

to the Rodman Wharf, so called, for the transportation of merchandise to and from said wharf: *provided*, said company shall not lay their rails along said street except with the consent of the selectmen of the town of Fairhaven and under their direction; and the use of said track shall be subject to all the laws which regulate the use of street railways.

SECTION 2. This act shall take effect upon its passage.

Approved May 13, 1864.

AN ACT FOR SUPPLYING THE CITY OF SALEM WITH PURE WATER.

Be it enacted, &c., as follows:

SECTION 1. The city of Salem, for the purpose of supplying the inhabitants thereof with pure water, is hereby authorized to take, hold and convey to, into and through said city, the waters of Wenham Pond, so called, in the towns of Wenham and Beverly, and the waters which flow into and from the same, and any water-rights connected therewith; and may take and hold by purchase or otherwise, such land on and around the margin of said pond, not exceeding five rods in width, as may be necessary for the preservation and purity of said waters; and may also take and hold, in like manner, such lands as may be necessary for erecting and maintaining dams and reservoirs, and for laying and maintaining conduits, pipes, drains and other works, for collecting, conducting and distributing said waters through said city.

SECTION 2. Said city for the purpose aforesaid, may take, hold and convey to, into and through said city, the waters of Brown's Pond and Mineral Spring Pond, so called, in the town of South Danvers and city of Salem, and the waters which flow into and from the same, and any other ponds, streams, fountains or springs within a distance of five rods from said Mineral Spring Pond, or upon the grounds of the proprietors of the Salem and Danvers aqueduct, and all water-rights connected therewith, and may take and hold, by purchase or otherwise, such land on and around the margin of the ponds and water-sources aforesaid, or not more than five hundred feet distant therefrom, as may be necessary for the preservation and purity of said waters; and may also take and hold, in like manner, such land as may be necessary for erecting and maintaining dams and reservoirs, and for laying and maintaining conduits, pipes, drains and other works, for collecting, conducting and distributing said waters through said city. If said city takes the ponds or other water-sources mentioned in this section, it shall also take, by purchase or otherwise, all the franchise,

Proviso.

Chap. 268

City of Salem may take certain waters and water-rights in Wenham and Beverly.

Marginal and other lands.

May take certain waters and water-rights in South Danvers and Salem.

Land necessary for erection of dams, reservoirs, &c.

Franchise of Salem and Danvers aqueduct.

rights and property of the proprietors of the Salem and Danvers aqueduct.

Mayor shall file description of lands taken.

SECTION 3. The mayor of said city, within sixty days after the taking of any of the lands or water-sources aforesaid, shall file in the registry of deeds for the county of Essex, a description thereof, sufficiently accurate for identifying the same.

City may build and maintain aqueducts.

SECTION 4. Said city for the purposes aforesaid, may build aqueducts from any of the aforesaid sources, and maintain the same by any works suitable therefor; may connect any or all of said sources with each other; may provide and maintain suitable machinery for raising the water above the source of supply; may erect such structures as are necessary for preserving the works; may erect and maintain

Dams, reservoirs, fountains and hydrants.

dams; may make and maintain suitable reservoirs; may make and establish such public fountains and hydrants, as are, from time to time deemed proper, and may change or discontinue the same; may distribute the water throughout said city; may regulate the use of the water within and without said city, and establish the rates to be paid therefor.

Distribution and use of waters.

Extension of pipes.

Said city may also, for the purposes aforesaid, carry its pipes and other works over or under any water-course, street, railroad, highway or other way in such manner as not to obstruct the same; and may enter upon and dig up such road, street or way, for the purpose of laying down, maintaining and repairing its pipes and other works, and may do any other acts or things necessary and proper in executing the purposes of this act.

City may lay pipes in streets.

Streets taken up beyond limits of city, selectmen of town to direct.

