expenses and damages, the said common council are hereby authorized to raise by loan, from time to time, in such amounts as they may deem expedient, a sum sufficient to complete and finish the same by the issue of bonds or the creation of a public debt or stock, to be called "the water stock of the city of Brooklyn," which shall bear an interest not exceeding six per cent per annum, payable semi-annually, and shall be payable or redeemable at a period of time not less than fifteen nor more than forty years from and after the passage of this act. Such bonds or stock may be sold by the common council, at public or private sale, at not less than the nominal or par value thereof.

To issue
bonds to pay
interest.

§ 25. In addition to the sums of money authorized to be procured by loan, under the preceding section of this act, the common council may, whenever and so far as may be necessary, issue and dispose of other bonds or stock, in the manner prescribed in said section, as part of said water stock, to meet all payments of interest which may accrue upon any bonds or stock by them issued under said section; 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.

§ 26. All moneys to be raised by virtue of this act, whether by loan or by tax, shall be exclusively expended and applied to and for the purposes specified herein, under the direction of the said commissioners, or as herein otherwise provided, and shall be appropriated or devoted to no other use or purpose whatsoever.

Money to be paid as specified.

§ 27. The common council shall, from time to time, regulate the price or rents for the use of water to be supplied through said works, so as to pay, from the net income to be derived from said works, the semi-annual interest upon, and ultimately the principle of, said bonds or stocks, so far as the same may be practicable and reasonable. And after payment or deduction of all expenses and charges of distribution, the net surplus income from said water works 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 stock, 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 commissioners of the said fund, to be applied solely to the use and purpose aforesaid until the principal and interest of the said water stock shall be fully paid and discharged.

Water rents.

§ 28. The common council shall make timely and ample provision for the redemption of said bonds or stock, principal and interest; to that end they shall ascertain and determine, from time to time, what sum will be required to be paid annually to meet the semi-annual accruing interest not herein otherwise provided for, and also to provide for the payment of the principal of said water stock when the same shall become payable; and if it shall appear in any year after the said works shall be put in operation, and the water distributed thereby, that the net surplus income mentioned in the preceding 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 actual or anticipated deficiency shall be levied and collected by tax, in the same manner as is now provided by law for the levying and collecting the taxes for the support of said city, and as a part of the next annual taxes of said city.

Redemption of bonds.

Moneys paid into sinking fund, how to be invested.

§ 29. The moneys directed by this act to be paid into the sinking fund shall be invested by the commissioners of said sinking fund in the several and respective public stocks or bonds issued by the city of Brooklyn, by the county of Kings, by the State of New-York, and by the United States.

Management of works, and distribution of water.

§ 30. The common council may organize a department, with full powers for the management of said works and the distribution of the said water; and may also pass by-laws and ordinances for the regulation, protection and preservation of the said works, provided that such by-laws and ordinances shall not be inconsistent with any law of this state, and shall be subject to be modified or repealed by the Legislature.

Penalty for injuring the works.

§ 31. If any person shall willfully 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 said city or elsewhere by the said commissioners or common council, 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 said city three times the amount of the damages that shall be assessed therefor, to be recovered by the said common council in any proper action, and every such person shall be deemed guilty of a misdemeanor and be indictable and punishable therefor.

Saving clause relative to Croton river water.

§ 32. 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.

Agreement with the corporation of Williamsburgh.

§ 33. The common council may agree with the corporate authorities of the city of Williamsburgh to supply that city with water upon the same terms and conditions as are paid by the citizens of Brooklyn.

Saving clause.

§ 34. Nothing in this act contained shall be so construed as to interfere with the rights, privileges, powers and immunities now held by the corporation created by the act entitled "An act to incorporate the Williamsburgh Water Works Company," passed April 16, 1852; but it shall be lawful for the city of Brooklyn, with the consent of a majority of the board of directors of the said corporation, and not otherwise, at any time hereafter to take or purchase all the interest, property and effects of the said corporation, at such price and upon such terms as may be agreed upon

by the common council of the said city of Brooklyn and the said Williamsburgh Water Works Company. And the said Williamsburgh Water Works Company are hereby authorized and empowered to convey, by deed or otherwise, to the city of Brooklyn, all their property, effects, rights, privileges and immunities; and upon the same being so conveyed, all the property, rights, privileges and immunities of the said Williamsburgh Water Works Company, granted to them by their act of incorporation, or any amendment thereof, or acquired under the same, shall absolutely vest in the city of Brooklyn.

§ 35. So much of sections twenty-six, twenty-seven and twenty-eight of the act entitled "An act to revise and amend the several acts relating to the city of Brooklyn, passed April 4th, 1850," passed June 19th, 1851, as is inconsistent with the provisions of this act, are hereby repealed; but nothing herein contained shall be so construed as to impair any act done, contract made or right acquired by or on behalf of the said "The city of Brooklyn" by virtue thereof; and all such acts, contracts and rights are hereby confirmed. Repeal.

§ 36. This act shall take effect immediately.

Chap. 299.

AN ACT *appropriating the revenues of the literature and United States' deposit funds.*

Passed June 3, 1853, three-fifths being present.

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

§ 1. The payment to academies for instruction in common school teaching during the academic year eighteen hundred and fifty-three, authorized by the fourth section of chapter five hundred and thirty-six of the Laws of New-York, passed July eleventh, eighteen hundred and fifty-one, shall be withheld until after the first day of January, eighteen hundred and fifty-four, and the amount appropriated in said act is hereby re-appropriated, and then made payable in conformity to existing laws and the ordinances of the regents. Appropriation to academies.

§ 2. This act shall take effect immediately.