

tracks of the company and eighteen inches outside thereof on both sides of the track, in repair and safe for public travel; and no location shall be granted upon said bridge except upon the foregoing conditions. The treasurer and receiver general of the Commonwealth shall pay back to said county and to such cities and towns as have been determined to be specially benefited, their proportionate shares of such amount as has been paid under this act by any street railway or electric railroad company.

The county of Essex and cities and towns benefited may borrow money to meet expense, etc.

SECTION 4. The county of Essex and such cities and towns as have been determined to be specially benefited may borrow on the credit of the county and of such cities and towns, respectively, such sums of money as may be necessary to comply with the provisions of this act.

SECTION 5. This act shall take effect upon its passage.

Approved June 28, 1906.

Chap. 532 AN ACT TO INCORPORATE THE NEW YORK, BROCKTON AND BOSTON CANAL AND TRANSPORTATION COMPANY.

Be it enacted, etc., as follows:

New York, Brockton and Boston Canal and Transportation Company incorporated.

SECTION 1. John J. Whipple, Herbert E. Guy, Bradford E. Jones, Wallace C. Flagg, Elmer C. Packard, George B. French, Daniel W. Field, Herbert L. Tinkham, George Clarence Holmes, Benjamin Buffington, George T. Durfee, Richard E. Warner, Thomas A. Norris, Fred P. Richmond, Kenneth McLeod, George A. Carter, Alva P. Poole, Samuel J. Gruver, Elliot L. Bonney, Rufus E. Tilton, George A. Wheeler, Embert Howard, Horatio E. Williams, Charles Howard, George E. Keith, Nathaniel R. Packard, Frank E. White, William Rapp, James G. Wilde, Portus B. Hancock, Howard T. Marshall, Loring W. Puffer, Emery M. Low, Henry F. Borden, Charles O. Emerson, Luke W. Reynolds, Henry J. LeLacheur, William S. Morey, Robert Cook, John E. Holland, Ellis S. LeLacheur, Charles L. Sargent, Edward B. Mellen, Maynard A. Davis, James A. Roarty, Martin Dolan, Ellery C. Dean, Moses A. Packard, John S. Kent, David A. Alden, William L. Douglas, George Hawley, Charles B. Whitcomb, James W. Rollins, Jr., William H. Lewis, Hiram E. Wardwell, Loved E. Chamberlain, Lewis M. Haupt, Baalis Sanford, Thomas B. Inness, Michael D. Long, Frank E. Shaw, Robert T. Davis, A. Homer Skin-

ner, Sumner H. Hancock, Charles A. Browne, Joseph Pratt, Roswell R. Skillings, Lorenzo B. Terry, Albert Barrows, Elmer H. Fletcher, Jabez W. Frederick, their associates and successors, are hereby made a corporation by the name of the New York, Brockton and Boston Canal and Transportation Company, and as such shall have perpetual succession, and by that name may sue and be sued, and may purchase, receive, hold and convey real and personal estate, and the same retain to themselves, their successors and assigns, so far as may be necessary for the transaction of their business; with all the privileges and subject to all the duties, restrictions and liabilities set forth in all general laws now or hereafter in force relating to railroad corporations, so far as they are applicable, except as otherwise provided herein.

SECTION 2. The capital stock of said corporation shall be fifteen million dollars, divided into shares of one hundred dollars each, and the corporation may issue coupon or registered bonds to an amount not exceeding the authorized capital stock of the corporation actually paid in at the time, and may mortgage or pledge as security for the payment of such bonds a part or all of its canal equipment or franchise then owned or thereafter to be acquired, or a part or all of its property, real or personal. All issues of stock and bonds under the provisions of this act shall be subject to the approval of the board of railroad commissioners in the manner provided in chapter one hundred and nine of the Revised Laws and in acts in addition thereto and in amendment thereof.

SECTION 3. Said canal company may locate, construct, maintain and operate a ship canal beginning at some convenient point on Narragansett bay or Taunton river, harbor or an estuary thereof, and extending across the state of Massachusetts to an estuary, river or harbor of Massachusetts bay or Cape Cod bay on or near the survey of nineteen hundred and one from Taunton river to Fore river, Weymouth; may locate, construct and maintain all such wharves, basins, docks, gates, locks and other structures and works as may be necessary for the convenient use of said canal, together with the highways provided for by this act; and may maintain and operate steam and other vessels or power conveyances for transportation by water, and steam tugs, or may use any other means or methods for

Capital stock,
etc.

