

New Jersey. Laws, statutes, etc. 18434
110

ACTS

OF THE

Ninety-Sixth Legislature

55

OF THE

STATE OF NEW JERSEY,

AND

TWENTY-EIGHTH UNDER THE NEW CONSTITUTION.



TRENTON, N. J.:

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1872. 2

struct their said railroad from the present terminus of their railroad at Lyon's farms, through and along the old road to Newark, and through Elizabeth avenue, as now laid out by the Essex County Road Board, to Miller street, in the city of Newark.

2. *And be it enacted*, That the time for completing said railroad authorized by this act, and the act to which this is a further supplement, and the supplements thereto, be and is hereby extended to five years from the first day of April next ensuing. Time extended.

3. *And be it enacted*, That said corporation be and they are hereby authorized to increase their capital stock two hundred thousand dollars, in addition to the capital stock now authorized by said act and said supplements thereto. May increase capital stock.

4. *And be it enacted*, That this act shall take effect immediately.

Approved March 22, 1872.

CHAPTER CCCXXVI.

An Act to incorporate the Cold Spring and Cape May Water Company.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That John C. Bullitt, William J. Sewell, Jacob F. Cake, James Leaming and Return B. Swain, and all other persons who may hereafter be associated with them in the manner hereinafter provided, and their successors, shall be and are hereby constituted and declared to be a body politic and corporate by the name and style of "The Cold Spring and Cape May Water Company," and by that name shall have continual succession, sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, and in all manner of actions whatsoever; have a common seal, and make, change or alter the same at pleasure, and acquire, hold and enjoy such real and personal estate as may be necessary for the object of this in- Corporators. Name and powers.

corporation, or may be taken in payment of debts; that the stock of said company shall be deemed personal property and shall be one hundred thousand dollars, divided into shares of fifty dollars each; that the management of the concerns of the said corporation shall be entrusted to five directors, being stockholders of said corporation, who shall be chosen every year at the annual meeting of the stockholders, which shall be held on the first Tuesday in May, at such hour and place in the city of Cape May, in the county of Cape May, as said directors shall from time to time appoint, a notice of which election shall be published in a newspaper published at the city of Cape May, for three successive weeks next before such election, at least once in each week; that all such elections shall be by ballot by the stockholders, in person or by proxy, under the inspection and direction of three stockholders, neither of them being a candidate at such election, appointed by the directors, each stockholder having a vote for each share of his or her stock, and the five persons voted for at such election having the greater number of votes shall be directors of said corporation for the succeeding year and until others are elected in their stead; that if any two or more persons shall have an equal number of votes, so that five directors shall not be elected, the said stockholders shall again proceed in like manner to elect out of the persons so having an equal number of votes so many as shall complete the number of five directors, out of which number the said directors shall, by a plurality of their votes, elect one for their president; and in case of a vacancy in the office of president or of any of the said directors, by death, resignation or otherwise, others shall be elected by said directors to fill such vacancy; and a majority of said directors shall form a quorum for doing business.

Amount of capital stock.

Election of directors.

Vacancies, how filled.

Commissioners to receive subscriptions.

2. *And be it enacted*, That the persons named in the first section of this act shall be commissioners to procure subscription for the stock of said corporation, and they, or a majority of them, may open books for that purpose, at the city of Cape May, in the county of Cape May, at any time after the passage of this act, giving fifteen days previous notice thereof, in a newspaper published at the city of Cape May; and five dollars on each share of stock subscribed for, shall be paid at the time of subscribing therefor, and the balance shall be paid by installments from time to time, and in such sums as the said commissioners, or the directors of

said corporation shall think proper and direct; and whenever five thousand dollars shall be subscribed, the said commissioners shall call a meeting of the stockholders within thirty days thereafter, by giving one week's notice of the time and place of such meeting, in a newspaper published in the city of Cape May, for the purpose of electing directors and transacting other necessary or proper business; and when directors are elected, the said commissioners shall pay over to them the money they shall have received, first deducting therefrom a reasonable compensation for their own services and expenses; and all the powers of the said commissioners shall cease and be determined on the election of a board of directors; and the said directors, or a majority of them shall have power, and are authorized to call upon the said stockholders, for the payment of further installments, in such sums, at such times, and under such forfeiture as they may deem expedient, until the whole amount of shares subscribed, shall have been fully paid; *provided*, the said installments, shall be at least thirty days apart, and shall not be called for in larger sums than ten dollars on each share at a time, and thirty days' notice of each installment required shall be given in a newspaper published at the city of Cape May aforesaid.

