

L A W S

CONSULTATION ROOM
COURT
OF APPEALS.

WATERBURY
OF THE
SEP 10. 18

STATE OF NEW-YORK,

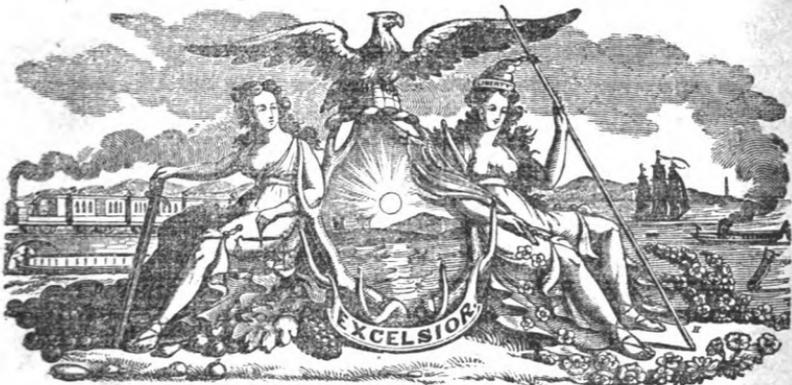
PASSED AT THE

SEVENTY-FIRST SESSION

OF THE

LEGISLATURE,

BEGUN THE FOURTH DAY OF JANUARY, AND ENDED
THE TWELFTH DAY OF APRIL, 1848,
AT THE CITY OF ALBANY.



ALBANY:

CHARLES VAN BENTHUYSEN, PRINTER.

1848.

undetermined, shall be continued before the said justices and police justices so elected, with the same effect and virtue as though before the said assistant justices, and present special justices for preserving the peace, and all judgments rendered may be executed by process, to be issued by said justices. The courts hereby created may issue all process necessary or proper to carry into effect the purposes of this act; and all constables and other officers are hereby authorised to perform all the duties and to receive the fees in the courts hereby created, which they were authorised to perform in the courts hereby abolished, and may serve all process issued by said courts hereby created.

§ 13. This act shall take effect immediately.

CHAP. 154.

AN ACT to incorporate the Utica Water works Company.

Passed March 31, 1848, "three fifths being present."

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

Corporation
created.

§ 1. James Watson Williams, Nicholas Devereux, Alfred Munson, Andrew S. Pond, Charles A. Mann, Horatio Seymour, Silas D. Childs, Willard Crafts and Thomas Hopper, and all such persons as are or may hereafter be associated with them, are constituted a body corporate, by the name of the Utica water works company.

Capital
stock.

§ 2. The capital stock of said company shall be fixed by the directors thereof, but the same shall not be less than thirty thousand dollars, nor exceed the sum of one hundred thousand dollars, to be divided into shares of twenty-five dollars each.

Subscrip-
tions to
stock.

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

Directors
to be elec-
ted.

§ 4. The concerns of said corporation shall be managed by nine directors, who shall be stockholders and residents of the city of Utica, and who shall hold their offices for one year and until others are chosen in their places. The directors shall be chosen annually on the first Monday of April, at such time of day and place in said city, as the directors for the time being shall appoint. The first election shall be held on the first Wednesday of April, eighteen hundred and forty-nine. Three weeks notice of such election shall be given by a publication at least once in each week, in two newspapers

published in said city. Each stockholder shall be entitled to one vote upon each share of stock held by him or her for at least ten days previous to an election. Voting shall be by ballot, and may be in person or by proxy.

§ 5. The directors shall annually appoint a president, secretary and treasurer, and such other officers as they shall deem necessary, who shall hold their offices until others are appointed in their places; 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.

Officers to be appointed.

§ 6. The directors may require payment of subscriptions to the stock, at such times and in such proportions as they may 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 said payments, shall be published for four weeks previous to said time, at least once in each week, in two newspapers published in said city.

Calls on stockholders.

§ 7. The persons named in the first section shall be the first directors, and shall hold their offices until the said first of April, eighteen hundred and forty-nine, and until others are chosen in their places; and in case of vacancy in the direction, by reason of the death, resignation or removal from the city of Utica, of any director, or of his ceasing to be a stockholder, 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 three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen, the directors may appoint them from time to time. The directors may remove all officers appointed by them, and appoint others in their places, and fill all vacancies in the offices. 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 cause be dissolved, but an election may be held on any other day, in such manner as shall be prescribed by the directors or provided for by the by-laws.

First directors.

§ 8. For the purpose of supplying the said city of Utica 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 purpose, and may take the water from any springs, ponds fountains or streams, and divert and convey the same to said city; and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs or other works or machinery neces-

Real estate may be acquired entered upon and used.

sary or proper for said purpose, upon any lands so entered upon, purchased, taken or held; but the said company shall not take or divert any water from the Sauquoit creek. 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, fountains, 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, within the bounds of the city of Utica, lay and construct said pipes, conduits, aqueducts, and other works through any private garden, court yard or building lot.