May locate,
construct and
operate a ship
canal, etc.

assisting vessels in their approach to and passage through and from the canal. The canal when constructed shall have a depth of not less than twenty-five feet at mean high tide and a width of not less than one hundred and twenty feet at the bottom, with suitable slopes, and with a surface width of not less than two hundred feet, and any part of said canal may be constructed of wood, stone or other suitable material and, if so constructed, and with vertical sides, shall have a uniform width of one hundred and fifty feet. All materials excavated from tide waters shall be disposed of to the satisfaction of the Massachusetts harbor and land commissioners, and the construction of the approach from deep water to either end of the canal shall be subject to their supervision.

Location, etc.

SECTION 4. Said canal company may lay out and have the location of its canal not exceeding seven hundred feet in width, and shall, within two years after the payment of the moneys referred to in section twenty-three, file with the harbor and land commissioners a plan of the proposed location and a plan of the proposed construction thereof. The board of harbor and land commissioners shall, after such notice as they shall deem sufficient, and after hearing the parties interested, and within six months after the filing of said plans, approve or disapprove said plan of the proposed location and the plan for the construction, or may require such modification of such plans as said commissioners may deem the public interest to require. The plans as finally approved by the said board shall be returned to the said company, and shall be accepted or rejected by the company within six months after such return. If accepted, notice in writing of the acceptance shall be sent to the said board, and the plans shall be deemed to be the plans of the location and construction of the said canal, and said company shall be authorized to construct its canal in accordance therewith. Said company shall thereupon file the location of said canal in the registry of deeds for the counties of Norfolk, Plymouth and Bristol, defining the courses, distances and boundaries thereof, in the manner provided for filing railroad locations.

Damages.

SECTION 5. Said canal company shall pay all damages occasioned to the Old Colony Railroad Company and to any street railway company whose railway is crossed by

the canal, by laying out and making said canal or by taking land or materials therefor, or by any change required under this act of the road of said railroad company; and such damages, on the application of either party, shall be estimated by the county commissioners for the county within which the land taken lies or the damage was occasioned, in the manner and subject to the rules of law provided for determining the damages for taking land in laying out railroads. Either party dissatisfied with the estimate of the county commissioners may, at any time within one year after it is completed and returned, apply by petition to the superior court for the county within which the land taken lies or the damage was occasioned for a jury to assess the damages, and like proceedings shall be had thereon as in proceedings for the recovery of damages for laying out railroads.

SECTION 6. The said canal company shall pay all damages occasioned by laying out, making and maintaining its canal, or by taking any land or materials therefor which may be necessary to comply with the plans and specifications provided for in sections four and eight of this act; and such damages shall, on application of either party, be estimated by the county commissioners of the county in which the damage is done, in the manner provided in the case of the laying out, making and maintaining of railroads. Either party dissatisfied with the estimate of the county commissioners may at any time within one year after their award has been made apply for a jury to assess the damages. The proceedings thereon shall be the same as for the recovery of damages for land taken by railroad companies.

SECTION 7. The canal company, within one month after the approval of its plans by the board of harbor and land commissioners, may apply to the boards of railroad commissioners and of harbor and land commissioners, who for the purposes hereinafter stated are constituted a joint board, to determine at what point or points the railroad of the Old Colony Railroad Company and any street railway company whose railway is crossed by the canal shall cross said canal by a drawbridge or bridges, or by a tunnel or tunnels constructed under said canal, and to determine the points where and methods by which public ways shall cross the canal. Said joint board thereupon, after notice

Payment of
damages.

Crossing of
canal by the
Old Colony
Railroad Com-
pany, etc.

to the Old Colony Railroad Company and to all other parties interested, which notice shall be given in such form as said joint board shall direct, shall determine said questions, and the decision of a majority of said joint board shall be final. Said canal company shall construct its canal with such structures and appliances for its protection and use as said joint board may order, together with such bridge or bridges, tunnel or tunnels, ferries, and changes of highways, under the supervision of said joint board, as shall be in accordance with plans approved by them and in conformity with such orders as they may make; and the supreme judicial court or any justice thereof in term time or in vacation shall have jurisdiction in equity to enforce such orders.

Railroad commissioners to prescribe when and how location of railroad may be altered.

