

ACTS

OF THE

GENERAL ASSEMBLY

OF THE

COMMONWEALTH OF KENTUCKY,

PASSED AT THE

REGULAR SESSION OF THE GENERAL ASSEMBLY, WHICH WAS
BEGUN AND HELD IN THE CITY OF FRANKFORT, ON
MONDAY, THE THIRTIETH DAY OF DECEMBER,
EIGHTEEN HUNDRED AND EIGHTY-NINE.

VOLUME I.

PROPERTY OF THE STATE OF KENTUCKY.

FRANKFORT, KY.:
CAPITAL OFFICE, E. POLK JOHNSON, PUBLIC PRINTER AND BINDER,
1890.

following words, namely: "On or before the first day of March of each year."

§ 3. That article three, section twelve, of said act be amended by striking from said section the word "April," and inserting the word "March" in lieu thereof.

§ 4. That article four, section seven, of said act be amended by striking out the word "annual," in the twenty-first line of said section, and by inserting in lieu thereof the word "monthly;" and by striking from the twenty-first and twenty-second lines of said section the words "before the first day of April of each year."

§ 5. That article five, section two, of said act be amended by striking out the words "one hundred and fifty," and inserting in lieu thereof the word "twelve."

§ 6. All laws or parts of laws in conflict with this act are hereby repealed.

§ 7. This act shall take effect and be in force from its passage.

Approved March 20, 1890.

CHAPTER 375.

AN ACT to amend an act, entitled "An act to incorporate the Lexington Hydraulic and Manufacturing Company," approved February twenty-seventh, one thousand eight hundred and eighty-two.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That the fifth section of the act to which this is an amendment, and all that portion of the fourth section of said act from and including the words, "and to agree with the owner or owners of any lands, tenements, or hereditaments, and so forth," down to the end of said fourth section, be, and the same is hereby, stricken out, and that the following be, and the same is hereby, substituted in lieu thereof, namely: Said

Purchase land. company shall have the power, from time to time, in its discretion, to purchase, in fee or lease, and to take conveyance from the owners thereof, any lands, tenements or hereditaments that may be needed to enable it to accumulate and furnish a plentiful supply of water to the city of Lexington and its inhabitants; and if, in order to secure such lands as may be needed, it shall be necessary for it to purchase more than is needed for said purpose, it shall have the power to purchase and take conveyance of same, and to sell and convey such part as it does not need; but it shall not hold such excess over what it may need for a longer period than five years. It shall have the power to agree with the owner of any lands, tenements or hereditaments that may be needed for use in, or may be damaged by, any of said operations, for and about a reasonable compensation to be made for such use or damage which such owner may sustain by the employing, directing, or obstructing any stream, or the making, raising, cutting, or laying any dams, reservoirs, dykes, mounds, aqueducts, canals, trenches, pipes, or conduits, or any other act or operation authorized or contemplated by this act.

§ 2. If said company shall for any reason be unable to contract with the owner of any land, tenements or hereditaments for the purchase or lease of such as may from time to time be necessary for its purposes, or for a reasonable compensation for the use of or damage to such as may from time to time be used in or damaged by the aforesaid operations, it shall file in the office of the clerk of the Fayette County Court a petition containing a particular description of the land which it needs to acquire or use, or which may be damaged by it, and stating the purposes for which the condemnation of such land is desired, and giving the name or names of the owner or owners of such lands, tenements or hereditaments, and of any person having an interest therein, and praying for the condemnation thereof, to the extent or for the purpose

desired. It shall thereupon be the duty of said court to appoint three impartial housekeepers of said county as commissioners, who, after having been first sworn to faithfully and impartially discharge their duties, shall view the lands described in the petition and assess the value of the interest or estate sought to be acquired, and the damages, if any, resulting to the adjacent lands of the owner, deducting, however, from such incidental damages the value of the advantages or benefits, if any, that will accrue to such adjacent lands from the prudent conduct of the operations proposed; or if only the right be sought to use or affect the land described for some specified purpose or purposes, the commissioners shall assess the damages resulting therefrom. And said commissioners shall, upon the completion of same, return their report in writing to the court.

