

Laws of Her Majesty's Province of Newfoundland, passed in the year 1859.

22 Victoria – Chapter 7

An Act to Incorporate the General Water Company. (Passed 20th April, 1859.)

Whereas it is expedient to provide for a sufficient Supply of Water to the Town of Saint John's, by the Incorporation of a Company formed for that purpose upon the conditions hereinafter mentioned. Be it therefore Enacted, by the Governor, Legislative Council and Assembly, in Session convened, as follows:

I. The Right Reverend Dr. Mullock, Walter Grieve, McBride & Kerr, Job Brothers, J. & W. Stewart, John Power, Robert Kent, Ambrose Shea, Edward Morris, Hugh W. Hoyles, and Robert Pack, and all such other persons as may have associated with them for the purpose aforesaid, or may hereafter become Stockholders in the said Company, and their respective Successors, Executors, Administrators and Assigns, shall be and they are hereby united into a Company for the purpose aforesaid, and shall be a Body Corporate and Politic, in law, in fact, and in name, by the style of "The General Water Company;" and by that name shall have perpetual succession and a common Seal, with power to alter the same, and shall be capable in law of suing and being sued, impleading and being impleaded, in all Courts and places whatsoever, and shall and may purchase, hold, receive, and assign, lands and chattels, and do all such other matters and things as may be necessary for the business of the said Corporation, and as to them as such Body Politic and Corporate shall pertain to do.

II. The Capital Stock of the said Company shall consist of Thirty Thousand Pounds, being in Six Thousand Shares of Five Pounds each, payable at such times as the Directors of the Company for the time being may appoint; and such sum, or so much thereof as may be necessary, shall be applied to the purpose of constructing, completing, and maintaining the Water Works of the said Company, and for carrying into effect the purposes of this Act: Provided that if the instalments payable by any Stockholder shall not be paid at the time appointed by the Directors, or within Ten Days thereafter, the amount paid up by such defaulter shall be forfeited, and his share in the said Company sold on his account for the highest price that can be had for the same.

III. The said Company shall, before definitely deciding upon the site or place from which the water for the purposes of this Act shall be obtained, lay before the Governor in Council the Engineer's plans and estimates, and receive in writing the approval of the Governor in Council for the adoption of such site or place, plans and estimates.

IV. If found necessary for the purposes of this Act, it shall be competent for the Company, at a general meeting of Stockholders to be called in manner hereinafter directed, to extend their capital stock to the amount, in the whole, of Fifty Thousand Pounds, or of such proportion thereof as may be requisite; such further stock to be distributed in shares of the like amount, and to be payable as before directed, and to have the like advantages in all respects as are hereinafter provided with respect to the stock first subscribed, but such extension shall not take place without the assent of the Governor and Council of the Colony.

V. All certificates of Stock issued by the said Company shall be signed by the President, and countersigned by the Secretary, and certified by the Colonial Secretary; and the holders thereof shall, on the production thereof to the President of the said Company, be entitled to receive, out of the funds at the disposal of the said Company, interest upon the amount of such stock at the rate of five per cent, per annum; and in default of payment by the said Company, the said holders, upon production thereof at the office of the Receiver General, shall be entitled to receive from the funds of the Colony the said interest, which interest, whether paid by the Company or Colony as aforesaid, shall be payable on the first days of February and August in each year.

VI. As soon as the necessary amount of capital shall be subscribed, the first general meeting of stockholders shall be held in St. John's, at a time and place to be appointed by the provisional committee, upon fourteen days' notice in at least two local papers, of which the "Royal Gazette" shall be one, and such meeting shall appoint seven persons, being each a proprietor of sixty shares, to be Directors of the Company for the then, ensuing year and upon the first Monday of July in each succeeding year during the existence of the Company, a like general meeting for the like purposes, and upon the like notice, shall be held at the place aforesaid.

VII. The Directors may, at any time, of their own accord or upon the requisition of the holders of Five Hundred Shares, call a general meeting of the stockholders for any special purpose, notice being given in manner aforesaid.

VIII. At all general and annual meetings the stockholders shall vote by ballot, the holders of five shares being entitled to one vote, and so on for every five shares; holders of less than five shares shall not be entitled to vote at such annual and general meetings. Rules and bye-laws may be passed for the government of the Company and the management of its business, and absent shareholders may vote by agents duly constituted for such purpose by written authority; Provided that such agent shall be a shareholder in the said Company.

IX. Of the Directors to be elected as aforesaid, four shall form a quorum; they shall elect a President from amongst their number, and in case a vacancy shall arise on the Board by the death, resignation, or absence from the Colony, of any member, the remaining Directors shall fill up such vacancy from amongst the Stockholders, the persons so appointed holding office until the next annual meeting. At every annual meeting the Directors shall lay before the meeting a full and unreserved statement of the affairs of the Company; they shall have power to appoint such officers, and at such salaries, as they may consider necessary, and shall have and exercise all such other powers as may be necessary for the general management of the Company's affairs and business; but such salaries shall, before being finally adopted by the Company, receive the approval of the Governor and Council.