Failure to pay subscriptions to work forfeiture.

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3. *And be it enacted*, That the directors shall be authorized in their discretion, to appoint a secretary, treasurer and other officers, agents and servants, as they shall from time to time deem necessary for carrying into effect the objects and powers of said corporation, to establish rules, regulations and by-laws for and concerning the conduct and government of the directors, their officers, agents and servants, and to determine the compensation to which they shall be entitled, and to require such security from them for the faithful discharge of their respective duties as they shall deem reasonable and proper, and for and concerning the manner of making transfer of the stock; and the conduct and government of all persons and corporations with whom they may contract for the use and preservation of water furnished by the said corporation, and to restrain the waste of water and to impose penalties and forfeitures for any neglect and refusal to comply with such rules and regulations; *provided*, no penalty shall exceed one hundred dollars, which penalties and forfeitures shall be recoverable in the name and for the use of the said corporation, before any justice of

Powers of directors.

May make rules and regulations.

Proviso.

the peace of the county of Cape May, with costs, in an action of debt.

May enter on
lands.

4. *And be it enacted*, That it shall and may be lawful for the said corporation by its agents, engineers, superintendents or others in its employ, to enter at all times upon all lands and water in the Lower township of the county of Cape May, or in the city of Cape May, for the purpose of exploring surveying, leveling or laying out a proper route or line for laying the pipes or conduits of said company, or for the purpose of ascertaining the quantity and flow of water, and for locating such reservoirs, stand-pipes and basins as may be necessary for the use of said company; *provided*, that the payment or tender of the payment of all damages for the occupancy of any lands for any of the purposes aforesaid, shall be made before the said company or any person under its direction shall enter upon or break ground in the premises, except for the purpose of exploring, surveying, leveling or locating as aforesaid, unless the consent of the owner or owners of such land shall be first had or obtained.

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Proceedings
in case com-
pany and own-
ers cannot
agree.

5. *And be it enacted*, That when the said company or its agents cannot agree with the owner or owners of such required land or materials for the use or purchase thereof, or when by the legal incapacity or absence of such owner or owners no such agreement can be made, a particular description of the land or materials so required for the use of said company in the construction of said reservoirs, aqueducts, stand pipes, conduits or raceways shall be given in writing under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners, if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this state, who shall cause the said company to give notice thereof to the persons interested, if known and in this state, or if unknown and out of this state, to make publication thereof as he shall direct, for any term not less than ten days, and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time, upon satisfactory evidence to him of the service, or publication of such notice aforesaid, he shall appoint under his hand and seal three disinterested, impartial and judicious freeholders, residents in the county in which the land or materials in controversy lie, or the owners reside, commissioners

to examine and appraise the said land or materials and to assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, to be expressed therein, not less than ten days; and it shall be the duty of said commissioners, having first taken or subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and to make a true report, according to the best of their skill and understanding, to meet at the time and place appointed, and to proceed to view and examine the said land or materials, said commissioners at the same time taking into consideration all the benefits to be derived from, or in consequence of the said reservoir, aqueduct, stand-pipe, conduit, raceway or other works of said company, as the case may be, to the said owner or owners, and to make a just and equitable estimate or appraisal of the value of the same and assessment of damages as shall be paid by the company for such lands or materials and damages aforesaid, which report shall be made in writing under the hands and seals of the said commissioners or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oaths or affirmations aforesaid in the clerk's office of the county of Cape May, to remain of record therein, which report or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy the said land or materials, or of the said owner or owners to recover the amount of said valuation with interest and costs in an action of debt, in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall from time to time constitute a lien upon the property of the company in the nature of a mortgage; and the said justice of the supreme court shall, upon application of either party, and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the supreme court, commissioners, clerks and other persons performing any of the duties prescribed in this section, as they or he shall think equitable and right, which shall be paid by the company; *provided always*, that should the said company Proviso. or the owner or owners of any of the land or materials feel

himself, herself or themselves aggrieved by the decision of the commissioners aforesaid, he, she or they may appeal to the next circuit court in the aforesaid county of Cape May, wherein said lands or materials may lie.

Proceedings
in case of ap-
peal.

