

L A W S  
OF THE  
STATE OF NEW YORK,  

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PASSED AT THE  
SEVENTY-FIFTH SESSION  
OF THE  
LEGISLATURE,

BEGUN THE SIXTH DAY OF JANUARY, AND ENDED THE SEVEN-  
TEENTH DAY OF APRIL, 1852, AT THE CITY OF ALBANY.



ALBANY:  
LITTLE & CO. LAW BOOKSELLERS,  
JEWETT, THOMAS & CO., PRINTERS.

1852.

## Chap. 379.

AN ACT *authorizing a settlement by the Canal Board of the claim of John S. M. Barhydt and James B. Van Vorst, for extra expense in constructing section thirty-four of the Erie canal enlargement, occasioned by a change in the line by order of the Canal Commissioners.*

Passed April 16, 1852, three-fifths being present.

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

§ 1. The canal board is hereby authorized and required to hear and determine the claim of John S. M. Barhydt and James B. Van Vorst, for an extra compensation on their contract, for constructing section thirty-four of the Erie canal enlargement, in consequence of an alteration of the line of said section, by the canal commissioners, after a portion of the work had been performed: And the said board are hereby required to allow and award to the said Barhydt and Van Vorst, such additional sum as they may be entitled to for any increased expense to said contractors, by reason of such change or alteration.

Canal board to hear and determine claim.

§ 2. The treasurer of the state shall pay, on the warrant of the auditor of the canal department, the sum awarded to the said Barhydt and Van Vorst, in pursuance of the first section of this act, out of any money in the treasury appropriated or which may be appropriated for the enlargement of the Erie canal.

Payment of the money.

§ 3. This act shall take effect immediately.

## Chap. 380.

AN ACT *to incorporate the Canajoharie water works company.*

Passed April 16, 1852, three-fifths being present.

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

§ 1. David Spraker, Thomas B. Mitchell, Lorenzo B. Clark, Horace Barns, Joseph White, and Chester S. Bromley, and all such persons as are or may be hereafter

Corporation created.

associated with them, shall be and are hereby constituted a body corporate, by the name of the Canajoharie water works company.

Capital stock.

§ 2. The capital stock of said company shall be one thousand dollars, and shall be divided into shares of twenty-five dollars each, but may at any time be increased by the directors of the company: provided that such capital stock shall not be increased so as to exceed the sum of ten thousand dollars.

Books of subscription

§ 3. Books of subscription to the capital stock of said company shall be opened under the direction of the directors hereinafter named, and subject to such rules as they may prescribe, and the stock of said company shall be considered personal property, and shall be assignable and transferable on the books of the company.

Concerns to be managed by 6 directors.

§ 4. The concerns of said company shall be managed by six directors, who shall be stockholders and residents of the town of Canajoharie, and who shall hold their offices for one year, and until others are chosen in their places. The annual election of directors shall be held on the first Wednesday in May in each year, at such place in the village of Canajoharie, and at such hour of the day as the directors for the time being shall prescribe. Notice of such election shall be published once in each week for three weeks immediately preceding such election in one newspaper published in said village. Each stockholder shall be entitled to one vote upon each share of stock held by him or her at the time of, and which shall have been held by him or her for thirty days next previous to, such election. The elections shall be by ballot, and votes may be given either in person or by proxy.

First directors.

§ 5. The persons named in the first section of this act shall be the first directors, and shall hold their offices until the first Wednesday of May, one thousand eight hundred and fifty-three, and until others are chosen in their places. In case of a vacancy in the direction, by reason of the death or resignation of any director, or of his ceasing to be a stockholder, or by his removal from the town of Canajoharie, it may be filled by the remaining directors until the next annual election, or until some other person shall be elected to fill the same. The directors herein named may appoint two persons, who shall be stockholders, to be inspectors at the first annual election, after which the stockholders shall choose two such inspectors at the annual election; if no inspectors are so chosen the directors may appoint

them from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that reason be dissolved, but an election may be held on any other day in such manner as shall be provided by the by-laws, or shall be prescribed by the directors.

§ 6. The directors may require payment of subscriptions to the stock at such times, and in such proportions, as they shall see fit, under the penalty of forfeiting all stock and previous payments thereon, and may sue for and recover all such subscriptions. Notice of the time and place of such payments shall be published for four weeks previous to the time so fixed, at least once in each week, in one newspaper published in the village of Canajoharie.

Payment of subscriptions.

§ 7. The directors shall annually appoint a president, a secretary and treasurer, and such other officers and agents as they shall from time to time deem necessary, and may remove all officers appointed by them, and appoint others in their places, and fill all vacancies in the offices; and they may make and ordain such by-laws and regulations as they may deem necessary and proper for the management of their business, and for accomplishing the purposes of the corporation.

Directors to appoint officers.

