

at said Chelsea, by driving additional piles in front of the same, with the right and privilege of using and occupying the flats, within or adjoining the said wharves and structures, for the purposes of said ferry: *provided*, that nothing in this act contained shall in any wise impair or interfere with the private rights of any other person or persons whatsoever. [*Approved by the Governor, March 27, 1846.*]

Provided, &c.

An Act for supplying the City of Boston with Pure Water.

Chap 167.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

SECTION 1. The city of Boston is hereby authorized, by and through the agency of three commissioners, to be appointed in the manner hereinafter provided, to take, hold and convey to, into and through the said city, the water of Long Pond, so called, in the towns of Natick, Wayland and Frammingham, and the waters which may flow into and from the same, and any other ponds and streams within the distance of four miles from said Long Pond, and any water rights connected therewith; and may also take and hold, by purchase or otherwise, any lands or real estate necessary for laying and maintaining aqueducts for conducting, discharging, disposing of, and distributing water, and for forming reservoirs; and may also take and hold any land on and around the margin of said Long Pond, not exceeding five rods in width, measuring from the verge of said pond, when the same shall be raised to the level of eight feet above the floor of the flume at the outlet thereof, and on and around the said other ponds and streams, so far as may be necessary for the preservation and purity of the same, for the purpose of furnishing a supply of pure water for the said city of Boston. The city of Boston shall, within sixty days from the time they shall take any lands or ponds or streams of water for the purposes of this act, file, in the office of the registry of deeds, for the county where they are situate, a description of the lands, ponds or streams of water so taken, as certain as is required in a common conveyance of lands, and a statement of the purpose for which taken, which said description and statement shall be signed by the said mayor.

City may obtain water from Long Pond, &c. in Natick, &c.

And may take and hold land, &c.

Provided, &c.

SECTION 2. The said city may, by and through the same agency, make and build one or more permanent aqueducts, from any of the aforesaid water sources, to, into and through the said city, and secure and maintain the same by any works suitable therefor; may connect the said water sources with each other; may erect and maintain dams to raise and retain the waters therein; may make and maintain reservoirs within and without the said city; may make and establish such public hydrants, in such places as may, from time to time, be deemed proper, and prescribe the purposes

May construct aqueducts, dams, and reservoirs, &c., distribute water, &c. and cross and dig up high-ways, &c.

for which they may be used, and may change or discontinue the same; may distribute the water throughout the city, and for this purpose may lay down pipes to any house or building in said city, the owner or owners thereof having notice and not objecting thereto; may regulate the use of the said water within and without the said city, and establish the prices or rents to be paid therefor. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts, or other works, by them to be made and constructed, over or under any water-course, or any street, turnpike-road, rail-road, highway, or other way, in such manner as not to obstruct or impede travel thereon; and may enter upon and dig up any such road, street or way, for the purpose of laying down pipes beneath the surface thereof, and for maintaining and repairing the same; and, in general, may do any other acts and things necessary, or convenient and proper, for the purposes of this act.

Appointment,
duties, &c. of
commissioners.

SECTION 3. Three commissioners shall be appointed by the city council, who shall, during their continuance in office, execute and perform, and superintend and direct, the execution and performance of all the works, matters and things mentioned in the preceding sections which are not otherwise specially provided for in this act; they shall be subject to such ordinances, rules and regulations, in the execution of their said trust, as the city council may, from time to time, ordain and establish, not inconsistent with the provisions of this act and the laws of this Commonwealth; they shall respectively hold their said offices for the term of three years next after their said appointment, unless the aqueducts and works aforesaid shall be sooner completed; but they, or either of them, after having had an opportunity to be heard in his or their defence, may be removed at any time, by a concurrent vote of two thirds of each branch of the city council; and in case of a vacancy in the board of commissioners, by death, resignation or removal, such vacancy shall be filled by the appointment of another commissioner, in manner aforesaid, who shall hold his said office for the residue of the said term of three years, with all the powers and subject to all the restrictions aforesaid. A major part of said commissioners shall be a quorum for the exercise of the powers and the performance of the duties of the said office; they shall, once in every six months, and whenever required by the city council, make and present in writing, a particular report and statement of all their acts and proceedings, and of the condition and progress of the works aforesaid.

Compensation.

SECTION 4. Before the appointment of the commissioners aforesaid, the city council shall establish and fix the salaries, or compensation, to be paid to the commissioners for their services; and the said salaries of the said commissioners,

so established and fixed as aforesaid, shall not be reduced during their continuance, respectively, in said office.