6. *And be it enacted*, That every appeal from the decision of commissioners appointed under the preceding section, shall be made in writing and in the form of petition to said court, and filed with the clerk of the said circuit court of the county of Cape May, wherein the lands or materials appraised by the said commissioners shall be, and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof, which proceeding shall vest in the circuit court full right and power to hear and adjudge the same; and to direct a proper issue for the trial of said controversy, to be formed between the said parties, and to order a jury to be struck, and a view of the premises to be had, and the said issue to be tried at the next term of said court to be holden in the said county of Cape May, upon the like notice, and in the same manner as other issues in the said court are tried; and it shall be the duty of the said jury to assess the value of the said land or materials and damages sustained; and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said company, and execution awarded therefor; but if said jury shall be applied for by the owner or owners, and shall find a less sum than the company shall have offered or the said commissioners shall have awarded, then said costs to be paid by said applicant or applicants, and either deducted out of the said sums found by the said jury, or execution awarded therefor, as the said court shall direct; but such application shall not prevent the company from taking the said land upon filing the aforesaid report; *provided*, that in no case whatever shall said company enter upon or take possession of any lands of any person or persons, for the purpose of actually constructing said reservoirs, aqueducts, stand pipes, conduits, raceways or machinery of said company, or of making any erection or improvements whatever, or otherwise appropriating said lands to the use of said company, until they have paid to the party or parties entitled to receive the same, the amount assessed by the commissioners as the value of such lands or damages; in case the report of the commissioners is not appealed from, or if the same is appealed from,

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then the amount which shall be found by the jury by whom the issue shall be tried; but in case the party or parties entitled to receive the amount assessed by the commissioners, in case there shall be no appeal found by the jury, and in case of appeal shall refuse, upon tender thereof being made, to receive the same, or shall be out of this state, or under any legal disability, then the payment of the amount assessed or found as aforesaid, into the circuit court of said county of Cape May, where said lands lie, shall be deemed a valid and legal payment; and further, that the party or parties entitled to receive the amount assessed by the commissioners may, upon tender thereof being made, receive the same without being barred thereby from his, her or their appeal from the report of the commissioners.

7. *And be it enacted*, That whenever it shall become necessary to make any repairs or alterations in any pipes which may have been laid through any private lands, either by virtue of the preceding section, or by agreement, with the owner or owners thereof, it shall be lawful for the said corporation, with its workmen and agents, and with necessary vehicles, tools and implements to enter upon said lands and make the necessary repairs and alterations, doing no unnecessary damage; *provided always*, that nothing in this section contained, shall be so construed as to protect the workmen or agents of said corporation from any action that may be brought against them individually by the owner or owners of said lands for any damage which they may have wilfully or unnecessarily done.

8. *And be it enacted*, That for the purpose of effectually supplying with water the city of Cape May, its vicinity, and the inhabitants thereof, it shall and may be lawful for the corporation created by this act, and it is hereby empowered to procure or purchase such lands as may be necessary for the uses of said company, not exceeding in the whole thirty acres, to make contracts with persons and corporations for the supply, use and preservation of water, to sink wells, and to erect, construct and maintain all such basins, reservoirs or other works as may be necessary or convenient to carry into effect the purposes of this act, and to lay down pipes and other conduits, and to erect, construct and maintain hydrants and fire plugs in the streets, alleys, lanes and other places in the city of Cape May, and in the highways of the Lower township in the county of Cape May, and to do all

May enter on
lands to make
repairs, &c.

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May make
contracts and
engagements,
lay pipes, &c.

things necessary to furnish the said city of Cape May and its vicinity, and the buildings, streets and other places situate therein with water; *provided*, that the public travel upon the said highways, streets, lanes and alleys, shall at no time be unnecessarily affected or impeded in the laying or repairing of pipes, or the erection and construction of fire plugs or hydrants or other necessary or proper work, and after the completion of any work, the street, side and crosswalks, shall be left in as good condition as before the commencement of any such work.

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May increase capital stock.

9. *And be it enacted*, That if the water now contemplated to be used by the said corporation for the purposes of this act of incorporation, should, by reason of the increased demand therefor, be insufficient to supply said city of Cape May, it shall be lawful for the said corporation, and it is hereby empowered to procure an additional supply of water from other sources, and to erect and construct the necessary works therefor, and if necessary for such purposes said corporation is hereby authorized and empowered to increase its capital stock from time to time, to an amount not exceeding in the whole the sum of one hundred and fifty thousand dollars, to be divided into shares of fifty dollars each, to be paid by installments in the manner and upon like notice above mentioned; and whenever a subscription to said additional stock is authorized by the board of directors the stockholders for the time being shall be first entitled to subscribe for said stock in a ratable proportion of stock held by them; and whenever a dividend is declared, the said directors shall declare and make dividends upon all the stock subscribed and paid for.