SECTION 5. If said city enters upon and digs up, for the purposes aforesaid, any road, street or way without its own limits, it shall do the same under the direction of the selectmen of the town in which such road, street or way is located, and shall restore such road, street or way to as good order and condition as it was in before such digging was commenced; and the work shall be done in such manner, and with such care, as not to render any road, street or way, in which said pipes are laid, unsafe or unnecessarily inconvenient to the public travel thereon. Said city shall at all times save harmless and indemnify any town which is liable to keep in repair any road, street or way aforesaid, against all damages which may be recovered against it and shall reimburse to it all expenses which it shall reasonably incur, by reason of any defect or want of repair in such road, street or way caused by the maintenance, repairing or replacing of said pipes, or by reason of any injury to persons or property caused by any defect or want of repair in said pipes: *pro-*

Public safety and convenience assured.

Indemnity to towns.

vided, said city has notice of any claim or suit for such damage or injury, and an opportunity to assume the defence thereof. Proviso.

SECTION 6. Any town under whose roads, streets or ways, said city lays its aqueduct or main pipe, may require said city to insert therein proper hydrants, at points not less than five hundred feet apart, to be used for the purpose of extinguishing fires, and for no other purpose. The expense of inserting said hydrants and keeping the same in repair, shall be paid by such town. Towns may require insertion of hydrants in streets taken up.
Expense.

SECTION 7. Three commissioners shall be appointed by the city council, by joint ballot of both branches thereof, who shall, during their continuance in office, execute, superintend and direct the performance of all the works, matters and things mentioned in the preceding sections, which are not otherwise specifically provided for in this act; and 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 law. They shall respectively hold office for the term of three years next after their appointment, unless the works aforesaid are sooner completed, but they or either of them, after having had an opportunity to be heard in 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, who shall hold his office for the residue of the said term of three years, with all the powers and under 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 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. City council shall appoint commissioners.
Duties of commissioners.
Terms of office.
Removal.
Vacancies.
Quorum.
Report to be semi-annual.

SECTION 8. The city council, before the appointment of said commissioners, shall establish and fix the salaries or compensation to be paid them for their services, which shall not be reduced during their continuance respectively in said office. Salaries of commissioners.

SECTION 9. Whenever the office of said commissioners shall cease, either by the expiration of said term of three years from the original appointment, or by the completion of the works aforesaid, all the rights, powers and authority Upon expiration of commission powers and duties to vest in city.

given to the city of Salem by this act, shall be exercised by said city, subject to all 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.

Liability of city for land and water damages, etc.

SECTION 10. Said city shall be liable to pay all damages sustained by any persons or corporations, by the taking of any land, water, water-rights, franchises or property, or by the constructing of any aqueducts, reservoirs or other works, for the purposes aforesaid. If any person or corporation, sustaining damage as aforesaid, cannot agree with said commissioners upon the amount of said damages, he may have them assessed and paid in the same manner, as is provided by law, with respect to land taken for highways.

How assessed and paid on disagreement.

Applications for assessments of damages, when to be made.

SECTION 11. No application shall be made to the county commissioners for the assessment of damages for the taking of any water-rights, until the water is actually withdrawn or diverted by said city. Any person or corporation whose water-rights are thus taken or affected may apply as aforesaid at any time within one year from the time when the water is first actually withdrawn or diverted.

City may issue water scrip.

SECTION 12. For the purpose of defraying the cost of such franchises, property, lands, water and water-rights, as are taken, purchased or held, for the purposes aforesaid, and of constructing the works, necessary and proper, for the accomplishment of said purposes, and paying all expenses incident thereto, the city council shall have authority to issue scrip, bonds, or certificates of debt, to be denominated on the face thereof, "City of Salem Water Loan," to an amount not exceeding in the whole, the sum of five hundred thousand dollars, bearing interest at a rate not exceeding six per cent. per annum, said interest to be payable semi-annually, and the principal to be payable at periods not more than fifty years from the time of issuing said scrip, notes, bonds or certificates respectively. Said city council may sell the same, or any part thereof, from time to time, or pledge the same for money borrowed for the purposes aforesaid; but the same shall not be sold or pledged at less than the par value thereof.

Amount.

Interest.

May sell or pledge.

Water rents, application for payment of principal and interest.

SECTION 13. The city council shall establish such price or rents to be paid for the use of the water, as to provide annually, if practicable, from the net income and receipts therefor, for the payment of the interest, and not less than one per cent. of the principal of the "City of Salem Water Loan" and shall determine the manner of collecting the same. The net surplus income and receipts, after deducting all expenses

Sinking Fund.

and charges of distribution, shall be set apart as a sinking fund, and applied solely to the payment of the principal and interest of said loan, until the same is fully paid and discharged. The mayor, city treasurer, and president of the common council, for the time being, shall be trustees of said fund, and shall, whenever required by the city council, render an account of all their doings in relation thereto.

