

ACTS
OF
THE LEGISLATURE
OF THE
STATE OF MICHIGAN,
PASSED
AT THE REGULAR SESSION OF 1853.

WITH
AN APPENDIX,
CONTAINING
THE STATE TREASURER'S ANNUAL REPORTS,
FOR THE YEARS 1851-'52.



By Authority.

LANSING:

GEO. W. PECK, PRINTER TO THE STATE.

1853.

When judge of probate may renew commission in case of failure of creditor to present claim.

“Sec. 7. On the application of a creditor who has failed to present his claim, if made at any time before the estate is closed, the judge of probate may revive the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall cause personally to be notified the parties of the time and place of hearing, and as soon as may be, make return of their doings to the probate court: *Provided*, That all costs and charges resulting from such application and the proceedings thereon, had in the probate court, shall be paid by the party making the application.”

Sec. 2. This act shall take effect immediately.

Approved February 14, 1853.

[No. 90.]

AN ACT to amend the laws relative to supplying the city of Detroit with pure and wholesome water, and to provide for the completion and management of the Detroit Water Works.

Board of water commissioners.

SECTION 1. *The People of the State of Michigan enact*, That Shubael Conant, Henry Ledyard, Edmund A. Brush, William R. Noyes, and James A. Van Dyke, be and they are hereby named and constituted as a “Board of Water Commissioners of the city of Detroit,” who, and their successors in office, shall be known by the name and style of the “Board of Water Commissioners of the city of Detroit,” and by that name shall have power to contract, sue and be sued, to purchase, hold and convey personal and real estate, to have a common seal, to alter and change the same at pleasure, to make by-laws and ordinances, and do all legal acts which may be necessary and proper to carry out the effect, intent and object of this act.

Powers of board.

Term of office.

Sec. 2. The said commissioners shall hold their offices respectively for the term of three, four, five, six and seven years from the first Tuesday in May, of the year one thousand eight hundred and fifty-three; said commissioners shall, within sixty days after the passage of this act, decide by lot their respective terms, which decision shall be notified by a written statement to the common council of said city, which shall be entered of record on the books of the said common

Classification.

council; and at their first regular meeting in the month of April, in the year one thousand eight hundred and fifty-six, and annually thereafter, the said common council shall elect and appoint a citizen of said city, being a qualified voter and a freeholder, as a commissioner, who shall hold his office for five years from the first Tuesday in the May next following: *Provided*, That this section shall not be so construed as to disqualify any member of the said board for re-appointment; and in case of the death, or resignation, or removal from the city, of any of said commissioners, the common council shall, as soon thereafter as possible, appoint to fill such vacancy, for the remainder of the term, some citizen of said city, being a qualified voter and freeholder.

Vacancies
secretary
how supplied.

Sec. 3. The said commissioners shall choose one of their own number as president, who shall hold his office until the first Tuesday of May next ensuing the date of his election; they shall also appoint some suitable person as secretary, who shall hold his office at the pleasure of the board; and in case of the death, resignation, or removal from the city of the president, the said commissioners shall have power to fill the vacancy so happening, as in the first instance.

President &
secretary;
how chosen.

Sec. 4. The said commissioners shall have power to loan, from time to time, upon the best terms they can make, after giving public notice by advertising in the city papers for sixty days, and in one paper in Boston, and two in New York, for such time as they shall deem expedient, a sum of money not exceeding two hundred and fifty thousand dollars, upon the credit of said city of Detroit, and shall have authority to issue bonds pledging the faith and credit of said city for the payment of the principal and interest of said bonds; which bonds shall issue under the seal of said board of commissioners, and shall be signed by them, or a majority of them, and bearing interest not exceeding eight per cent per annum. And it shall be the duty of said commissioners to cause to be kept an accurate register of all the bonds issued by them, shewing the number, date, and amount of each bond, and to whom the same was issued; and it shall also be their duty to cause to be furnished to the auditor of said city a copy of such register, as soon as the same is made, which shall be preserved by said auditor, and copied into the records of said city.

