

HOUSE No. 779.

[Bill accompanying the petition of Benjamin A. Ham and another for legislation relative to blasting in the city of Somerville. Cities. Feb. 4.]

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and One.

AN ACT

Relative to Blasting in the City of Somerville.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The city of Somerville at any time
2 within ten years after the passage of this act is
3 authorized to enter into agreements with persons
4 owning stone quarries therein as to restricting
5 the manner and times of blasting and excavating
6 said quarries.

1 SECTION 2. At any time within ten years
2 after the passage of this act, in cases in which

3 the city is unable to make an agreement with the
4 respective owner or owners thereof, and upon
5 written request to that effect, of the said owner
6 or owners, the city of Somerville by its city
7 council shall restrict the blasting and excavating
8 of stone quarries within the limits of said city, as
9 to the manner, times of blasting and of excavat-
10 ing the same.

1 SECTION 3. The said city shall within sixty
2 days after the restricting of the use of any stone
3 quarries, other than by agreements as aforesaid,
4 cause to be recorded in the Middlesex south dis-
5 trict registry of deeds a description thereof suffi-
6 ciently accurate for identification, with a state-
7 ment of the restriction imposed upon the same,
8 which statement shall be signed by the mayor.

1 SECTION 4. Said city shall be liable to pay all
2 damages sustained by any persons or corporations
3 by restricting the use of any of their land as
4 aforesaid. If any person sustaining damage as
5 aforesaid does not agree with said city upon the
6 amount of said damage, he may, within one year
7 from such restricting, and not afterwards, apply
8 by petition to the superior court for said county
9 for the assessment of said damage. Such petition
10 may be filed in the clerk's office of said court,
11 and the clerk shall thereupon issue a summons to
12 the said city returnable on the first Monday of
13 the next month after the expiration of the four-
14 teen days from the filing of the petition, to appear

15 and answer to the petition. The summons shall
16 be served fourteen days at least before the day at
17 which it is returnable by leaving a copy thereof
18 and of the petition, certified by the officer who
19 serves the same, with the clerk of said city; and
20 the court may upon the default of said city or
21 upon hearing, appoint three disinterested persons
22 who shall after reasonable notice to the parties,
23 assess the damages, if any, which the petitioner
24 may have sustained as aforesaid, together with
25 interest at the rate of six per centum per annum
26 from the passage of the order of restriction as
27 aforesaid. And the award of the persons so ap-
28 pointed, or of a major part of them, being
29 returned into and accepted by the court, shall be
30 final, and judgment shall be rendered and execu-
31 tion issued thereon for the prevailing party, with
32 costs, unless one of the parties claims a trial by
33 jury as hereinafter provided.

1 SECTION 5. If either of the parties mentioned
2 in the preceding section is dissatisfied with the
3 amount of damage awarded, such party may, at
4 the sitting at which the award was accepted, or
5 at the next sitting thereafter, claim in writing a
6 trial in said court, and have a jury to hear and
7 determine all questions of fact relating to such
8 damages, and to assess the amount thereof with
9 interest as aforesaid; and the report of the per-
10 sons so appointed to assess damages shall be
11 prima facie evidence upon such matters only as
12 are expressly embraced in the order of their ap-

13 pointment, and the verdict of the jury being
14 accepted and recorded by the court shall be final
15 and conclusive, and judgment shall be rendered
16 and execution thereon, and costs shall be re-
17 covered by the parties respectively according to
18 damages sustained by aforesaid restrictions.

1 SECTION 6. This act shall take effect upon its
2 passage.