SECTION 5. Whenever the said office of commissioners shall cease, either by the expiration of the said term of three years from the original appointment, or by the completion of the aqueducts and works mentioned in the preceding sections of this act, all the rights, powers and authority, given to the city of Boston by this act, shall be exercised by the said city, subject to all the duties, liabilities and restrictions herein contained, in such manner, and by such agents, officers and servants, as the city council shall, from time to time, ordain, appoint and direct.

Power to be exercised by the city, after the office of commissioners has ceased.

SECTION 6. The said city of Boston shall be liable to pay all damages that shall be sustained by any persons 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 taken as aforesaid, or other person who shall sustain damage as aforesaid, shall not agree upon the damages to be paid therefor, he may apply, by petition, for the assessment of his damages, at any time within three years from the taking of the said land, water or water rights, as aforesaid, and not afterwards, to the court of common pleas, in the county in which the same are situate; such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the city of Boston, returnable, if issued in vacation, to the then next term of the said court, and if in term time, returnable on such day as the said court shall order, to appear and answer to the said petition; the said summons shall be served fourteen days, at least, before the return day thereof, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the mayor or clerk of the said city; and the said court may, upon default or hearing of the said city, appoint three judicious and disinterested freeholders of this Commonwealth, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid; and the award of the said freeholders, or of the major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

Remedy of owners of lands, &c., in case of disagreement as to damages.

SECTION 7. If either of the parties mentioned in the preceding section, shall be dissatisfied with the amount of damages awarded as therein expressed, such party may, at the term at which such award was accepted, or the next term thereafter, claim, in writing, a trial in said court, and have

Right of parties to trial, if dissatisfied with award.

a jury to hear and determine, at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of such jury being accepted and recorded by the said court, shall be final and conclusive, and judgment shall be rendered and execution issued thereon; and cost shall be recovered by the said parties respectively, in the same manner as is provided by law, in regard to proceedings relating to the laying out of highways.

Time for application for damages.

SECTION 8. No application shall be made to the court, for the assessment of damages for the taking of any water rights, until the water shall be actually withdrawn or diverted by the said city under the authority of this act; and any person or corporation, whose water rights may be thus taken and affected, may make his application aforesaid, at any time within three years from the time when the waters shall be first actually withdrawn or diverted as aforesaid.

City council may issue scrip to the amount of \$3,000,000, bearing interest, &c., payable at dates, &c.

SECTION 9. For the purpose of defraying all the costs and expenses of such lands, estates, waters and water rights, as shall be taken, purchased or held, for the purposes mentioned in this act, and of constructing all aqueducts and works necessary and proper, for the accomplishment of the said purposes, and all expenses incident thereto, the city council shall have authority to issue, from time to time, notes, scrip, or certificates of debt, to be denominated, on the face thereof, "BOSTON WATER SCRIP," to an amount not exceeding, in the whole, the sum of three millions of dollars, bearing interest at a rate not exceeding the legal rate of interest in this Commonwealth; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing of the said scrip, notes, or certificates respectively. And the said city council may sell the same, or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as the said city council shall judge proper.

Scrip for payment of interest.

SECTION 10. In addition to the sum of three millions of dollars mentioned in the preceding section, the said city council may, whenever and so far as may be necessary, issue and dispose of notes, scrip, or certificates of debt, in the manner prescribed in the preceding section, to meet all payments of interest which may accrue upon any scrip by them issued; *provided, however*, that no scrip shall be issued for the payment of interest as aforesaid, after the expiration of two years from the completion of said aqueducts and other works; but payment of all interest that shall accrue after that time, shall be made from the net income, rents, and receipts for the use of the water, if they shall be sufficient for that purpose; and if not, then the payment of

Provided, &c.

the deficiency shall be otherwise provided for by the city council. All notes, scrip, and certificates of debt to be issued as aforesaid, shall be signed by the treasurer and auditor, and countersigned by the mayor of the said city, and a record of all such notes, scrip, and certificates shall be made and kept by the said treasurer and auditor respectively.

Form of scrip.

Records of the same.

SECTION 11. The city council shall, from time to time, regulate the price or rents for the use of the water, with a view to the payment, from the net income, rents and receipts therefor, not only of the semi-annual interest, but ultimately of the principal also of the "Boston Water Scrip," so far as the same may be practicable and reasonable. And the said net surplus income, rents and receipts, after deducting all expenses and charges of distribution, 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 scrip; and shall, under the management, control, and direction of the mayor, treasurer, and auditor of the city, or the major part of them for the time being, who shall be trustees of the said fund, be applied solely to the use and purpose aforesaid, until the said scrip shall be fully paid and discharged. And the said trustees shall, whenever thereto required by the city council, render a just, true, and full account to the said city council, of all their receipts, payments, and doings under the provisions of this section.

City council to regulate the price of water.

Appropriation of proceeds of water rents.

