

L A W S
OF THE
STATE OF NEW-YORK.
PASSED AT THE
SEVENTY-FOURTH SESSION
OF THE
LEGISLATURE:

THE REGULAR SESSION BEGUN THE SEVENTH DAY OF JANUARY
AND ENDED THE SEVENTEENTH DAY OF APRIL, 1851,
AND THE SPECIAL SESSION BEGUN THE TENTH DAY OF JUNE AND
ENDED THE ELEVENTH DAY OF JULY, 1851, AT ALBANY.

[N. B. The Laws passed at the Special Session commence on Page 483.]



ALBANY:
PRINTED BY CHARLES VAN BENTHUYSEN,
FOR
GOULD, BANKS & CO., 475 BROADWAY, ALBANY;
AND
BANKS, GOULD & CO., 14 NASSAU ST., NEW-YORK
1851.

§ 2. Upon the making and filing of said certificate the treasurer shall pay, upon the warrant of the comptroller, to the said Russel B. Burch the amounts certified to be due by the first section of this act, which said payment shall be a final settlement of all claims of the said Burch relating to said costs and expenses, and the liquidation and settlement thereof.

§ 3. The sum of two hundred dollars, or so much thereof as may be necessary, is hereby appropriated for the purposes of this act, out of any money in the treasury not otherwise appropriated.

§ 4. This act shall take effect immediately.

Chap. 471.

AN ACT to incorporate the *Westernville Water Works Company*.

Passed July 9, 1851.

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

Title.

§ 1. Calvin Church, George Wallace, Griffith W. Jones, Jabez Hallock, Jr, Mary Winchell, John Swan, Lole Ann Badgeley, Montalbert Greenfield, Samuel Swan, William Floyd, Alfred H. Conklin and Harvey M. Miller, and all such persons as are or may be hereafter associated with them, shall be and are hereby constituted a body corporate by the name of the "Westernville Water Works Company."

Capital stock.

§ 2. The capital stock of said company shall be seven hundred dollars, and shall be divided into shares of ten dollars each, but may at any time be increased by the directors of the company, provided that such capital stock shall not be increased to exceed the sum of one 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 transferrable on the books of the company.

Directors.

§ 4. The concerns of said company shall be managed by five directors, who shall be stockholders and residents of the town of Western, in the county of Oneida, 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 of April in each year, at such place in the village of Westernville, in the said town of Western, and at such hour of the day as the directors for the time being shall appoint. Notice of such election shall be posted in five public places in said town of Western, at least four weeks prior to and immediately preceding such election. 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 held by ballot, and votes may be given either in person or by proxy.

§ 5. John Swan, William Floyd, Montalbert Greenfield, George Wallace and Harvey M. Miller, shall be the first directors, and shall hold their offices until the first Wednesday of April, eighteen hundred and fifty-two, and until others are chosen in their places. In case of a vacancy in the board of directors, 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 Western, 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 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 payment shall be given by posting notices in at least five public places, at least four weeks previous to the time so fixed.

§ 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 make and ordain such by-laws and regulations as they may deem proper for the management of their business, and for accomplishing the purposes of the corporation.

Real estate
and property
of com-
pany.

§ 8. For the purpose of supplying the village of Westernville with pure and wholesome water, the said company may, and they are authorized by virtue of this act, to take, use, and hold for their use and benefit, all pipes, conduits, aqueducts, wells, reservoirs, and other works, materials and machinery heretofore laid, constructed and furnished for hydraulic purposes, by the persons named in the first section of this act, provided releases in writing from the owners of the land through and over, and upon which the said pipes, conduits, aqueducts, and reservoirs are laid and constructed, shall be first obtained and recorded in the office of the clerk of the county of Oneida. And the said company, by virtue of this act, 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 village, and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs, or other works or machinery necessary or proper, for the purpose of furnishing and supplying the village of Westernville with water, 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, 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 the said entry.

Survey and
map.

§ 9. Before entering, taking, or using any land or water for the purposes of this act, the directors of said 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

Oneida. 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.

§ 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, 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 fifth judicial district, or to the county court of the county of Oneida, for the appointment of three commissioners 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 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 the county of Oneida 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 courts 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 com-

Proceed-
ings to ac-
quire title
to lands.

missioners shall certify was properly and necessarily sub-pœnaed, 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.

Appeal.

§ 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 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 proceeding and appraisement, 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.

Title to
lands how
perfected.

§ 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 purposes 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 or 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 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 two newspapers published in the county of Oneida, 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 per-

son appointed cannot be found, or shall refuse to receive the same, then by deposit in bank as aforesaid.

§ 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 forever. Lands how held.

§ 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, in case the said village of Westernville shall hereafter be or become incorporated. Laying of pipes and conduits.

§ 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 penalties may be recovered from the person or persons violating the said rules with the costs, in the name of the company, before any justice of the peace; and a copy of said rules and regulations certified by the president and secretary of said company, shall be received as evidence in all courts and places. Rules for use of water.

§ 16. 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 any individuals, associations and corporations, which agreements, contracts, grants and leases shall be valid and effectual in law. Contracts for sale of water.

§ 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 cognisance 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. 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 Liability of stockholders.

generally 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 demand 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
trustees.

§ 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 estates 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.

Limitation
of liability.

§ 21. 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 said 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.

§ 22. All claims on the part of this state for damages, arising from the laying and construction, under the Black River canal, of the necessary pipes, aqueducts and conduits provided for by this act, or from doing any other act necessary to carry into full execution and effect the purposes of this act, are hereby released to the said company.

§ 23. This act shall take effect immediately.