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ACTS

OF

THE GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA,

PASSED IN

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DECEMBER, 1854.

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1854.

AN ACT TO INCORPORATE THE CHARLESTON WATER COMPANY, IN THE
CITY OF CHARLESTON, STATE OF SOUTH CAROLINA.

A. D. 1854.

No. 4179.

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That Joshua Lazarus, C. D. Carr, John Lucas, L. T. Potter, Lingard A. Framp-ton, W. C. Gatewood and John Heart, and their associates and successors, shall be and they are hereby incorporated and declared a body politic and corporate; shall have power to make, use, have and keep a common seal, and the same at will to alter; to make all necessary by-laws not repugnant to the laws of the land, and to have succession of officers and members conformably to such by-laws, and to sue and be sued, implead and be impleaded, in any court of law or equity in this State, and to have, use and enjoy all other rights, and be subject to all other liabilities which are incident to other bodies incorporate.

Corporators.

II. That said company shall have full power and authority to take, hold and convey water from any point from any river, creek, springs or other sources within sixty-five miles of the city of Charleston, into and through the said city, with the consent of the City Council of Charleston first had and obtained, and shall have full power and authority to make canals, build dams, erect locks, lay conduits or tunnels for the conveyance of the said water through, under and along any highway in the country adjacent, or any street or streets, lane or lanes, alley or alleys of the City of Charleston, for the purpose of conveying and distributing said water; and the canals, locks, dams, conduits or tunnels from time to time to renew and repair, and for such purpose to dig, break up, and open at their own expense all and any part of highways, streets, lanes and alleys, and of the middle or side pavements thereof, leaving at all times a sufficient passage for carriages, horses and foot passengers, and restoring forthwith to their former condition all such highways, streets and alleys, and the pavements thereof, as may at any time be taken up, opened or dug; and the said Company shall have full power and authority to erect such buildings, and to hold such real and personal estate as may be requisite and proper to carry on the business aforesaid. And the said corporation shall have full power to raise by subscription, in shares of twenty-five dollars each, a capital of five hundred thousand dollars, with the privilege of increasing the same to three millions of dollars, if so much be deemed proper, and the said corporation shall not go into operation, nor the rights, privileges and franchises hereby granted attach, until the sum of fifty thousand dollars shall have been actually paid in gold or silver coin, or the current notes of incorporated Banks of this State, and an oath or affirmation thereof shall have been made by the President, Treas-

Power of the
Company.

Subscription.

A. D. 1854. } urer and a majority of the Board of Directors of the said Company, and recorded in the office of the Secretary of State, at Charleston, and shall have been published in at least two respectable newspapers in the said city. And the said corporation may make, purchase or otherwise take and hold any land necessary for the establishment of their works, and also all private rights of way, water courses, or other easement which may be on or along the route through which such canals, dams, locks, tunnels or conduits shall pass, and may conduct such canals, dams, locks, tunnels or conduits over or through any public road, river, creek, water course or waters that may be on the route, but in such manner as shall not obstruct the passage of the public road or navigation of the stream. Lands or private rights of way for canals, dams, locks, tunnels or conduits which cannot be purchased from the owner for want of agreement, or from any other cause, may be taken by the company at a valuation to be made by

Commission- commissioners appointed by the Court of Common Pleas of the District in
ers. which any part of the land or right of way may be situated. The commis-
sioners; before acting, shall be sworn before some magistrate, faithfully and

Return under impartially to discharge the duty assigned them. Their proceedings, accom-
seal. panied with a full plat and description of the land, shall be returned under
their hands and seals to the court from which the commission issued, there