SECTION 8. The board of railroad commissioners, after due notice to all parties interested and after hearing all who shall appear, shall determine and prescribe in writing the time when and the manner in which the Old Colony Railroad Company and any street railway company whose railway is crossed by the canal, shall alter its location so as to cross said canal at such point or points as may be determined upon by the joint board hereinbefore provided; and in making such alterations said railroad corporation shall have all the powers and privileges and shall be subject to all the duties, restrictions and liabilities set forth in all general laws relating to railroads, except that the damages of land owners shall be assessed only against, and shall be paid by, said canal company, as in the case of land taken for railroad purposes. The canal company may thereupon proceed to build the railroads or railways upon the new locations, and may complete the same in such manner as may be prescribed by the railroad commissioners, and to their satisfaction, in case the parties do not agree upon the same; and shall pay all damages caused by the construction of said railroads or railways upon such new locations, and shall be liable for such damages, as in case of the construction of railroads. Until the completion of the railroads or railways upon the new locations, said canal company shall not enter upon the old location of said railroad except for making surveys or by consent of the said railroad or railway companies, or of the railroad commissioners. Damages occasioned to the said railroad or to any street railway company by its compliance with

the requirements of this act may be recovered by it of the canal company, in the manner provided by law for the recovery of damages caused by the location and construction of railroads.

SECTION 9. Upon the completion and acceptance by the board of railroad commissioners of the newly constructed railroad or railway and bridge or bridges, tunnel or tunnels, as above provided, the title of said railroad company to the land covered by the old, but not covered by the new, locations of said railroad, so far as the same is included within the location made by said canal company, shall vest in and become the property of said canal company.

Title to certain land to vest in the canal company.

SECTION 10. The said railroad and railway companies and any street railway company whose railway is crossed by the canal, upon the completion and acceptance by the board of railroad commissioners of the newly constructed railroad and bridge or bridges, tunnel or tunnels, as above provided, may at its option take such iron and other materials as may remain upon that part of the line of said railroad which is to be given up, and shall allow or pay to the said canal company the value thereof, such value to be determined by the county commissioners of the county in which the property was situated in case the parties do not agree upon the same.

Unused materials may be taken by railroad and street railway companies.

SECTION 11. The canal company shall build, maintain and keep in repair a bridge or bridges across said canal, or a tunnel or tunnels under the same, suitable for the passing of railroad and highway traffic, as said joint board shall determine, which bridge or bridges shall have a suitable draw or draws for the passage of vessels, and shall be constructed to the approval, and shall be maintained under the supervision, of the board of railroad commissioners. In case of injury to or destruction of any railroad bridge over the canal, the railroad company may repair or rebuild it, and may recover the reasonable expense thereof of the canal company in an action of contract, unless such injury or destruction was caused by the fault of the railroad company, in which case the expense shall be borne by the railroad company.

Bridges and tunnels may be built and maintained by the canal company.

SECTION 12. The Old Colony Railroad Company shall appoint a superintendent and all necessary assistants for every drawbridge used for the purpose of its lines, over said canal: *provided*, that such appointments shall be ap-

Superintendent and assistants.

Proviso.

proved in writing by the board of railroad commissioners before they take effect. Said superintendent shall have full and absolute control of the drawbridge and ferries under his charge, subject to such rules and regulations as may from time to time be made or approved by the railroad commissioners.

Location of
Old Colony
Railroad
Company, etc.

SECTION 13. The Old Colony Railroad Company shall have its location, not exceeding five rods in width, upon any land owned or located upon said canal company up to the bridge where it crosses the canal, on each side thereof: *provided*, that all reasonable use of such location by the canal company for the purpose of operating its canal, and under the direction of the board of railroad commissioners, shall be permitted by the railroad company without the payment of rent to the railroad company.

Proviso.

Penalty for
obstructing
operation
of draw.

SECTION 14. Whoever unnecessarily opens or obstructs any draw without the consent of the superintendent, or without such consent makes fast or moors any scow, raft or other vessel to a bridge to within wake of the draw, or neglects or refuses, upon request, to unfasten or unmoor such vessel, shall be fined not less than three dollars nor more than fifty dollars.

Penalty for
injury to
bridges, etc.

SECTION 15. Whoever wilfully injures or damages any bridge, wharf or pier belonging to the canal company, or wilfully disturbs or hinders the superintendent in the discharge of his duties, shall forfeit to said canal company for each offence a sum not exceeding one hundred dollars, and be further liable in damages to said canal company.