§ 8. For the purpose of supplying the village of Canajoharie with pure and wholesome water, the said company may purchase, take and hold any real estate, and by their directors, agents, servants, or other persons employed, may enter upon the lands of any person or persons which may be necessary for said purposes, and may take such water from any springs, ponds or streams, as may be determined by the commissioners appointed as hereinafter mentioned, and divert and convey the same to said village, and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs, or other works or machinery necessary or proper for said purpose, upon any lands so entered upon, purchased, taken or held; said corporation may as aforesaid, enter upon any lands, streets, highways, roads, lanes or public squares through which they may deem it proper to convey the water from said springs, ponds, streams, wells and reservoirs, and lay and construct any pipes, conduits, aqueducts, or other works for that purpose, leaving the said lands, streets, highways, roads, lanes and public squares, in the same condition, as nearly as may be, as they were before said entry; but the said company shall not lay and construct said pipes, conduits, aqueducts and

May purchase and hold real estate.

May take water.

other works, through any private garden, court yard or building lot, without the written consent of the owner thereof.

Map and survey to be made of lands intended to be used.

§ 9. Before entering, taking or using any lands or water for the purpose of this act, the directors of this company shall cause a survey and map to be made of the lands intended to be taken or entered upon for any of said purposes, and by which the land of each owner and occupant intended to be taken and used shall be designated, and which map shall be signed by the surveyor or engineer making the same, and by the president of said company, and be filed in the office of the clerk of the county of Montgomery. Notice of the time and place of filing the same shall be given by said company to each person whose land or water it is proposed to take; such notice to be served in the manner provided in the next section of this act. The company by any of its officers, agents or servants, may enter upon any lands for the purpose of making any examination, and of making said survey and map, doing no unnecessary damage.

Proceedings in case of disagreement with owners of land.

§ 10. In case the said company cannot agree with the said owners and occupants of any lands or water, intended to be taken or used as aforesaid for the purposes thereof the directors upon giving such notice as hereinafter required to be given by the commissioners, may apply to the supreme court at any term or session thereof held in the county of Montgomery, or to the county court of the county of Montgomery for the appointment of three disinterested commissioners, who are hereby authorized to determine what lands or water said company may take for the purposes of this act; and by whom the compensation to be paid for damages suffered, or to be suffered, by any person or persons by reason of taking said lands and water, and constructing any of the works of said company shall be ascertained and determined, and in case of the death, resignation, refusal, or disability to act of any of said commissioners the said court may appoint others in their places: the commissioners shall cause a notice of at least twenty days of the time and place of their meeting, to be served upon such owners of said land and water as can be found in this state, which may be served personally or in their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age; and in case of any legal disability of such owner to act, then upon serving notice in like manner upon his guardian or person appointed to act for him as hereinafter directed, and in

case any of said owners cannot be found in this state, such notice shall be given to them by publishing the same for six weeks successively in one newspaper in the village of Canajoharie and the state paper, and if any of said owners shall be married women, insane, infants, or idiots, the said court shall appoint some suitable person to attend in their behalf before said commissioners, and take care of their interests in the premises. The commissioners may issue subpoenas to compel the attendance of witnesses to testify before them; and they, or any one of them, may administer the usual oath to such witnesses: they shall make a written report of all their proceedings containing the testimony taken by them, and showing the sum awarded to each owner or other person, and return the same to the said court to be filed of record: the company shall pay to each commissioner the sum of two dollars per day, for every day necessarily spent by him in the performance of his duties under this act; and to each witness sworn and testifying, or if not sworn and testifying, whom the commissioners shall certify was properly and necessarily subpoenaed, the sum of fifty cents per day, and four cents per mile travel in going and returning, if living more than three miles from the place of meeting.

§ 11. The said company, or any party to the proceedings of the said county commissioners, may appeal to the supreme court or the county court, from any award or determination of the commissioners, provided the party appealing shall, within ten days after any such award or determination shall be made, give notice of the appeal to the other party or parties interested in the same; and the said court shall, upon the report of the commissioners, and upon additional testimony to be taken by them if they deem the same to be necessary, proceed to hear the same appeal, and may confirm the proceedings of the commissioners in relation to taking any lands or water, in whole or in part, or may increase or diminish the amount of compensation awarded by the said commissioners; and if their proceedings in any case have been irregular, the court may set the same aside and order a new proceeding and appraisal; and the said court may make such orders in reference to the proceedings of the commissioners, and of notice to be given to parties, as may not be inconsistent with this act, and as the nature of the case and the interest of the parties may require.

Appeals  
may be  
made within  
ten days.

