

ACTS

OF THE

General Assembly of Alabama,

PASSED AT THE

SESSION OF 1884-85,

HELD IN

THE CITY OF MONTGOMERY,

COMMENCING 2D TUESDAY IN NOVEMBER, 1884.

With Separate Index to General and Local Laws.

E. A. O'NEAL, GOVERNOR.

THOS. SEAY, PRESIDENT OF THE SENATE.

H. CLAY ARMSTRONG, SPEAKER OF THE HOUSE.

MONTGOMERY, ALA.:

BARRETT & CO., STATE PRINTERS AND BINDERS.

1885.

in the county have been completed, to have a copy of the lists returned to him made out and forwarded to the secretary of the State, as provided in section 234 of the Code of Alabama. Copy of lists to be returned to probate judge.

SEC. 20. *Be it further enacted*, That all laws and parts of laws contravening the provisions of this act, be and the same are hereby repealed. Repeal of laws in conflict.

Approved February 13, 1885.

No. 266.]

AN ACT

[S. 282.]

To incorporate "The Birmingham Water Works Company" for the city of Birmingham, and to confer upon it certain corporate powers.

Whereas, it will greatly promote the health and comfort of the citizens of Birmingham, in Jefferson county, Alabama, and of its suburbs to have an ample supply of good and pure water, and the same is greatly needed; *and whereas*, The Birmingham Water Works Company desire to be incorporated to supply it; *and whereas*, in the judgment of the General Assembly, the object of the corporation cannot be obtained under the general laws, To incorporate Water Works Company, Birmingham.

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That M. T. Porter, Jos. F. Johnston, J. W. Sloss, A. T. Jones, E. W. Rucker, Jas. E. Webb and such other persons as they may associate with them, their successors and assigns be, and they are hereby created and constituted a body politic and corporate, under the name and style of "The Birmingham Water Works Company," and by that name may contract and be contracted with, sue and be sued, plead and be impleaded, and may have and use a common seal, which they may alter or renew at pleasure, and may enact and execute such by-laws, rules and regulations for the government and management of the affairs of said company as they may deem expedient, and may elect or appoint such officers or agents as may be necessary. Board of corporators.

SEC. 2. *Be it further enacted*, That the object and business of said company shall be to establish and construct water works within or near the corporate limits of said city of Birmingham, and to send and distribute wa- Objects and business of company.

ter throughout the said city, and places adjacent thereto; and to that end said corporation may purchase and hold real estate within the county of Jefferson and counties adjacent and any other property that may be necessary and expedient for the carrying on of said business; and also to that end and for that purpose the said company is hereby authorized and empowered by its officers, and persons in its employment, to enter upon, survey and mark out, or lay off, any land between the place or places from which the waters for the purposes aforesaid are to be drawn, and the place or places for the distribution thereof, for the route or course thereof, and to dig, construct, lay or make any dam, reservoir, ditch, canal, pipes or tubes of any material or size, or aqueduct of any kind, that the said company may deem best for the conducting of such water to the city of Birmingham, and from time to time and at any time afterwards to enter upon and dig and work upon said lands along the aforesaid route or course, for the purpose of laying, relaying, examining, repairing, altering or amending such canal, channel, pipes, tubes or aqueduct by and with the consent of the owners of such lands, and if the owners of such lands cannot agree with said company for such right or easement, then the said company may and it is hereby authorized to condemn such rights by a proceeding or proceedings had and conducted in accordance with the provisions of Article 2, Chapter 17, of Title 2 of Part 3 of the Code of Alabama.

SEC. 3. *Be it further enacted*, That said company is hereby authorized to lay pipes and aqueducts for conducting its water and for that purpose make excavations through any of the streets, alleys or public grounds of the said city of Birmingham by and with the consent of the corporate authorities of said city.