Provisions of
R. L. 111, §§
171 to 177 to
apply.

SECTION 16. The provisions relating to drawbridges contained in sections one hundred and seventy to one hundred and seventy-seven, inclusive, of chapter one hundred and eleven of the Revised Laws shall extend to any bridges constructed or maintained by said canal company under the provisions of this act, so far as they may be applicable, except that said drawbridges may be kept open at all times except when required to be closed for the actual passage of trains, and except that a railroad train shall be allowed five minutes to cross said draw instead of fifteen minutes, as provided in section one hundred and seventy-two of said chapter. The same penalties and forfeitures provided in section one hundred and seventy-six of said chapter shall also be in force, and may be recovered of the Old Colony Railroad Company or of any engineer or any superintend-

ent of said bridge in like manner as therein provided in case of the violation of any provision of section one hundred and seventy-three or one hundred and seventy-five of said chapter.

SECTION 17. Said canal company may establish for its sole benefit, but without discrimination, favoritism or rebating, a toll upon all vessels or water craft of whatever description, using its canal, at such rates as the directors thereof may determine, and may from time to time regulate such use in all respects as said directors may determine. Said canal company shall also furnish towage through the canal for all vessels or water craft which require it, for which service it may establish for its sole benefit, but without discrimination, favoritism or rebating, a toll at such rates as the directors may determine. If the said company shall be guilty of any act of discrimination, favoritism or rebating in respect to the tolls hereby authorized to be charged by it, or in respect of any service rendered by it, it shall be subject to a penalty of not less than five hundred nor more than one thousand dollars for each offence.

Tolls upon vessels, etc., using canal.

SECTION 18. Whoever fraudulently evades or attempts to evade the payment of any toll lawfully established under this act, either by misrepresenting the register or draught of any vessel, or otherwise, shall be fined not less than fifty nor more than five hundred dollars, and all such fines shall be paid over to the canal company.

Penalty for evading payment of toll, etc.

SECTION 19. To compensate the county commissioners for services rendered under this act, and to defray their expenses, the canal company shall pay each of said commissioners the sum of five dollars a day for the time actually spent in the discharge of his duties: *provided*, that said canal company shall not be required to pay any of said commissioners for more than fifty days' service in one year.

Compensation to county commissioners for services, etc.

Proviso.

SECTION 20. Whoever wilfully or maliciously obstructs the passing of any vessel or steam tug or other water craft in said canal, or obstructs the approaches to said canal within two thousand feet of either extremity thereof, or in any way injures said canal or its banks, breakwaters, docks, wharves, locks, tunnels, ferries, ferryboats, slips, gates, or other structures or works, or anything appertaining thereto, or any materials or implements for the con-

Penalty for obstructing the passing of vessels through the canal.

struction or use thereof, or aids or abets in such trespass, shall forfeit to the use of said canal company for such offence treble the amount of damages proved to have been sustained thereby, to be recovered in an action of tort in the name of said company; and may further be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding one year.

Fee for certificate of incorporation.

Payment to the treasurer of the Commonwealth.

SECTION 21. Said canal company shall pay to the secretary of the Commonwealth, on receiving its certificate of incorporation, the sum of fifty dollars; and shall also pay to the treasurer of the Commonwealth such sums of money as shall be fixed by the governor and council as compensation for the services and expenses of the boards of railroad commissioners and of the harbor and land commissioners for performing the duties imposed on them as a joint board under the provisions of this act. Said allowance for expenses shall include the compensation for such expert engineers as may be employed by said joint board.

Certain money expended by the harbor and land commissioners to be refunded, etc.

SECTION 22. Any moneys expended by the board of harbor and land commissioners under chapter one hundred and four of the resolves of the year nineteen hundred and one, not exceeding, however, the sum of ten thousand dollars, shall be refunded to the Commonwealth by the grantees of this charter at any time within one year after the passage of this act; and if said company fails to comply with the requirements of this section, this charter may be declared void in the manner provided in the following section. The said sum may be reckoned by the company as a part of its capital stock, as if it had been paid in as such.

Construction of the canal to be completed within ten years, etc.