X. The shares in the stock of the said Company shall be assignable by endorsement, but under and subject to such rules as may be provided in that behalf; and no assignment of any share shall be valid unless the assigner shall have paid off all his liabilities actually due to the Company, nor until such assignment shall be entered in a book to be kept for that purpose.

XI. The shares of any stockholders in the said Company shall be liable to attachment and execution by service of a warrant of attachment on the President or Secretary of the Company, and such service shall bind the shares of such stockholder for all beyond the amount of his liabilities actually due to the Company; and upon the production of a bill of sale from the Sheriff, of such shares, or upon an order of Court to such effect, the Directors shall so register a transfer of such shares to the purchasers thereof by virtue of the provisions of this Act.

XII. It shall be lawful for the Company to break, dig, and trench, the streets, squares, public places, and lands, in and near the town of St. John's, as may be necessary, observing all proper precautions for the safety and convenience of the public; and for the purposes of this Act, from time to time, after compensation made or tendered to the owner in that behalf, to enter upon, excavate, trench, possess and hold, as the property of the Company, the lands of private parties in or near the said town.

XIII. Should any person whose land shall have been so entered upon, excavated, or taken as aforesaid, deem the amount tendered to him by the Company insufficient compensation for any injury sustained by him by any act of the Company or their agents or servants, or for any portion of his land, tenements, or premises, appropriated or used by the Company, it shall be competent for such person to appoint one arbitrator, and the said Company another, and such two arbitrators shall appoint a third, and the award of any two of them, signed by them after hearing both parties and their witnesses, as to such compensation, shall be final and binding. Should either party neglect or refuse, upon being required by the other, to appoint an arbitrator within ten days after being so required, or should the two arbitrators when so appointed not agree to the appointment of a third within ten days after their appointment, it shall be lawful for the Supreme Court of this Island, upon the application of either party, to appoint an arbitrator for the party refusing, omitting, or neglecting to make such appointment, and that the arbitrator when so appointed shall have the same power in all respects as if appointed by either party or the said two arbitrators.

XIV. If any person shall in any way obtain or use the water of the said Company without the consent of its proper officers, or shall wrongfully waste the same, such offender shall forfeit a sum not exceeding ten pounds, to be recovered with costs in an action at the suit of the Company in any Court of Record: Provided that this section shall not extend to parties taking water from the public pumps hereinafter mentioned, nor to any use of the said water in case of a fire occurring in the said town.

XV. If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the contractors, servants, agents, or workmen of the Company, in the exercise of any of the powers and authorities within this Act authorized and contained, or if any person shall wilfully or maliciously put out of order, injure or destroy, any pipework or material of the Corporation, such offender, on conviction in a summary manner before a Justice of the Peace, shall forfeit a sum not exceeding five pounds, with costs of suit, and shall pay upon the order of such Justice, a sum equal to the amount of damage so occasioned by him, and in default of such payment shall be imprisoned for a period not exceeding three calendar months; and it shall be lawful for any person who may witness the commission of such offence, to apprehend, without warrant, and for any other person to assist in apprehending, such offender, and to convey him before a Justice to be dealt with in manner aforesaid.

XVI. Copies of the annual statement of the Company's affairs, shall be transmitted to the Colonial Secretary within five days after the annual meeting; the Government shall have power at all times to inspect the books of the said Company; and all the net profits of the Company, after the payment of the interest upon the stock and all incidental expenses, shall, within ten days after each annual meeting, be paid to the Receiver General, to be applied in the repair of the said water works, and the formation of a sinking fund for the purchase of the capital stock hereinafter provided.

XVII. If at any time after, twenty years from the passing of this Act, it shall be deemed advisable by the Governor in Council, with the assent of the Legislature, that the water works, and other property of the said Company, shall be transferred to and vested in the Government of this colony, it shall be lawful for the Governor to cause a written notice to be given to the said Company, which shall be issued upon the President, Secretary, Director or Manager of the said Company in this Colony, which notice shall state that the Government has decided upon becoming the holder of the said water-works and other property, and is prepared to pay to the shareholders in the said Company, upon production of their certificates as aforesaid, the amount of stock they may hold in said Company, as shown by said certificates, together with six per cent from the time of the last payment of interest upon the amount of such stock; and after the. expiration of one year from the sendee of such notice, and the payment or tender of payment of principal and interest to the stockholders as aforesaid, all and singular the said Water-Works, and other property of the said. Company, shall become the property of Her Majesty for the benefit and public use of the Colony, and shall be thenceforth held free and discharged from all claims of the said Company or stockholders thereof or any person whomsoever; and the Government shall draw warrants on the Receiver General of this Colony for the payment to the several stockholders in the said Company of the principal and interest aforesaid.

