

corporations cannot agree upon the manner and conditions of such entry and use, or the compensation to be paid therefor, the same shall be determined in accordance with the provisions of the thirty-eighth section of chapter three hundred and eighty-one of the acts of the year eighteen hundred and seventy-one.

SECTION 5. The capital stock of said corporation shall not exceed the sum of five hundred thousand dollars. Capital stock.

SECTION 6. Said corporation shall within four months from the passage of this act, take the tracks, or any part thereof, of the Marginal Freight Railway Company, subject to the laws relating to the taking of land by railroad companies and the compensation to be made therefor. To take tracks of Marginal Freight R. R.

SECTION 7. Chapter one hundred and seventy of the acts of the year eighteen hundred and sixty-seven, entitled an act to incorporate the Marginal Freight Railway Company, and so much of chapter four hundred and sixty-one of the acts of the year eighteen hundred and sixty-nine, as relates to said Marginal Freight Railway Company, are hereby repealed. Repeal.

SECTION 8. The corporate powers conferred by this act shall cease, unless within one year from the date of its passage the Union Freight Railroad Company shall have constructed a track or tracks, in suitable condition for use, in accordance with the terms of this act, connecting one or more of the steam railroads on the northerly side of the city of Boston with one or more of the steam railroads on the southerly side of said city: *provided, however*, that the board of railroad commissioners may at their discretion extend the time herein allowed for building the road for a further period not exceeding one year, on sufficient cause shown. Tracks to be constructed, etc., within one year.

SECTION 9. The provisions of this act, and the franchise, rights, powers, privileges, duties and liabilities of the corporation established under this act may be altered, amended or repealed, and the legislature may annul or dissolve said corporation. Proviso.

SECTION 10. This act shall take effect upon its passage. Corporation may be annulled by legislature.

Approved May 6, 1872.

AN ACT TO AUTHORIZE THE TOWN OF BROOKLINE TO TAKE WATER FROM CHARLES RIVER.

Chap. 343

Be it enacted, &c., as follows:

SECTION 1. The town of Brookline is hereby authorized to take, hold and convey into and through said town, from Charles River, at any convenient point upon the same, suf- Brookline to be supplied with water.

ficient water for the use of said town and the inhabitants thereof, not exceeding one and a half millions of gallons daily, for the extinguishment of fires, domestic and other purposes; and may also take and hold by purchase or otherwise, any lands or real estate necessary for laying and maintaining aqueducts or pipes, constructing or maintaining reservoirs and such other works as may be deemed necessary or proper for raising, forcing, retaining, distributing, discharging or disposing of said water.

To file description of lands taken, in the registry of deeds.

SECTION 2. The town of Brookline shall, within sixty days from the time they shall take any lands for the purposes of this act, file in the registry of deeds of the county and district in which such lands lie, a description of the lands so taken as certain as is required in a common conveyance of lands, and a statement of the purposes for which they were taken, which description and statement shall be signed by a majority of the selectmen of said town.

May build aqueducts, erect dams and reservoirs, and regulate use of water.

SECTION 3. Said town may make, build and lay down aqueducts and pipes from said source to, into, through and about said town, and secure and maintain the same by any works suitable therefor; may erect and maintain dams to raise and retain the water taken; may construct and maintain reservoirs within or without said town; and may make, erect and maintain, and carry on such other works as may be necessary and proper for raising the water into the same, and forcing and distributing the water through and about said town; may make and establish such public hydrants and fountains in such places in said town as may, from time to time, be deemed proper, and prescribe the purposes for which the same may be used, and may change or discontinue the same; may distribute the water throughout said town, and for this purpose may lay down pipes to any house or building in said town, the owner or owners thereof having notice and not objecting thereto; may regulate the use of said water, and establish, receive and collect the prices or rents to be paid therefor; and said town may, for the purposes aforesaid, carry, conduct and maintain any aqueducts, pipes or other works, by them to be made, laid down or conducted over, under, through or across any water-course, canal, street, bridge, railroad, highway or other way, in such a manner as not to obstruct the travel or free use thereof; may enter upon and dig up any such road, street or way for the purpose of laying down pipes beneath the surface thereof, and for maintaining and repairing the same, and in general may do any other acts and things necessary or convenient and proper for carrying out the purposes of this act.