SECTION 12. At any time after the expiration of two years, from the completion of the works mentioned in the second section of this act, and before the reimbursement of the principal of the "Boston Water Scrip" herein before mentioned, if the surplus income and receipts for the use of the water distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall, for any two successive years, be insufficient to pay the accruing interest on the said scrip, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, praying that the said price may be raised and increased so far as may be necessary for the purpose of paying, from the said surplus income and receipts, the said accruing interest, and upon due notice of the pendency of such petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may raise and increase the said price, if they shall judge proper, so far as may be necessary, in their judgment, for the purpose aforesaid, and no farther. And the award of said commissioners, or the major part of them, being returned to the said court, at the then next term thereof for the county of Suffolk, and ac-

Proceedings for increase of water rents.

cepted by the said court, shall be binding and conclusive, for the term of three years next after the said acceptance, and until the price so fixed by the commissioners shall, after the expiration of said term, be changed or altered by the city council.

Proceedings for
reduction of
water rents.

SECTION 13. If the surplus income and receipts for the use of the water, distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall, for any two successive years, be more than sufficient to pay the accruing interest on the "Boston Water Scrip" herein before mentioned, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, who may deem the said price unreasonably high, and pray for a reduction thereof; and upon due notice of the pendency of said petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may, if they shall judge proper, reduce the price established by the city council; *provided*, that such reduction shall not be so great that the surplus income and receipts aforesaid, will, in the judgment of the said commissioners, be thereafter insufficient for the payment of the said accruing interest. And the award of the said commissioners, or the major part of them, being returned and accepted as mentioned in the preceding section, shall be binding and conclusive, in the same manner, and to the same extent, as therein provided in regard to awards made pursuant to the provisions of that section.

Costs on petitions.

And the said court may, at their discretion, order the costs on such petitions as are mentioned in this and the preceding section, and of the proceedings thereon, or any part thereof, to be paid by either of the said parties, and may enter judgment and issue execution therefor accordingly.

Owner and occupant both liable for price of water, &c.

SECTION 14. The occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement; and the owner thereof shall be also liable, if, on being notified of such use, he does not object thereto; and if any person or persons shall use any of the said water, either within or without the city, without the consent of the city, an action of trespass on the case may be maintained against him or them, by the said city, for the recovery of damages therefor: *provided, however*, that this act shall not be so construed as to prevent the inhabitants of Natick, Framingham, Sherburne, and Wayland, from using so much of the water hereby granted as shall be necessary for extinguishing fires and for all ordinary household purposes, under such regulations of the said city council as may be essential for the preservation of the purity of the same.

Provided, &c.

SECTION 15. If any person or persons shall wantonly or maliciously divert the water, or any part thereof, of any of the ponds, streams or water sources, which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery or other property, held, owned or used by the said city, by the authority and for the purposes of this act; every such person or persons shall forfeit and pay, to the said city, three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action. And every such person or persons may, moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be punished by fine, not exceeding one thousand dollars, and imprisonment not exceeding one year.

Penalty for diverting or corrupting water.

SECTION 16. The said city of Boston is hereby authorized to purchase and hold all the property, estates, rights and privileges of the Aqueduct Corporation, incorporated by an act passed February 27th, in the year one thousand seven hundred and ninety-five, and by any convenient mode may connect the same with their other works.

City may purchase property, &c., of the Jamaica Pond Aqueduct Corporation, &c.

SECTION 17. The mayor and aldermen of the city of Boston shall notify and warn the legal voters of the said city, to meet in their respective wards, on such day as the said mayor and aldermen shall direct, not exceeding thirty days from and after the passing of this act, for the purpose of giving their written votes upon the question, whether they will accept the same; and if a majority of the votes so given upon the question aforesaid, shall be in the negative, this act shall be null and void.

Act to be void if not accepted by majority of voters in wards within 30 days.

SECTION 18. This act shall take effect from and after its passage. [*Approved by the Governor, March 30, 1846.*]

When to take effect.

An Act in addition to "An Act for the Relief of Insolvent Debtors, and for the more equal Distribution of their Effects."

Chap 168.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Every judge of probate or master in chancery, in their respective counties, before whom any matter may be pending in relation to any insolvent estate under the act for the relief of insolvent debtors, and for a more equal distribution of their effects, passed in the year one thousand eight hundred and thirty-eight, chapter one hundred and sixty-three, upon complaint made under oath, by any person interested in said estate, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away any of the money, goods, effects, or other estate of such insolvent, may cite such suspected person to appear before him, and to be examined on oath,

Persons charged, &c., with concealment, &c., of property of insolvent debtors, to be examined on oath by judges of probate, or masters in chancery,