

L A W S

OF THE

STATE OF NEW-YORK,

PASSED AT THE

SIXTY-EIGHTH SESSION OF THE LEGISLATURE,

BEGUN AND HELD IN THE CITY OF ALBANY,

THE SEVENTH DAY OF JANUARY, 1845.



ALBANY :

PRINTED BY C. VAN BENTHUYSEN AND CO.

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1845.

be necessary, and to make all needful and proper rules for the regulation of their respective duties.

§ 10. This act shall take effect immediately ; and the legislature may at any time amend or repeal this act.

CHAP. 184.

AN ACT to increase the capital of the Common School Fund.

Passed May 10, 1845.

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

§ 1. The sum of eighty-four thousand three hundred and fifty-eight dollars and fifteen cents, which has been appropriated to the state under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," passed September 4th, 1841, which is now deposited in the Commercial Bank of Albany, and the interest thereof, is hereby appropriated to the use and benefit of the common school fund ; but said moneys appropriated by virtue of this act are hereby received only in deposit, and liable to be refunded to the treasury of the United States, whenever Congress shall direct by law.

Capital
how in-
creased.

§ 2. This act shall take effect immediately.

CHAP. 185.

AN ACT to authorize Edward H. Brodhead to supply the city of Utica with pure and wholesome water.

Passed May 10, 1845.

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

§ 1. Edward H. Brodhead is hereby authorized to take and appropriate so much of the waters of a stream commonly called the Starch Factory creek, as may be necessary to supply the city of Utica with pure and wholesome water, to be used and applied to that purpose only ; and also to take so much land as may be necessary for the construction and maintenance of conduits, reservoirs and other works neces-

E. H. Brod-
head autho-
rized to use
water and
land.

sary for that purpose ; and to construct such conduits under any public highway or street, without obstructing the use thereof, which he shall restore to their usual state as speedily as practicable.

Three commissioners to be appointed to determine as to lands.

§ 2. The circuit judge of the third circuit, upon the application by the said Brodhead, of which three weeks notice shall be given, by publishing the same in two of the public newspapers published in the city of Utica, one of which shall be a daily paper, shall appoint three disinterested persons, not being inhabitants of the city of Utica, commissioners, who shall determine what lands are necessary to be taken by the said Brodhead for the construction and maintenance of the said conduits, reservoirs, and other necessary works, pursuant to the first section of this act ; and shall make a survey and map of such lands, with the courses and distances, which survey and map shall show the quantity of such lands owned and occupied by each owner and occupant thereof. The said commissioners shall subscribe such survey and map, and acknowledge the same before some officer authorized to take the acknowledgement of deeds, and cause the same to be filed and recorded in the office of the clerk of the county of Oneida.

Two weeks notice to be given.

§ 3. Before determining what lands are necessary to be taken as aforesaid, the said commissioners shall give two weeks notice of the time and place of their meeting to make such determination, by publishing the same in two public newspapers published in the city of Utica ; at which meeting all persons interested may appear before the said commissioners, and be heard in respect to such determination.

They may enter on lands.

§ 4. For the purpose of making such survey, the said commissioners and the said Brodhead, and their servants and assistants, may enter upon any premises, doing no unnecessary damage ; and if any damage be done by such entry, the said Brodhead shall make just compensation therefor.

Owners of lands to be paid.

§ 5. The said Brodhead shall pay to the owners of the lands which the said commissioners shall determine are necessary to be taken as aforesaid, a just compensation therefor, and for the damages which the said owners shall sustain by reason of the taking of the same ; and he shall also pay to all persons now entitled to use any waters which he shall take by virtue of this act, the amount of the damages which they shall sustain by reason of his taking the said waters as aforesaid.

Provision in case of disagreement.

§ 6. In case there shall be any of the owners of the lands which the said commissioners shall determine are necessary to be taken as aforesaid, or of the persons entitled to use the waters so taken, with whom the said Brodhead cannot agree as to the amount to be paid to them for the said lands or dam-

ages, or in case any of them shall be married women, infants, idiots, insane, or out of this state, the circuit judge of the third circuit, upon the application of the said Brodhead, and after such notice to the other parties as the said judge shall direct, shall appoint three disinterested persons, not being inhabitants of the city of Utica, by whom the value of such lands and the amount of the said damages shall be appraised.

§ 7. The said appraisers shall cause a notice of at least thirty days, of the time and place of their meeting to make such appraisement, to be given personally to such of the owners and persons entitled to use the said waters, as can be found within this state; and in case any of such owners or persons cannot be found within this state, such notice shall be given to them by publishing the same for twelve weeks successively, in two public newspapers published in the city of Utica; and if any of such owners or persons shall be married women, infants, idiots, or insane, the said circuit judge shall, upon the application of the said Brodhead, appoint some suitable person to attend before the said appraisers in their behalf, and to take care of their interests in respect to the said appraisement.

Duty of appraisers.

§ 8. The said appraisers may issue subpoenas to compel the attendance of witnesses before them, who may be sworn as such by either of the said appraisers to testify to any matter necessary to be inquired into in order to make the said appraisement; and they may compel such witnesses to appear before them and testify, in the same manner in which a justice of the peace may compel a witness to appear and give evidence before him.

Power to compel attendance of witnesses.