May sell and dispose of water.

10. *And be it enacted*, That said corporation may supply, sell and dispose of the water procured and furnished by it upon such conditions, for such rents, and at such prices as the directors of said corporation may from time to time prescribe, and that all moneys due to said corporation for the use of any water so supplied, sold or disposed of shall draw interest at the rate of twelve per centum per annum from and after the time when such money shall respectively become due.

Actions of debt.

11. *And be it enacted*, That all moneys due to said corporation for the use of water may be sued for and recovered, with costs, in an action of debt or assumpsit, before any court of competent jurisdiction; and in case of non-payment of any

such moneys it shall be lawful for said corporation immediately, and without notice to the person or persons failing to pay the same, to cause the supply of water to the premises of such person or persons so failing to pay for the use of such water, to be stopped; and such moneys so due for the use of water supplied to any building or other premises shall be and remain a lien upon such building, and the lot or curtilage whereon it is erected, from the time such moneys shall become due, and until the same shall be paid.

Moneys for use of water to remain a lien on lands.

12. *And be it enacted*, That the president and directors of the said corporation shall declare and make such dividends as they may deem prudent and proper, from time to time, out of the net profits of the said water works; and the said corporation shall cause to be kept at their office proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be at all times open within the usual hours of business for the inspection of the stockholders.

Dividends.

13. *And be it enacted*, That said corporation shall have power to borrow such sum or sums of money from time to time as shall be necessary to purchase lands or to build, construct, maintain and procure such reservoirs, stand pipes houses, machinery, engines, pumps, pipes, hydrants, conduits or other things necessary for the use of said company; and to secure the payment thereof by the bonds or notes of said company, or by mortgage on the property, land, privilèges, franchises and appurtenances of, or belonging to said corporation at a rate of interest not exceeding seven per centum per annum; *provided*, that it shall not be lawful for said company to plead any statute or statutes of this state against usury in any suit in law or equity instituted to enforce the payment of any bond, note, mortgage or other security, executed in pursuance of this act.

May borrow money and issue bonds.

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14. *And be it enacted*, That if any person shall wilfully do or cause to be done any act or acts whatever, to injure any engine, machine, reservoir, pipe, fire plug, hydrant or structure whatsoever, or anything appertaining to the works of the said corporation or whereby the same may be obstructed, stopped or injured, or shall wilfully and maliciously draw off or waste the water from any fire plug or hydrant, the person so offending shall be deemed guilty of a misdemeanor, and being thereof convicted shall be punished by fine not exceeding five hundred dollars, or imprisonment in the county

Penalty for injuring works.

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jail not exceeding six months, or both; *provided*, such criminal prosecution shall not in any wise impair the right of action for damages by a civil suit, and the said corporation is hereby authorized to bring an action and recover damages by a civil suit for any such injury aforesaid, by and in the name of said corporation, in any court in this state having cognizance of the same.

Penalty for polluting water.

15. *And be it enacted*, That if any person or persons shall wilfully pollute or adulterate the water in any reservoir, aqueduct, stand-pipe, conduit or raceway, erected, constructed, built or laid down by said corporation, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the state prison for any term not exceeding three years, or both, at the discretion of the court.

Taxation.

16. *And be it enacted*, That said corporation shall be assessed and taxed upon the full and actual value of all its real and personal property only, and not upon the amount of the capital stock paid in, and said corporation shall be entitled to all deductions for and in respect to debts owing by said corporation in the same way and to the same extent as natural persons now are or hereafter may be under the laws of this state.

Failure to elect not to dissolve.

17. *And be it enacted*, That if at any time it shall so happen that an election for directors shall not take place on the day herein appointed for that purpose, this corporation shall not be deemed dissolved; but the directors for the time being shall appoint a future day to hold such election for directors, giving the same notice of such election as is hereinbefore required for that purpose.

General powers

18. *And be it enacted*, That the corporation hereby created shall possess the general powers and be subject to the restrictions and liabilities set forth in an act entitled "An Act concerning corporations," approved February fourteenth, eighteen hundred and forty-six, and the several supplements thereto, so far as the same are applicable.

19. *And be it enacted*, That this act shall take effect immediately.

Approved March 22, 1872.