

*N. N. Chittenden*

L A W S

*1845*

OF THE

STATE OF NEW-YORK,

PASSED AT THE

SIXTY-SEVENTH SESSION OF THE LEGISLATURE,

BEGUN AND HELD IN THE CITY OF ALBANY,

THE SECOND DAY OF JANUARY, 1844.



ALBANY:

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1844.

new trial, to be specified in said summons, which day shall not be less than six days from the service of said summons on the said parties.

§ 2. At the time and place specified in said summons; Trial how conducted. the said assistant justices' court, or marine court, as the case may be, shall proceed to try and determine the issue joined in such suit, in the same manner as if there had been no previous trial of such suit.

§ 3. Whenever the said superior court shall order any new trial in any such cause, it shall have power to make such order, relative to the costs of the certiorari, as it may deem just; and the said court shall have the same power relative to costs of the certiorari in all cases in which a judgment of the said marine court, or any of the said assistant justices' courts shall be reversed. Order relative to costs.

§ 4. The third subdivision of the sixth section of the act entitled "An act relating to the Supreme and Circuit Courts," passed April 13, 1832, is hereby amended so as to read as follows:

*Subdivision 3.* No person acting as supreme court commissioner in the city of New-York, shall be authorized to make any order, or do any act relative to suits pending in the supreme court; but in the absence from the city of New-York, or sickness of the circuit judge of the first circuit, such duties may be performed by the first or associate judges of the common pleas. Order relative to suits pending in sup. court.

§ 5. Actions in the said superior courts and in the courts of common pleas, mayor's and recorder's courts in the several counties and cities of this state may be commenced by service of a declaration, in all cases in which such actions may now be commenced by capias. Actions how commenced in courts.

§ 6. The second section of the act entitled "An act to provide for returning a greater number of grand jurors at the courts of oyer and terminer and general sessions of the peace in the city of New-York, and for other purposes," passed May 26, 1841, is hereby repealed. Repeal.

## CHAP. 149.

AN ACT to incorporate the Albany Hydrant Company in the city of Albany.

Passed April 12, 1844, by a two-third vote.

*The People of the State of New-York, represented in Senate and Assembly, do enact as follows:*

§ 1. John Townsend, John K. Paige, Bradford R. Wood, James D. Wasson, Barnum Whipple, Rufus W. Peckham, Corporation created.

Peter Gansevoort, and their associates, who shall become stockholders with them, are hereby constituted a body corporate by the name of the "Trustees of the Albany Hydrant Company," in the city of Albany.

Capital  
stock.

§ 2. The capital stock of said company shall be one hundred thousand dollars, to be divided in shares of twenty-dollars each.

Affairs how  
managed.

§ 3. The stock, property and concerns of said corporation shall be managed and conducted by seven trustees, being stockholders and residents in the city of Albany, one of whom shall be president thereof; and which trustees shall hold their office for one year, or until others are chosen, and shall be chosen on the first Tuesday in June in each and every year, at such time of the day, and at such place in the city of Albany, as the trustees for the time being shall appoint; of which election public notice must be given in one or more newspapers printed in the city of Albany, at least ten days previous to such election; and such election shall be holden under the inspection of three stockholders, who shall not be trustees, to be appointed by the trustees, and made by a plurality of votes of the stockholders present, allowing one vote to every share; stockholders not present may vote by proxy. And the trustees chosen at any election, shall meet as soon as may be after every election, and choose out of their body one to be president, who shall preside for one year; and in case of death, resignation or inability to serve, of the president or any of the trustees, such vacancy or vacancies may be filled for the remainder of the year by the trustees.

First trustee.

§ 4. The first trustees shall be John Townsend, John K. Paige, James D. Wasson, Bradford R. Wood, Barnum Whipple, Rufus W. Peckham and Peter Gansevoort, who, within one year from the passage of this act, shall open books of subscription to the capital stock of said company, after ten days public notice in a newspaper published in said city; and in case an excess of stock shall be subscribed for, the said trustees shall apportion the same among the subscribers ratably, in proportion to the amount subscribed by them respectively, rejecting fractional parts of a share; and in case the whole stock is not then subscribed for, the said trustees may afterwards, and from time to time, receive subscriptions to the same, under such regulations as they shall adopt, until the whole of said stock is subscribed for; as soon as fifty thousand dollars shall have been subscribed, the said company shall be considered as organized, and may commence operations: persons subscribing stock shall in all cases pay to the trustees two dollars on each share subscribed for at the time of subscribing.

§ 5. It shall be lawful, and the trustees are hereby authorized, in their discretion, to appoint a clerk, superintendent, and such other officers, agents and servants as they shall from time to time deem necessary, to carry into effect the power vested in said company, to declare dividends on the stock of said company, to establish rules and regulations, ordinances and by-laws, for and concerning the government of such officers, agents and servants, and for and concerning the conduct and government of all such persons as shall use the water from their works, so far as respects the preservation of the water furnished by said company, and the use thereof, and to restrain the waste thereof, and by such by-laws and ordinances to impose penalties and forfeitures for any neglect or refusal to comply therewith, so as such penalties and forfeitures, in any one case, shall not exceed five dollars; which penalties and forfeitures shall be recoverable in the name of the clerk or superintendent, in the justices' court, or before a justice of the peace in the city of Albany, in an action of debt.