Right of way. SEC. 4. *Be it further enacted*, That for the purpose of carrying out the object of its incorporation, the said company is hereby authorized, in order to obtain a supply of water for its reservoirs, pipes and canals, to take, divert, use and condemn the waters of any stream, spring, creek or river and lands, to construct dams and reservoirs, and for this purpose said company may institute proceedings of *ad quod damnum* against the riparian owners of any such creek, stream or water-course, river or spring or lands in the Probate Court of Jefferson county, Ala-

bama, as a proceeding *in rem.* against the water of any such creek, stream, spring or water-course and the riparian rights of the subjacent riparian owners by a petition addressed to said court under and as nearly in conformity as practicable with the provisions of Article 2, Chapter 17, of Title 2 of Part 3 of the Code of Alabama, and upon the filing of such petition, the jurisdiction of said court shall attach to the *rem.* and the judge thereof shall cause a monition or notice, signed by him as such judge, addressed "to all whom it may concern" to be given of the filing of said petition and of the purport in general terms thereof, to be published in some paper printed in the city of Birmingham, Ala., for twenty days prior to the day to be appointed by him for the hearing thereof; and also cause a copy of said notice to be posted by the sheriff of said county in some conspicuous place at or near the place or point on such stream or water-course where it is proposed to deflect said water from its natural channel; and thereafter the proceedings in said cause upon said petition shall be had and conducted after the manner, as near as practicable, as is provided in said Article 2 of Chapter 17, Title 2 of Part 3 of the Code, except that no personal notice shall be necessary to be given to the individual riparian owners along said stream; and when said damages are so assessed and determined they shall be paid into the said Probate Court by said company for the use and benefit of all persons who may suffer damage by reason of the diversion of said water, and thereafter the rights of all the subjacent riparian owners shall be transferred to and be invested in the said money so paid into court, and thereafter said court shall give notice requiring all persons claiming any interest in said money so paid in to come into court and propound their claim thereto. And from any and all of these proceedings authorized by this section the right of appeal to the Supreme Court of Alabama direct is hereby given to any person whose rights of property are affected thereby; *Provided, however,* that the provisions of this section shall not apply or be construed to authorize said company to condemn or appropriate for its use the springs or waters flowing therefrom in sections 1 and 12, township 18, range 3, west, or to the sources of, and waters in Cedar Branch, in said county, or to the waters

Notice of petition published.

Damages.

Exception.

of Village Creek, or to any springs used for private and domestic purposes, or to Hawkins Spring, or to take or interfere with any water used by any other company for supplying the city of Birmingham.

Capital stock. SEC. 5. *Be it further enacted*, That the capital stock of said company shall be divided into shares of one hundred dollars each, amounting to one hundred thousand dollars, to be increased by additional shares to five hundred thousand dollars, as the business of said company may require, and at the option of a majority in value of the stockholders; said stock may be paid either in money or property.

May borrow money. SEC. 6. *Be it further enacted*, That the said company may, by a vote of its stockholders, borrow money to carry into effect the object and provisions of this charter, and to issue its bonds and to secure their payment by a mortgage on its property and franchises.

Penalty for interfering with the rights of the company. SEC. 7. *Be it further enacted*, That if any person or persons shall wilfully injure or destroy any portion of the water works, reservoirs, fixtures or other property of said company, or shall wilfully deposit any offensive or unwholesome substance or matter in the reservoir, pipes or streams supplying the same, or shall open a communication into any of the mains or pipes thereof, otherwise than by the authority of the said corporation, or its lawful or authorized agents, such person or persons shall be guilty of a misdemeanor and subject to prosecution in any court having jurisdiction of such offense in Jefferson county, Alabama, and, on conviction, shall be fined in a sum not exceeding five hundred dollars, and may be imprisoned or sentenced to hard labor for the county for not more than twelve months at the discretion of the jury trying the same.

Right to make contract. SEC. 8. *Be it further enacted*, That said company shall have the right to make contracts with individuals and corporations for the water to be supplied by it, and to charge for and collect such water rates and compensation therefor as may be contracted to be paid to them.

Approved February 13, 1885.