§ 3. Upon the filing of said report the owners of and persons interested in said land shall be summoned to show cause why the same shall not be confirmed, in the same manner that defendants in civil action are required to be summoned. The clerk shall issue such summons, and if the defendants, or any of them, be non-residents or under disability, he shall, upon the conditions prescribed in the Civil Code, make as to them such orders as are required by the Civil Code as to such defendants in civil actions. At the next regular term of said court commencing after the defendant shall have been summoned the length of time prescribed by the Civil Code, it shall be the duty of the court, if said report be in conformity to this act, to confirm the same and render judgment pursuant to its terms, to the extent that no exceptions have been filed thereto. If exceptions shall be filed by any party, the court shall forthwith empanel a jury to try the issues of fact made by the exceptions; and in trying any such issue that may be made as to the amount of damages, the jury shall be governed by the rules above prescribed as to the commissioners, and may be

Provide for trial.

sent by the court, in its discretion, to view the land in question. If sufficient cause be not shown for setting aside the verdict and awarding a new trial, the court shall render judgment in conformity thereto.

§ 4. Upon the rendition of judgment as hereinbefore provided for, and payment or tender to the owners of the amount due as shown by the judgment, and of the costs adjudged to them, the estate or interest or tenement, as the case may be, which may be condemned, shall immediately vest in said company, which shall thereupon have the right to immediate possession and use; and the court shall cause a commissioner, appointed by it for the purpose, to convey by deed such estate, interest or easement to said company, and shall enforce by all appropriate orders or writs the said right to immediate possession and use. If there be more than one defendant, the said company may pay the amount due under the judgment and the costs into the court, such payments to have the same effect as if paid to the owner in person; and it shall be the duty of the court to ascertain the interest of the respective owners and apportion the same amongst them.

Appeal.

§ 5. Either party may appeal to the circuit or common pleas court for said county from the judgment of the county court, when rendered upon the verdict of a jury: *Provided*, Such an appeal be taken within thirty days after the rendition of such judgment. The party appealing shall file in the office of the clerk of the court to which the appeal is taken a statement of the parties to the appeal, and a transcript of the orders of the county court; and thereupon said clerk shall certify to the clerk of the county court that said appeal has been taken, and the latter shall immediately transfer the papers into the clerk's office of the court to which the appeal is taken. The exceptions to the report shall be tried *de novo* upon the appeal, and if no sufficient cause be shown for setting aside the verdict and granting a new

trial, judgment shall be rendered in conformity to the verdict. If it shall appear that the amount awarded by the county court has been paid, and the verdict on the appeal shall be for a greater amount, judgment shall be rendered in favor of the owner for the difference; and if it be for a less amount, judgment shall be rendered in favor of the company for the difference. If the amount awarded by the judgment in the county court has not been paid, judgment shall be rendered for the amount ascertained by the verdict on the appeal. The party as to whom the judgment on the appeal shall be less favorable than that in the county court, shall pay all the costs of the appeal. If, on the appeal, it shall appear that the company has not obtained the possession of the deed provided for in the fourth section of this act, the court trying the appeal shall have full power to secure to the company such possession, and to cause such deed to be made by its commissioner.

§ 6. The power hereby conferred of condemnation, and of purchasing or leasing or agreeing with the owners of land touching a compensation for the use of or damage to same, may be exercised from time to time, and as often as may be necessary in the judgment of said company to enable it to accumulate and furnish to said city and its inhabitants a plentiful and adequate supply of water; and in any and all losses when land is purchased or condemned for purposes of a reservoir, or for the collection and storage of water, said company shall have the sole and exclusive occupancy, use, possession and control of such land. and the right to prohibit the entry thereon of any and all persons whatsoever, for any purpose whatsoever, except by its consent.

§ 7. This act shall take effect from its passage.

Approved March 20, 1890.