Power of
commissioners
to loan
money.

Limitation.

Authority
of commis-
sioners to
issue bonds.

Register of
bonds issued
to be kept.

Duty of
commissioners
relative
to supply of
water.

Sec. 5. It shall be the duty of said commissioners to examine and consider all matters relative to supplying the city of Detroit with a sufficient quantity of pure and wholesome water, to be taken from the Detroit river, or such other source as may be deemed expedient, for the use of its inhabitants.

Duty and
compensation
of persons
employed
by commis-
sioners.

Sec. 6. Said commissioners shall have power to employ superintendents, clerks, collectors, assessors, engineers, surveyors, and such other persons as, in their opinion, may be necessary to enable them to perform their duties under this act, and to specify the duties of such persons so employed, and to fix their compensation: *Provided*, That in no case shall said commissioners receive, directly or indirectly, any compensation for their own services.

General
powers and
duties of
commissioners.

Sec. 7. Said commissioners shall have power, and it is hereby made their duty, as soon as may be, after the necessary funds have been procured, as herein provided, to purchase such land and materials, and to construct such reservoirs, buildings, machinery, and fixtures as shall be deemed necessary or desirable to furnish a full supply of water for public and private use in said city.

Ibid.

Sec. 8. Said commissioners shall have power to construct reservoirs, jets and fire hydrants, at such localities in said city as they may deem expedient and necessary, and to lay pipes in and through all the alleys and streets of said city; and also to construct in such localities as they may deem expedient, not exceeding one to each block, hydrants for public use, and to keep the same in repair; and also, with the consent of the common council of said city, to construct fountains in the public squares, or such other public grounds of said city as they shall deem expedient.

Assessment
of water-
rates.

Sec. 9. Said commissioners shall, from time to time, cause to be assessed the water-rate to be paid by the owner or occupant of each house or other building having or using water, upon such basis as they shall deem equitable; and such water-rate shall become a continuing lien, until paid, upon such house or other building, and upon the lot or lots upon which such house or other building is situated.

Power of
commissioners
relative
to collect'n
of water-
rates.

Sec. 10. Said commissioners shall have full power to make and enforce all necessary by-laws, rules and regulations, for the collection of said water-rates, either by the appointment of collectors to demand the same, requiring payment at the office, shutting off the water, or by a

suit at law before any court of competent jurisdiction, or by sale of the lot or premises, upon which such rates shall have become a lien: *Provided*, That such sales shall be conducted in the same manner, and shall have the same force, virtue and effect, of sales of lots delinquent for city taxes: *And provided further*, That the attempt to collect said rates by any process above mentioned, shall not in any way invalidate the lien upon said lot or premises.

Sec. 11. The said commissioners shall cause to be kept an accurate Record. record of all proceedings, together with a list of all assessments for water rates, which shall be subject to inspection at all times.

Sec. 12. It shall be the duty of said commissioners to make report Report. to the common council of said city annually, which report shall embrace a statement of the condition and operations of the works; a statement of the funds and securities of said board, and all debts due and owing to and from said board, together with an accurate account of their expenses; which statement shall be certified by said commissioners, and shall be entered of record by the clerk of said city, and published in such manner as said common council may direct.

Sec. 13. Whenever the receipts of said board, from water rates or other sources, shall accumulate so that there shall be a surplus, amounting to a sum of not less than five hundred dollars, not needed for the payment of the current expenses or the extension of said works, it shall be the duty of the commissioners, together with the auditor of said city, who shall be associated with them for that purpose, to invest the same in some safe stocks, or upon other real or personal securities. Such investment shall be made in the name of said board, and in such manner as to make the same available for the payment of interest and principal of the bonds issued as aforesaid, as soon as may be. It shall be the duty of said commissioners to pay the interest on such bonds, and as fast as such surplus fund will permit, also the principal, as the bonds become due, as funds for such purpose shall from time to time accumulate. The said commissioners may, when they have funds for that purpose, purchase the bonds so issued as aforesaid, whether the same have become due or not; and in case the said commissioners shall at any time not have funds on hand sufficient to meet any of the said bonds at the time when they shall become due, they shall have the right to issue

Surplus fund; how to be disposed of.

new bonds for such amount, and on such time as they shall deem expedient, in the place of bonds so becoming due as aforesaid; the said old bonds to be cancelled in the registry thereof, and the said new bonds to be recorded in the manner hereinbefore provided.