Surveys & maps to be made.

§ 9. Before entering, taking or using any land for the purposes 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, or occupant intended to be taken or 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 Oneida. The company, by any two 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.

Provision in case the company cannot agree with owners of land and water.

§ 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 purchase thereof, the directors may apply to the supreme court, at any term or session thereof held in the fifth judicial district, for the appointment of three commissioners, by whom the compensation to be paid for the 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 of the 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 two newspapers published in said city; 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 three 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, who the commissioner shall certify were 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 commissioners, may appeal 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 said appeal, and may confirm the proceedings of the commissioners, 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 proceedings and appraisal; and the said court may make such orders in reference to the proceedings of the commissioners and of notices 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.

Appeal
may be
made.

§ 12. Upon the payment or legal tender of the compensation awarded by the 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 paid or tendered as aforesaid, and to hold and use the same for the said purposes, 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

Land when
to be entered
upon by
company.

by depositing the amount of 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 two newspapers published in said city, 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 appointed cannot be found, then by deposit in bank as aforesaid.

Lands, &c.
to be held.

§ 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 in any way legally enter upon and take by virtue hereof, to them and their successors forever.

Laying,
pipes, &c.

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

Rules to be
establish'd.

§ 15. The said directors of said company may establish rules and regulations 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 and use, and restraining the waste thereof; and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so that such penalty or forfeiture shall not in any case exceed five dollars; which penalties may be recovered with the costs in the name of the company, before the recorder or any justice of the peace of said city. Said rules and regulations shall be published for three weeks successively in two newspapers published in said city; and a copy of said rules and regulations certified by the president or secretary of said company, with affidavits of said publication of the same made by any one of the publishers of said papers, or by a foreman in their offices, shall be received as evidence in all courts and places.

Water to
extinguish
fires, &c.
how fur-
nished.

§ 16. The said company shall furnish water to the city of Utica for the purpose of extinguishing fires, upon such terms as may be agreed upon between them and the common council of said city; and if they cannot agree, application may be made by said company or the common council of said city, for the appointment of commissioners, as provided in section ten of this act, who shall prescribe the terms upon which said water shall be furnished, subject to an appeal by either party, as provided in section eleven of this act. Any agreement made by the common council in reference to a supply of water for said purpose, shall be obligatory upon the city; but if the said agreement shall require the payment of any sum

of money to the said company, or for said supply of water, the common council shall not make said agreement, nor shall they contract or incur any debt for said purpose, until they shall have made an estimate of the expense or sum of money to be paid for said supply of water, and shall have fully complied with all the provisions of the third section of the act, amending the act, entitled an act to incorporate the city of Utica, passed May 7, 1847, and the necessary tax shall have been voted according to the provisions of the said third section of the act aforesaid. The said 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 any individuals, associations and corporations, which agreements, contracts, grants and leases shall be valid and effectual in law.

§ 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. Penalty.

§ 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. General powers.

§ 19. Nothing in this act shall be deemed or taken to authorise the corporation hereby created, to interfere in any way or manner with the rights and privileges of the "Utica water works association." Saving clause.

§ 20. All the stockholders of the company hereby created, shall be severally individually liable to the creditors of said company, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by said company, until the whole amount of the capital stock fixed and limited by the directors of said company, shall be paid in, and a certificate thereof shall have been made and recorded as prescribed in the following section; and the capital stock so fixed shall all be paid in, one half thereof in one year, and the other half within two years from the time of the commencement of the works of said company under this act, or the corporation hereby created shall be dissolved. Liability of stockholders.

§ 21. The president and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate of the amount of the capital fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors, and shall within thirty days be recorded in the clerk's office of Oneida county. Certificate about stock.

§ 22. The stockholders of said company shall be jointly and severally liable for all debts that may be due and owing Liability for debts.

to all their laborers and servants, for services performed for said company.

Restriction

§ 23. The indebtedness of said company shall not at any time exceed an amount equal to seventy-five per cent. of its capital stock, and if the indebtedness of said company shall at any time exceed such amount, the directors of said company assenting thereto, shall be personally and individually liable for such excess to the creditors of such company.

Executors,
&c.

§ 24. 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 estates and funds in the hands of such executor, administrator, guardian or trustee, 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. Every such executor, administrator, guardian or trustee, shall represent the shares of stock owned by him as such administrator, guardian or trustee, at all meetings of the company, and may vote as a stockholder, and every person pledging his stock as aforesaid, may in like manner represent the same, and vote accordingly.

Provision
respecting
liability for
debt.

§ 25. No stockholder shall be personally liable for the payment of any debt contracted by said company, which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of said debt shall be brought against said company, within one year after the debt shall have become due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in said company, for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor shall any suit be brought against any stockholder, until an execution against the company shall be returned unsatisfied in whole or in part.

§ 26. This act shall take effect immediately.