§ 6. For the purpose of effectually supplying the said city with pure and wholesome water, and for no other purpose whatever, it shall be lawful for the said trustees and company to enter into and upon the water rills and creeks, and upon lands of any person or persons, bodies politic and corporate, except so much of such rills and creeks as are now necessarily used, and such lands as now belong to the trustees and company of the Albany water works, to take the water and lay out and construct any number of conduits necessary for, and calculated to supply such water, through or over any lands, roads, streets and highways; and to place and erect any machinery and reservoirs for raising and containing the water, as the said trustees shall deem necessary and useful. But all lands, real estate or property thus entered upon, and taken possession of, and used by said trustees and company, shall be purchased by said trustees and company of the owner or owners of the same, at a price to be mutually agreed upon between them; and in case the said trustees and company cannot agree with all the occupants or owners of such lands or other property, as to the price to be paid, or in case any owner or occupant shall be femme covert, under age, non compos mentis, or out of the state, the lands or other property intended to be taken for the purpose aforesaid, shall be appraised and the damage assessed as hereinafter directed. But previous to such appraisal and assessment, the said trustees and company shall cause a survey and map to be made of the track or direction in which it is intended that such waters and conduits shall run, and of the ground deemed requisite by said trustees and company for conveying

Trustees to  
appoint of-  
ficers.

May enter  
into and  
upon water-  
rills, creeks  
and lands.

the water and for laying such conduits, reservoirs and other devices, in the field book of which survey and maps shall be specified and distinguished the lands and other property of each of the several owners and occupants intended to be appropriated to the works aforesaid, and the quantity thereof, and shall exhibit such field book to the recorder of the city of Albany, who shall certify such field book and maps under his hand and seal, and cause the same to be filed in the office of the clerk of the county of Albany, there to remain as a public record. In cases where there shall have been no agreement as to the price, and before the taking and using of any such lands or other property, it shall be the duty of the chancellor of this state to appoint three commissioners, neither of whom shall be residents of the county of Albany, and who shall not be interested in the matters to be determined by them, to determine the damages which the owner or owners of the land, real estate or property so entered upon and designated by the said trustees and company, may have sustained or shall be likely to sustain by the occupation or use of the same; which damages shall be ascertained and be paid as hereinafter provided, to and for the benefit of such persons as are entitled thereto and competent to receive the same, before any part of said lands or other property shall be taken and used by the said trustees and company. The party applying for the appointment of commissioners shall give such notice to the opposite party as the chancellor shall direct, previous to making such appointment; and upon the payment of such damages, together with the costs and charges attending the appraisal by the said commissioners, the said commissioners being allowed three dollars each per day while thus employed; or upon said trustees and company depositing in one of the specie paying banks in the city of Albany, the amount of such damages, together with the costs and charges aforesaid, to the credit of the person or persons to whom the commissioners may have awarded them, the proper officers of the said bank giving notice to such person or persons by letter, to be deposited in the post office in the city of Albany or delivered personally, of such deposit being made by the said trustees and company, the said trustees and company shall be deemed to be seised of the fee simple and possessed of all such land, real estate and property as shall have been appraised by the commissioners, unless there shall be an appeal as hereinafter provided. And it shall be the duty of the said commissioners to cause fifteen days previous notice of the time and place of such appraisal to be given to the occupants of the lands or other property to be appraised, if there be any, and if there be none, such notice as the chancellor shall direct, and after such ap-

praisement to deliver to the said trustees and company a written statement of the award or awards they shall make, with a description of the land, real estate and property appraised, to be recorded by the said trustees and company in the office of the clerk of the county of Albany. And in case any owner or owners of land, real estate or property taken by said trustees and company, shall be married women, infants, idiots, insane, or shall reside out of this state, then, and in such case, the said trustees and company shall cause the damages sustained by said owner or owners to be determined in the manner above prescribed, and shall pay the amount of the said last mentioned damages into the court of chancery, for the benefit of the person or persons entitled to the same, which damages shall be paid before the said trustees and company shall take possession of the property. No dwelling house, or mill, or manufactory shall be removed or taken by said trustees and company, except the same be purchased of the owner by mutual agreement.

§ 7. Should the said trustees and company, or the owner or owners of any land, real estate or other property, feel themselves aggrieved by the decision of the commissioners aforesaid, either party may, within ninety days from the making of such decision and notice thereof, or from the removal of the disabilities in the preceding section mentioned, or from the return of non-residents to the state, appeal to the court of chancery of this state, and the decision of such court shall be final and conclusive; and on payment of the sum so finally settled, the said trustees and company shall be deemed to be seised of the fee simple, and possessed of all such land, real estate and other property as shall have been finally appraised as aforesaid.

Parties aggrieved may appeal.

§ 8. It shall be lawful for the said president and trustees to conduct and lay their conduits below the surface of any street or public highway in the city of Albany, subject to the consent of the corporation of the said city, or in any town in the county of Albany, putting such street or highway in as good condition as the same was before such conduits were laid, and without unreasonable delay.

Conduits how to be laid.

§ 9. The corporation created by this act shall be subject to the operations of the provisions contained in the third title of the eighteenth chapter of the first part of the Revised Statutes.

General powers.

§ 10. The said corporation shall organize and commence the transaction of its business within three years from the passage of this act.

Time limited.

§ 11. The Legislature may at any time alter, modify or repeal this act.

Right to repeal.