§ 12. Upon the payment or legal tender of the compen-

Lands, when to be taken possession of

sation awarded by said commissioners, or in case of appeal by the said court, the said company shall be entitled to enter upon, for the purpose contemplated by this act, all the lands, waters, and real estate for which said compensation shall be made or tendered as aforesaid, and to hold or use the same for the said purpose, to them and their successors forever. If any person to whom any compensation shall be awarded or who shall be entitled to the same, by virtue of said award, cannot be found, or shall refuse to receive the sum awarded to him, then the said payment may be made by depositing the amount of the said award to the credit of said person, in such bank as may be appointed by said court. A certificate of such deposit signed by the cashier of the bank, shall be published by said company in one newspaper published in the village of Canajoharie, for four weeks successively, immediately after said deposit. If the person to whom compensation is awarded or who is entitled to receive the same as aforesaid, be under legal disability as aforesaid, payment may be made to his guardian or person appointed as aforesaid, by the said court; and if said guardian or person cannot be found, or shall refuse to receive the same, then by deposit in bank as aforesaid.

Lands, waters, and real estate, may be taken.

§ 13. The said company shall also take and hold for the purposes contemplated by this act, all the lands, waters and real estate, which they shall any way legally enter upon and take by virtue hereof to them and their successors, during the continuance of this corporation.

Laying of pipes, conduits, &c.

§ 14. In laying pipes, conduits, or aqueducts or constructing or erecting works in the streets, lanes or public squares of the said village, the company shall conform to such regulations as the trustees thereof shall prescribe.

Rules and regulations in using the water.

§ 15. The directors of said company may establish rules and regulations for and concerning the use of the water from their works; so as to preserve the same from waste, and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so that said penalty or forfeiture shall not in any case exceed five dollars, which penalty or penalties may be recovered from the person or persons violating said rules with costs in the name of the company, before any justice of the peace. Said rules and regulations shall be published for three weeks successively, in one newspaper published in said village, and a copy of said rules and regulations certified by the president or secretary of said company, with affida-

vits of such publication of the same, made by any one of the publishers of said paper, or by a foreman in said office, shall be received as evidence in all courts and places.

§ 16. Said company shall furnish water to the trustees of the said village for extinguishing fires and other purposes, upon such terms as may be agreed upon between the said trustees and the company; and in case they cannot agree on such terms, said trustees may apply to the court as provided in section ten of this act, for the appointment of three commissioners, who shall prescribe the terms upon which water shall be furnished, and said company shall furnish water upon the terms so prescribed; for the period of three years, at the expiration of which time a new commission may be applied for by the trustees in their discretion, and thereafter once in three years a like application may be made. The company may make any agreements, contracts, grants, and leases, for the sale, use, and distribution of water, that may be agreed upon between said company, and individuals, associations, and corporations, which agreements, contracts, grants and leases, shall be valid and effectual in law.

Water for extinguishing fires to be furnished

§ 17. Any person who shall maliciously or wilfully destroy or injure any of the works or property of said company, or who shall maliciously or wilfully commit any act which shall injuriously affect or tend thus to affect the water of said company, shall be guilty of a misdemeanor, and may be punished by fine or imprisonment, or both, in the discretion of the court, and shall also forfeit and pay to the company treble the damages sustained thereby, to be recovered in any court having cognizance thereof, with costs.

Penalty for injuring water works

§ 18. The corporation hereby created shall possess the powers, and be subject to the provisions of title three, chapter eighteen, of the first part of the revised statutes, so far as the same are applicable and not otherwise provided for in this act.

General powers.

§ 19. The stockholders of said company shall be individually liable for the payment of the debts of said company to an amount equal to the amount of the stock they severally shall have subscribed or held in said company, over and above such stock, to be recovered of the stockholder who is such when the debt is contracted, or of any subsequent stockholder, and any stockholder who may have paid any demands against said company, either voluntarily or by compulsion, shall have a right to resort to the rest of the stockholders who were liable to contribution.

Liability of stockholders.

Persons holding stock as executors, administrators, &c.

§ 20. No person holding stock in said company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of said company, but the person pledging said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustees shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such fund, would have been if he had been living and competent to act, and held the stock in his own name.

Contracts, how to be made.

§ 21. Every contract to be made under this act, by which said company shall obtain credit, shall be in writing, and there shall be attached to the copy of said contract delivered to the creditor, a printed copy of the twenty-first section of this act.

§ 22. This act shall take effect immediately.

## Chap. 381.

AN ACT for the relief of *Charity Van Alstine*.

Passed April 16, 1852, three-fifths being present.

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

Duty of canal appraisers.

§ 1. The canal appraisers are hereby authorized and required to examine the lands and premises of *Charity Van Alstine*, situate on the south bank of the *Mohawk* river, in the town of *Canajoharie*, in the county of *Montgomery*, alleged to have been damaged by reason of the construction of the enlarged *Erie canal*, and by reason of the overflowing of the *Mohawk* river upon the said premises, caused by the construction of the said enlarged canal; and the said appraisers shall consider and award such sum or sums for damages which have already and may hereafter accrue thereon, as they shall deem just and equitable; such appraisal, and the award thereon, shall be subject to the provisions of the statutes, in relation to the appraisal of canal damages in other cases.