SECTION 4. The rights, powers and authorities given to said town by this act, shall be exercised by said town subject to the restrictions, duties and liabilities herein contained, in such manner and by such commissioners, officers, agents and servants as said town shall from time to time choose, ordain, appoint and direct. Such commissioners, officers or agents shall be subject to such ordinances, rules and regulations in the execution of their trust as the town may from time to time ordain and establish not inconsistent with the provisions of this act and the laws of the Commonwealth.

Rights to be exercised by commissioners, agents, etc., as town may direct.

SECTION 5. For the purpose of defraying the cost and expenses which may be incurred under the provisions of this act, the town of Brookline, through its treasurer, shall have authority to issue from time to time, notes, scrip or certificates of debt, to be denominated on the face thereof Brookline Water Scrip to an amount not exceeding six hundred thousand dollars, bearing interest not exceeding seven per centum per annum, payable semi-annually; the principal shall be payable at periods not more than thirty years from the issuing of said notes, scrip or certificates respectively. Said treasurer, under the authority of said town, may sell the same or any part thereof, from time to time, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as he may deem proper, or as may be prescribed by the town. Said town is further authorized to make appropriations, and assess from time to time such amounts not exceeding in one year the sum of twenty thousand dollars towards payment of the principal of the money so borrowed, and also a sum sufficient to pay the interest thereof, in the same manner as money is assessed and appropriated for other town purposes.

Brookline water scrip may be issued, not exceeding \$600,000 at seven per cent. interest.

SECTION 6. The said town of Brookline shall be liable to pay all damages that shall be sustained by any person or persons in their property, by the taking of the waters of said Charles River, or other source of supply, or any part thereof, as authorized by this act, or by the taking of any land, rights of way, water rights or easements, or by the erection of any dams, or the construction of any aqueducts, reservoirs, water-ways or other works for the purposes of this act; and if the owner or owners of any property which shall be taken as aforesaid, or other person or persons sustaining damages as aforesaid, shall not agree on the damages to be paid therefor, he or they may apply by petition for an assessment of the damages at any time within three years from the taking of the said property, or the construction of

Liability for damages.

dams or other works occasioning damages as aforesaid, and not afterwards, to the superior court in the county in which the same are situated. Such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the said town of Brookline, returnable, if issued in vacation, at the next term of the said court, to be held after the expiration of fourteen days from the filing of said petition; and, if in term time, returnable on such day as said court shall order to appear and answer to the said petition. The said summons shall be served fourteen days at least before the term or day at which it is returnable, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the clerk of said town; and the said court may, upon default or hearing of said town, appoint three disinterested persons, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid; and the award of the said persons so appointed, or a major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party with costs, unless one of said parties shall claim a trial by jury as hereinafter provided.

Parties dissatisfied may have trial by a jury.

SECTION 7. If either of the parties mentioned in the sixth section shall be dissatisfied with the amount of damage awarded, as therein expressed, such party may, at the term at which such award was accepted or the next term thereafter, claim, in writing, a trial in said court, and have a jury to hear and determine at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of said jury being accepted and recorded by the said court shall be final and conclusive, and judgment shall be rendered and execution issued thereon, and costs shall be recovered by the said parties, respectively, in the same manner as is provided by law in regard to proceedings relating to the laying out of high-ways.

Town may make a tender for damages.

SECTION 8. In every case of a petition to the superior court for the assessment of damages as provided in this act, the town may tender to the complainant, or his attorney, any sum that it shall think proper, or may bring the same into court to be paid to the complainant for the damages by him sustained or claimed in his petition, and if the complainant shall not accept the sum with his costs up to that time, but shall proceed in his suit, he shall be entitled to his costs up to the time of the tender of such payment into

court and not afterwards, unless the complainant shall recover greater damages than were so offered.