SECTION 23. Within one year after the receipt, by the joint board of the written acceptance of the plans, as provided in section four, the said company shall begin the construction of said canal and shall complete the same within ten years after the entry for that purpose; but the company shall not begin said construction until one million dollars of its capital stock have been subscribed and five hundred thousand dollars thereof paid in cash to the treasurer of the corporation, nor until a deposit of two hundred thousand dollars in cash or United States government bonds, par value, has been made with the treasurer of the Commonwealth. The said deposit shall be made, and shall be held by the treasurer of the Commonwealth

as security for the faithful performance of the obligations imposed by this act, and for the payment of all damages occasioned by the laying out, construction and maintenance of the said canal, or by taking any land or material therefor, and also of all claims for labor performed or furnished in the construction of said canal; which sum shall remain with the treasurer until such time as the company shall have actually received into its treasury and expended the sum of fifteen million dollars in the construction of said canal, and shall have produced proof satisfactory to the board of railroad commissioners that it has settled all damages incurred or to be incurred in the location and construction of said canal. And unless such amount has been subscribed and such amount paid in and such deposit made within the time first mentioned in this section, this charter may be declared void by the supreme judicial court on the application of five citizens of the Commonwealth.

SECTION 24. Said canal company shall, before entering upon, removing, altering or otherwise interfering with any highway crossing the proposed line of said canal, give to each of the cities and towns traversed by the canal a bond with sureties satisfactory to the mayor and aldermen and the selectmen of such cities and towns respectively. The penal sum of each of said bonds shall not exceed fifty thousand dollars, and the bonds shall be conditioned to save the said cities and towns, respectively, harmless from all loss and expense occasioned by the removal or alteration of or interference with said highways by reason of the construction of said canal. Whenever the mayor of any city or the selectmen of any town and the canal company do not agree upon the amount of the bond, it shall be referred to the county commissioners of the county in which the city or town is situated, whose decision shall be final.

Company to
give bond
to cities and
towns, etc.

SECTION 25. If said company fails to comply with the requirements of sections twenty-three or twenty-four, and this charter shall be declared void, as provided in section twenty-four, all buildings, machinery and personal property of said company situated on said canal shall become the property of the Commonwealth, and the location of the canal shall become the property of the cities and towns in which it is located.

Charter to
become void
in certain
cases, etc.

SECTION 26. The Commonwealth or the United States may purchase of the New York, Brockton and Boston

The Common-
wealth or the
United States

may purchase
the canal and
franchise, etc.

Canal and Transportation Company its canal and all its franchise, property, rights and privileges by paying therefor such sum as will reimburse to it the amount of the capital paid in, with a net profit thereon of ten per cent a year from the time of the payment thereof by the stockholders of said company to the time of purchase, deducting from the purchase price the amount of any dividends received by the stockholders prior to the time of the purchase: *provided*, that no such purchase shall be made before the completion of the canal unless the purchaser agrees to complete the canal under the provisions of this act.

Proviso.

When to take
effect.

SECTION 27. So far as to authorize the organization of said canal company, the preparation and filing of the plan of the proposed location, and the submission of this act for acceptance by the voters of the cities and towns through which said location extends, this act shall take effect upon its passage, but it shall not further take effect unless accepted as provided in the next section.

To be sub-
mitted to the
voters for
acceptance.

SECTION 28. This act shall be submitted for acceptance at the next state election after the filing of the plan of the proposed location, as provided in section four of the act, to the voters of the cities and towns through which said location extends. The vote shall be in answer to the question, "Shall an act passed in the year 1906, entitled 'An Act to incorporate the New York, Broekton and Boston Canal and Transportation Company', be accepted?" and this act shall not further take effect unless accepted by a majority of the voters voting thereon.

Approved June 28, 1906.

Chap. 533 AN ACT TO PROVIDE FOR CERTAIN ANNUAL PAYMENTS TO THE TOWN OF HOLDEN ON ACCOUNT OF THE CONSTRUCTION OF THE METROPOLITAN WATER SYSTEM.

Be it enacted, etc., as follows:

Certain sums
to be paid
annually to
the town of
Holden, etc.

SECTION 1. The treasurer of the Commonwealth shall pay annually, as a part of the expenses of the metropolitan water system, on or before the thirty-first day of December, to the town of Holden an amount equal to the average assessment made by the assessors of said town for the three years preceding the purchase of said property by the Commonwealth on all real estate taken or acquired and held by the Commonwealth as a part of the metro-