Oath of of-
fice.

Sec. 14. Before entering upon the duties of their office, said commissioners shall each take and file with the city clerk an oath or affirmation similar to that provided in the case of other officers of said city.

When ma-
terials to be
exempt fr'm
execution.

Sec. 15. All materials, procured or partially procured, under a contract with the commissioners, shall be exempt from execution; but it shall be the duty of the commissioners to pay the money due for such materials to the judgment creditor of the contractor, under whose execution such material might otherwise have been sold, upon his producing to them due proof that his execution would have so attached; and such payment shall be held a valid payment on the contract.

Member of
board may
be removed
for sufficient
cause.

Sec. 16. Any member of said board of commissioners, may at any time be removed by a vote of two-thirds of the members elect of the common council of said city, for sufficient cause, and the proceedings in that behalf shall be entered on their journal: *Provided*, That the said common council shall previously cause a copy of the charges preferred against the commissioner sought to be removed, and notice of the time and place of hearing the same, to be served on him ten days at least previous to the time so assigned; and in case of such removal, the common council shall, at their first regular meeting, or as soon thereafter as may be, appoint some person, being a citizen and a freeholder, to fill such vacancy; and the person so appointed to fill such vacancy, may continue in office for the period his predecessor had to serve.

Vacancies;
how filled.

Sec. 17. The said commissioners, and under their direction, their agents, servants and workmen, are hereby authorized to enter upon any land or water for the purpose of making surveys, and to agree with the owner of any property, which may be required by the purposes of this act, as to the amount of compensation to be paid to such owner.

Authority
of commis-
sioners rela-
tive to en-
tering upon
lands, &c.,
for certain
purposes.

Damages;
how es-
timated in
case of dis-
agreement
of par-
ties.

Sec. 18. In cases of a disagreement between the commissioners and the owner of any property which may be required for the said purposes, or affected by any operation connected therewith, as to the

amount of compensation to be paid to such owner; or in case any such owner shall be an infant, a married woman, or insane, or absent from this State, the judge of the circuit court of Wayne county may, upon the application of either party, nominate and appoint three disinterested persons to examine such property, and to estimate the value thereof or damage sustained thereby, and to report thereon to the said court without delay.

Report.

Sec. 19. Whenever such report shall have been confirmed by the circuit judge of Wayne county, the said commissioners shall pay to the said owner, or to such person or persons as the court may direct, the sum mentioned in said report, in full compensation for the property so required, or for the damage sustained, as the case may be; and thereupon the said commissioners shall become seized in fee of such property so required, and shall be discharged from all claim by reason of any such damage.

Amount of damages reported; how disposed of.

Sec. 20. And in case of the refusal by any owner or owners, person or persons, to receive such sums awarded to them for property required or damages sustained, then the said commissioners shall deposit with the city treasurer the sums so awarded, subject to the draft of said owner or owners, person or persons; and thereupon the said commissioners shall become seized in fee of such property so required, and shall be discharged from all claim by reason of any such damage; and said city treasurer shall keep strict account of all sums so deposited, and shall pay out the same on the drafts of the owner or owners, person or persons, to the credit of whom such moneys may have been deposited.

Duty of commissioners when parties refuse to receive sums awarded.

Sec. 21. If any person shall wilfully do or cause to be done, any act whereby any work, materials or property whatsoever, erected or used within the city of Detroit or elsewhere, by the said commissioners, or by any person acting under their authority, for the purpose of procuring or keeping a supply of water, shall in any manner be injured, or shall wilfully pollute the water, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished therefor as other misdemeanors are punished.