§ 9. The said appraisers shall make a written statement of their appraisement, with the sum awarded to each owner or other person, a description of the land appraised, and of the damages for which compensation is awarded; they shall subscribe and acknowledge it before some person authorized to take the acknowledgment of deeds, and shall cause it to be filed and recorded in the clerk's office of Oneida county.

Appraisement how made.

§ 10. The said Brodhead shall pay to the said commissioners and appraisers three dollars a day for every day necessarily spent by them in the performance of the duties imposed on them by this act, and the expense of filing and recording the instruments herein before required to be by them filed and recorded; and he shall also pay to each witness attending before them, fifty cents a day for such attendance, and six cents a mile for travel.

Pay of commissioners, &c.

§ 11. Within thirty days after the filing of the said statement in the said clerk's office, the said Brodhead may elect to have the claim of any person for compensation for land or damages, which shall have been heard and determined by

Claims for damages may be tried before a jury.

the said appraiser, tried before a jury in the circuit court of Oneida county, and within thirty days from the time of receiving notice of such appraisement and of the filing of such statement, any person whose claim for such compensation or damages shall have been so heard and determined, may make the like election. In case of any such election, notice thereof shall be given to the opposite party; the circuit judge of the fifth circuit shall cause an issue to be made up for the trial of the claim, and the same shall be brought to trial upon the notice of either party, and shall be tried as other issues are tried in the said court; but no inhabitant of the city of Utica shall be a competent juror on such trial.

Costs how awarded.

§ 12. Costs shall be awarded to either party on such trial as shall be deemed just by the judge holding such circuit.

Sums awarded to be paid.

§ 13. Before the said Brodhead shall be entitled to take such lands or waters, he shall pay the sums so as aforesaid awarded by the said appraisers or by the verdict of the jury, to the persons entitled to the same, or for their benefit, except as hereinafter provided.

How made to married women, infants, &c.

§ 14. If the person entitled to the same be a married woman, infant, idiot, or insane, such payment shall be made into the court of chancery, for the benefit of such person; and in all other cases, if such person be a resident of this state, and can be found therein, payment shall be personally made to such person; but if he be not a resident of this state, or cannot be found therein, it may be made by depositing the amount thereof in the Bank of Utica, to his credit and for his use, and giving him notice of such deposit, by publishing a certificate thereof in a public newspaper printed in the city of Utica, for six successive weeks.

Time limited make payment.

§ 15. Such payment shall be made within forty days after the statement of the said appraisers shall be filed as aforesaid, or within thirty days after verdict, if the claim shall be tried by a jury; and in default thereof, any party in whose favor the said appraisers shall have made an award in respect to which there shall not have been an election or a trial by jury as aforesaid, may have the same docketed in the clerk's office of the said county, and an execution issued thereon by said clerk, in the same manner, and with the like effect, as in case of a judgment recovered in the court of common pleas of the said county; and any party in whose favor a verdict shall be rendered, may have a judgment entered thereon, and for the costs of the trial, if he shall be entitled to recover such costs, in such form as the circuit judge of the fifth circuit shall approve, which shall be docketed and execution issued thereon as aforesaid; but if the said Brodhead shall be entitled to recover costs on such verdict, they shall be

deducted from such judgment, if they shall be taxed within such time as the said circuit judge shall direct.

§ 16. If any person entitled to receive such payment cannot be found within this state, and for that reason personal notice cannot be given to him of the filing of the said statement, the said Brodhead, in addition to making such payment by a deposit, as aforesaid, shall deposit therewith a bond to such person, in such sum and with such sureties as the said circuit judge of the fifth circuit shall approve and direct, conditioned to pay to such person any damages or costs over and above the sum so deposited, which he shall be entitled to receive. Provision when persons entitled to pay are out of the state.

§ 17. If any party shall elect to have the claim for which any award shall be made by the said appraisers, tried by a jury, the said Brodhead may deposit the amount awarded in the Bank of Utica, to abide the decision of such jury, and to be paid to the claimant in whole or in part, according to the verdict upon such trial; and may give to the claimant a bond in such sum, and with such sureties as the circuit judge of the fifth circuit shall direct and approve, conditioned for the payment to such claimant of any damages or costs over and above the amount so deposited, which he shall be entitled to receive. In case of trial by jury amount awarded where to be deposited.

§ 18. Upon such payment being made, or such deposit being made and such security given as aforesaid, the said Brodhead, shall be entitled to take such lands and the said waters, and to use and apply the same as provided in the first section of this act, but for no other purpose. Lands and waters when to be taken.

§ 19. The corporation of the said city and the inhabitants thereof, may use the said water upon such terms and conditions as shall be mutually agreed upon between them and the said Brodhead, and the legislature shall have power to prescribe from time to time, the terms, conditions and regulations upon which he shall furnish the said water to them. Use of water in the city of Utica.

§ 20. The powers and privileges hereby granted to the said Brodhead, shall be exercised within the city of Utica, in conformity with such regulations as the common council of the said city shall prescribe. Subject to regulation of common council.

§ 21. Nothing in this act shall be deemed or taken to authorize the said Brodhead, his heirs or assigns to interfere in any way or manner with the rights and privileges of the Utica Waterworks Association by taking the property of said company. Saving clause.

§ 22. The legislature may at any time alter or repeal this act.