Appeal. to remain of record. Either party may appeal from this valuation at the
next session of the court granting the commission, giving fifteen days' notice
to the opposite party of such appeal; and the court shall order a new valuation
to be made by a jury, who shall be charged therewith in the same term,
and the verdict shall be final and conclusive, unless a new trial be granted,
and the land or right of way so valued by commissioners or jury shall vest
in the company in fee simple, so soon as the valuation be paid; or tendered
and refused. The pendency of an appeal by either party from the valuation
of the Commissioners, shall not prevent the company from proceeding in the
construction of their works in and upon the land or right of way; but if the
appeal be made by the company, it can proceed only upon giving to the
opposite party a bond with good security, to be approved by the Clerk of the
Court where the valuation is returned in a penalty of double the said valuation,
conditioned on the payment of the valuation, and interest in case the
valuation be sustained, and for the payment of the valuation made by the
jury and sustained by the court in case it be reversed. In all such assess-
ments made by the commissioners or jury after the construction of the
works or appertenance upon the land, reference shall be had to the true
value of the land at the time the construction was begun. The land covered
by said works and the space of twenty-five feet on each side, shall be deemed
in the actual possession of the company. A majority of the commissioners
shall be competent to perform the duties required of them in this section.

Nothing in this Act contained shall authorize the company to take or invade without the consent of the owner, any dwelling-house, yard, garden, grave-yard, or ornamental trees. In the absence of any written contract between the company and the owner of the land through which the works have been constructed, it will be presumed that the land required and occupied by the company, with twenty-five feet on each side, has been granted to the company by the owner, and the company shall have good right and title to it, and shall hold it, unless the owner or some one claiming under him shall apply for an assessment of the value of the land as before directed, within five years after the construction of the work on or through said land, if within that time no application be made for assessment by the owner or some one claiming under him, he or they shall be barred for ever from recovering the same, or having any compensation, but this limitation shall not affect the rights of feme covert, infants or lunatics, until two years after the removal of their respective disabilities: *Provided nevertheless*, That should the Commissioners aforesaid, or jury upon appeal as aforesaid, give any compensation in damages to the owner or owners of any land, or private rights of way taken and occupied as aforesaid by the Charleston Water Company, that said Company shall be held liable for the costs of the proceedings; and should such owner or owners as aforesaid fail to recover any compensation as aforesaid from said Company, that such owner or owners shall in like manner be liable for the costs of the proceedings, and either party may enforce by execution the collection of the costs aforesaid.

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Proviso.

III. That the said Company shall have full power and authority to establish reservoirs and fountains in such parts of the streets and squares of the said city, with the consent of the City Council of Charleston first had and obtained, or adjacent thereunto, or elsewhere to be connected with the works, as they may think proper, and to all persons whomsoever, and to all bodies politic and corporate; the privilege of using the said water, to be introduced in such manner, and on such terms and conditions, and in quantities respectively as they shall think fit. And the said water so to be introduced, together with all reservoirs, canals, dams, locks, conduits, tunnels, engines, buildings and machines, to be by them made and used for the purpose of introducing, raising and distributing the said water, to hold to them, their successors and grantees forever, as their sole and exclusive property.

To establish reservoirs and fountains.

IV. That the said shares in the capital stock aforesaid of the said corporation, shall be deemed personal estate, and be transferable only on the books of said corporation. And no part of the said capital shall at any time, or under any pretence whatever, be loaned to or divided amongst the stockholders, until the liabilities of the said corporation have been lawfully paid, nor shall any dividend or dividends be at any time declared, except of the clear earnings and profits of the said company.

Shares, personal property.

A. D. 1854.
 Neglect to pay
 instalments.

V. That if the proprietor of any share shall neglect or refuse to pay instalments assessed thereon, for the space of thirty days after the time appointed for the payment thereof, the Treasurer of the Company may, by order of the Board of Directors, sell by public auction, a sufficient number of any shares held by such defaulter, to pay all instalments then due by him, together with the necessary and incidental charges. And the treasurer shall give notice of the time and place of such sale, and of the sum due on each share, by advertising the same for two successive weeks previous to such sale, in some newspaper in the City of Charleston, and a bill of sale of the shares so sold shall be made by the Treasurer of the Company to the purchaser thereof, who shall thereupon be entitled to have the same transferred to him on the books of the Company, and shall be liable for all future instalments on the stock he may purchase.