Penalty for wilful misdemeanor.

Sec. 22. If any person shall, without the authority of the said commissioners, as delegated through any of their agents, perforate or bore, or cause to be perforated or bored, any distributing pipe or

Penalty for certain offences.

main log, belonging to the water works of said city, or make or cause to be made any connection or communication whatever with the said pipes or logs, every person so offending shall for each offence forfeit a sum not exceeding fifty dollars and costs of prosecution, to be recovered in the mayor's court of said city, or other court of competent jurisdiction.

Power of commissioners relative to extend'n pipes, mains &c.

Sec. 23. The said commissioners, in their discretion, shall have power to extend the distributing pipes and mains, and to construct reservoirs, hydrants and jets without the limits of said city; and to regulate, protect and control such portions of said water works without the bounds of said city, in and after the same manner that they regulate, protect and control said works within said bounds.

Duty of commissioners.

Sec. 24. It shall be the duty of said commissioners, at least thirty days before the time fixed by the ordinance of said city for assessing city taxes, to make a special report to the common council of said city, what, if any sum, will be needed by said commissioners over and above the revenue of said board, to meet the payment of interest or principal of the bonds issued as aforesaid; and it shall be the duty of the common council to raise said amount by special tax in the same manner as general taxes, to be designated a water tax; and the said amount shall be paid over to said board by the treasurer of said city.

Commissioners may not be interested in any contract.

Sec. 25. No one or more of the said commissioners shall be interested, either directly or indirectly, in any contract entered into by them with any other person; nor shall they be interested, either directly or indirectly, in the purchase of any material to be used or applied in and about the uses and purposes contemplated by this act.

Certain property vested in board of commissioners.

Sec. 26. All lands, lots, docks, buildings, machinery, pipes, logs, hydrants, and all fixtures whatsoever, purchased, designated or used for the present water works of the said city of Detroit, are hereby conveyed to and vested in said board of commissioners, who shall have full power to regulate, protect and control the same; and all the authority, rights and power heretofore exercised and had by said city over said works, are hereby continued to and vested in said board of commissioners.

Sec. 27. The said commissioners are hereby invested with full power to make and enforce such by-laws, regulations and ordinances as may be necessary to carry into effect the object and intent of this act, and to supply any power or mode not already specified herein, and shall cause all such by-laws, regulations and ordinances to be entered into a book to be kept for that purpose, and signed by the president and secretary, which, when so entered and signed, shall be evidence in any court of justice.

Power of board relative to by-laws, &c.

Sec. 28. All acts or parts of acts contravening the provisions of this act are hereby repealed.

Sec. 29. This act may at any time be altered, repealed or amended.

Approved February 14, 1853.

[No. 91.]

AN ACT supplementary to an act to define the limits, jurisdiction and powers of Circuit Courts, approved April eighth, eighteen hundred and fifty-one, and to repeal an act supplementary to said act, approved June twenty-seventh, eighteen hundred and fifty-one.

SECTION 1. *The People of the State of Michigan enact*, That all issues of law shall be tried by the court, and all the issues and questions of fact shall be tried by the court, unless a jury be demanded by one of the parties, in a manner prescribed by the rules of court: *Provided*, That in all actions of tort, it shall be competent for the court to order the cause to be tried by a jury.

Issues of law or questions of fact; how tried.

Sec. 2. Upon the trial of a question of fact by the court without a jury, the decision of the court shall be given in writing, and filed with the clerk on or before the first day of the term succeeding that in which the cause was submitted.

Decision of court; how given.

Sec. 3. In giving the decision, the court shall specify the facts found, and the conclusions of law thereon, upon the request of either party.

Ibid.

Sec. 4. Either party desiring a review upon the evidence appearing on the trial, either of the questions of fact or of law, may, within such time as shall be prescribed by the rules of court, make a bill of exceptions, in the same manner, and with the same effect as upon a

Review of evidence.