Trustees of fund.

SECTION 14. The occupant of any tenement shall be liable for the payment of the 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.

Occupant of tenement liable for water rent.

Owner's liability.

SECTION 15. If said city takes the water from the sources mentioned in the first section of this act, it shall lay its aqueduct or main pipe for conducting the same to said city, by some convenient route through the town of Beverly. The inhabitants of any town upon the line of the works authorized by this act, upon the application of its board of selectmen, shall be entitled to the reasonable use of the water, upon paying an equitable compensation therefor; which, in case of difference, shall be determined by three commissioners, to be appointed by the supreme judicial court, upon application of either party, and notice to the other; whose award when accepted by said court, shall be binding upon the parties for the term of five years.

Location of main pipe.

Use of water by towns on line of works.

SECTION 16. If any person shall use any of the said water, either within or without said city, without the consent of said city, an action of tort may be maintained by said city for the recovery of the damage sustained: *provided*, that nothing herein contained shall be construed to prevent the abutters on Wenham Pond from entering thereon during the winter season, with men and horses and the proper implements, for the purpose of preparing, cutting and securing ice, in the manner heretofore practised; and *provided, also*, that if said city takes the water from the sources mentioned in the second section of this act, it shall allow to the owners and occupants of the manufacturing establishments on Goldthwait's Brook, in South Danvers, the same supply of water for manufacturing and other purposes from said sources which they now have; and the rights conferred on said city, by this act, shall not be so exercised as to impair or injure the water-rights and privileges of the owners and occupants aforesaid, as the same now are and heretofore have been used and enjoyed.

Illegal use of water.

Provisos.

SECTION 17. Whoever wantonly or maliciously diverts the water, or any part thereof, of any of the ponds, springs, streams or sources of water, taken or held by said city,

Penalty for malicious diversion or corruption of water or destruction of works.

pursuant to the provisions of this act, or corrupts the same, or renders it impure, or destroys or injures any dam, aqueduct, pipe, conduit, hydrant, machinery or other works or property, held, owned or used, by said city, under the authority and for the purposes of this act, shall forfeit and pay to said city, three times the amount of the damages assessed therefor, to be recovered in an action of tort; and on conviction of either of the wanton or malicious acts aforesaid, may also be punished by fine, not exceeding three hundred dollars, or by imprisonment, not exceeding one year.

City may purchase and connect with Salem and Danvers aqueduct.

SECTION 18. Said city is hereby authorized to purchase all the franchise, rights and property of the proprietors of the Salem and Danvers aqueduct, and may, by any convenient mode, connect the sources and works so purchased with its other sources and works.

Act void unless approved by voters.

SECTION 19. This act shall be void, unless submitted to, and approved by, a majority of the voters of said city present and voting, at meetings held simultaneously for the purpose, in the several wards, on the first Monday of December next, upon notice duly given, at least seven days before the time of holding said meetings.

Capacity and sufficiency of water sources to be tested.

SECTION 20. The city council shall cause careful investigations to be made by skilful engineers, as to the capacity and sufficiency of the sources mentioned in the first and second sections of this act respectively; and shall by joint ballot, at least fourteen days before said first Monday of December, determine the source or sources, from which, in the event of the acceptance of this act, said city shall take the water; and shall, forthwith, notify the inhabitants of said city of its decision, by publication in the newspapers of said city. In the event of the acceptance of this act, said city shall take the water only from the sources so determined upon by the city council.

Shall be determined by joint ballot of council.

SECTION 21. This act shall take effect upon its passage.

Approved May 13, 1864.

Chap. 269 AN ACT TO REPEAL AN ACT RELATING TO AN ANNUAL ABSTRACT OF PUBLIC DOCUMENTS AND REPORTS.

Be it enacted, §c., as follows:

Repeal.

Chapter two hundred and thirty-nine of the acts of the year eighteen hundred and sixty-three is hereby repealed.

Approved May 13, 1864.