Subscriptions. VI. The said Joshua Lazarus, Charles D. Carr, John Lucas, L. T. Botter, Lingard A. Frampton, W. C. Gatewood and John Heart may open books and take subscriptions for the capital stock of the said Company, in such manner as they may deem expedient, and whenever such subscription shall amount to the sum of one hundred thousand dollars, the stockholders having had two weeks' notice, in writing or in one of the public newspapers of the city of Charleston, may meet and proceed to elect a President, Treasurer and Board of Directors, or such other officers as they may deem necessary for organizing the said Company, and conducting the affairs thereof. And the said Board of Directors shall continue in office until their successors shall have been duly elected, and until otherwise provided by the by-laws of the said Corporation, shall have power to dispose of the residue of the capital stock of the said Company not subscribed for in such manner, and at such time as they may deem fit. And at the said election of officers, and at all meetings of the said Company, every stockholder shall be entitled to one vote for every share held by him. That the Directors shall submit to the stockholders annually, a written statement under oath or affirmation of the Treasurer of the Corporation, setting forth the amount of the capital stock paid in, and of the general assets of the said company.

Officers and Directors.

Votes.

Infringement of privileges. VII. That if any person or persons should wantonly, negligently or maliciously divert the water, or any part thereof, of any ponds, streams, springs or water sources which shall be taken by said Company in pursuance of the provisions of this Act, or shall corrupt the same, or render it impure or offensive by mingling other substances with it, or by washing or swimming in it, or by erecting any privy or other nuisance near it, or by any other means whatsoever, or shall injure or destroy any dam, lock, aqueduct, pipe, conduit, hydrant, machinery or other property held, owned, or used by the said Company, by the authority and for the purposes of this Act, any such person or persons shall forfeit and pay to the said Company treble the amount of damages sustained by any such injury, to be recovered by action

on the case. And any such person or persons shall moreover be deemed guilty of misdemeanor, and may, on indictment and conviction thereof, be punished by fine not exceeding five hundred dollars, and imprisonment not exceeding one year at the discretion of the court.

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Penalty.

VIII. That any such action or complaint by the said company against any person or persons whomsoever, on account of or grounded on a trespass or injury done to the said work, or any tunnels, locks, dams, conduits, canals, water courses, pipes, hydrants, machinery or other property of the said company, or appertaining to the same, shall in every instance be held and deemed as transitory in its nature, and may be brought, sustained and tried in any court in this state having jurisdiction in such like case: And nothing in this Act providing for the special remedies of the said company shall be construed to deprive them of the right, or impair the same, of bringing any suit, in law or equity, to which they would otherwise be entitled.

Trespass.

IX. If the City Council of Charleston shall at any time, within twenty years after the water works shall go into operation, desire to purchase the same, they shall have the right to do so upon the following terms: That is, upon providing for the payment to the company, within such time as may be agreed on between the parties, of the amount actually paid in and expended, and such additional sum as will, when added to the actual receipts of the said Company, over and above the actual annual expenditures, make up the sum of ten per cent. annually upon the capital stock actually paid in, and further a premium, graduated at the following rates, namely: If within five years, a premium of twenty-five per cent. upon the amount of capital stock as aforesaid paid in and expended by said company; if after five years, and within six years, nineteen per cent.; if after six years and within seven, eighteen per cent.; thus reducing the amount of premium to be paid by the said City Council of Charleston one per cent. for every year beyond five years that the said water works shall remain in the possession of the said water works company, so that, if not taken within the twentieth year, the premium to be paid shall be five per cent.

City Council of Charleston may purchase.

X. That this Act shall continue in force for twenty-one years, and no part of the capital stock, nor any of the funds of the corporation, shall at any time during the continuance of this charter be used directly or indirectly, in banking operations, or for any other purpose whatever inconsistent with this Act: That this charter, and everything contained therein, shall cease and determine, unless the company shall have been duly organized, and shall have actually commenced the work within five years from this date.

This Act for twenty-one yrs.

In the Senate House, the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventy-ninth year of the Sovereignty and Independence of the United States of America,

ROBT. F. W. ALLSTON, *President of the Senate.*

JAMES SIMONS, *Speaker House of Representatives.*