SECTION 9. Said town may also, for the purpose of collecting water and supplying the same to said river, make and maintain, upon or near said river, or the streams flowing into the same, or at, upon or near the source of said river or streams, any reservoirs, dams or other suitable structures, and may take and hold, by purchase or otherwise, such real estate, water, water rights or easements as may be necessary or convenient for that purpose. Said town may make any contracts with the proprietors of mills on Charles River, or with the owners of any mills on Charles River, Mother Brook or Neponset River, or with other towns which now are or may be hereafter authorized to take water from Charles River, by which said proprietors or owners or towns, or any of them, shall contribute to the expense of making and maintaining said dams, reservoirs or other suitable structures, and of taking or purchasing any water, water rights, lands or easements for the purpose of collecting water and supplying the same to Charles River as aforesaid. And said town may unite and agree with any other town or towns authorized to take water from said river, in making and maintaining suitable works and structures for their joint use under this act.

May hold land and water rights necessary for supplying water to river.

May contract with mill proprietors concerning payment of expense of constructing dams and reservoirs.

SECTION 10. The town of Brookline may, by a vote of said town, declare the quantity proposed to be taken, not exceeding one and a half million gallons daily, such vote to be passed not less than six months before the waters shall be withdrawn from said river, and a copy of such vote being filed in the registry of deeds for Norfolk county within sixty days thereafter; the terms thereof shall be held to be the measure and limit of the right of said town to take or divert the waters of said river under this act, and in case of a joint taking by any towns under this act the provisions of this section shall apply to such towns jointly, so far as any damage results from such joint taking.

To declare by vote the quantity of water to be taken daily.

SECTION 11. It shall be the duty of said town to provide some reliable means or method of measuring and registering the amount of water taken from Charles River, as soon as they commence taking the same, such register or record to be accessible at all times to any interested parties; and if the owners of any water rights in the waters of said river, and said town, shall fail to agree upon the mode of measurement the method shall be fixed by one or more engineers, to be appointed upon the application of either party, by any justice of the supreme judicial court. And if

To provide a reliable method for measuring water taken.

at any time said town shall take a larger quantity of water from Charles River than it shall have determined by said vote under the tenth section of this act, it shall be liable in an action of tort to any mill owner for any such damage he may have suffered, and may be restrained by injunction from taking such larger quantity of water in a suit in equity brought by any such mill owner or other party.

No application to be made for damages until water is actually withdrawn.

SECTION 12. No application shall be made to the court for the assessment of damages for the taking of any water rights, or for any injury thereto, until the water is actually withdrawn or diverted by said town under the authority of this act.

Penalty for unlawfully using water, wantonly diverting the same or rendering it impure.

SECTION 13. If any person shall use any water taken under this act without the consent of said town, or shall wantonly or maliciously divert the water, or any part thereof, taken or held by said town, pursuant to the provisions of this act, or corrupt the same or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery or other works or property held, owned or used by said town under the authority of and for the purposes of this act, he shall forfeit and pay to said town three times the amount of damage assessed therefor, to be recovered in an action of tort, and on conviction of either of the wanton or malicious acts aforesaid, may be also punished by fine not exceeding three hundred dollars, or by imprisonment in jail not exceeding one year.

Occupant of tenement liable for water rent.

SECTION 14. The occupant of any tenement shall be liable for the payment of the rent for the use of water in such tenement, and the owner shall also be liable, if, on being notified of such use, he does not object thereto.

Water may be used to generate steam.

SECTION 15. The water taken under this act shall not be used in any way as a motive power, except for generating steam.

Existing rights not affected.

SECTION 16. Nothing in this act shall be construed to affect any existing rights of said town to draw water from said river.

Repeal.

SECTION 17. Chapter three hundred and forty-three of the acts of the year eighteen hundred and sixty-seven is hereby repealed.

Subject to acceptance by vote of the town.

SECTION 18. This act shall take effect upon its passage, and it shall become void unless accepted by a majority of the legal voters of the town of Brookline present and voting thereon, at a legal meeting held within two years from the time of the passage of this act. *Approved May 6, 1872.*