XVIII. It shall be obligatory upon the said Company to cause a sufficient supply of pure and wholesome water to be conveyed in pipes and mains throughout the several Streets of the said town, as follows, namely: from Job's Bridge South, and down the South Side; in Water Street, from a point at River Head, to be determined upon, to Magotty Cove Fire Break; New Gower Street, Gower Street and Duckworth Street, throughout the whole length of the said Streets, along Queen's Road, from its junction with Gower Street, at the head of Nurse's Lane, to the head of Prescott Street; along the Military Road from Garrison Hill to Fort William; and to erect in such places within the said limits as the Governor in Council may direct, fountains for supply of water to the poor, and to establish hydrants throughout the said town, as the Governor and Council may think necessary; and to extend the said supply of water in pipes or mains throughout such other streets and within such other limits as the Governor in Council shall at any time direct.

XIX. The Company shall purchase from the St. John's Water Company their water privileges, pipes, mains and water-works, with their appurtenances; and for the purpose of determining the amount to be paid for the same, it shall be competent for each Company to appoint two arbitrators, and such four arbitrators shall appoint a fifth, and the award of a majority of such arbitrators, to be made and signed by them after hearing both parties upon the matters aforesaid, shall be final and binding. Should either Company neglect or refuse, upon being so required by the other, to appoint its arbitrators, within ten days after being notified of the appointment of arbitrators by the other Company, it shall be lawful for the Governor and Council to appoint two arbitrators for the Company so refusing, whose powers shall

be the same in all respects as if they were appointed by the said Company. Should the said arbitrators not agree upon the choice of a fifth arbitrator, it shall be lawful for the Judges of the Supreme Court, upon petition of either Company, to appoint a fifth arbitrator for the purposes aforesaid.

XX. Upon the fulfilment by the General Water Company of the terms of such award, on their parts, such fulfilment to be certified by the arbitrators, or any three of them, all and singular the water privileges, waterworks, pipes, mains, and other the fixed property of the said St. John's Water Company, shall be absolutely vested in and become the sole property of the General Water Company.

XXI. As soon as the water works shall be in operation, the owners of all houses and other buildings along which pipes shall have been laid, and within two hundred yards of any such pipes, shall pay annually, in manner hereinafter provided, a sum not exceeding one and three quarters per cent; Provided that government buildings, churches, public school houses, and buildings belonging to charitable bodies, shall be exempt from this assessment.

XXII. The term "owners" shall, for the purposes of this Act, mean all persons who at the time of such assessment have any insurable interest, either present or in reversion, in the houses and other buildings aforesaid; the assessment upon such present interest shall be estimated by the yearly rent value of such houses or other buildings, or the profit rent thereof, as the case may be; and the assessment upon reversionary interests shall be estimated on the appraised annual interest of the lessor in the buildings for the unexpired term; provided that nothing in this Act contained shall affect mortgages; but in case of mortgaged property coming within the operation of this section, the assessment chargeable thereon shall be paid by the mortgagor.

XXIII. For the purpose of ascertaining the amount of such assessment, and of collecting and recovering the same, it shall be lawful for the Governor in Council to appoint one or more appraisers who shall be sworn before a Justice of the Peace faithfully to discharge the duties of their office, and a collector who shall give sufficient security to the like effect; Such appraisers shall annually appraise all such houses and other buildings as aforesaid, and shall deposit the books of such appraisement, when completed, with the Clerk of the Peace for the Central District.

XXIV. Such return shall be open to the examination of all parties interested therein; and after the expiration of One Calendar Month after it shall have been so deposited, the Court of Sessions for the Central District shall at certain times, within One Month thence following, to be notified by advertisement published in the public Newspapers in St. John's, hold a court for the revision of such return. It shall be competent for any party named in such return, by a notice in writing to be filed in the office of the said Court, and served on the said appraiser, to object to the amount of the assessment imposed on him, which objection the said Court shall hear and determine, and amend or confirm the return accordingly; and after the expiration of the times fixed for the holding of such Court, the said return shall be final and binding on all parties for the then ensuing year.

XXV. The Collector to be appointed as aforesaid shall, as soon as possible after such appraisement shall have been completed, collect from the parties respectively liable in that behalf, their contribution

towards such assessment; and in case any person so liable shall neglect or refuse to pay such contribution, the same may be recovered, with costs, in a summary manner, by a suit in the Court of Sessions for the Central District, to be brought in the name of the Collector: Provided that service of process upon the agent or any absent or non-resident defendant, shall be service upon the principal.

XXVI. The Appraisers and Collector to be appointed under the provisions of this Act shall be paid, out of the funds of the said Company, such sum as the Governor in Council shall determine upon.

XXVII. As soon as the said Company are prepared to supply Water, and shall have introduced the necessary branch pipes for supplying the houses and other buildings subject to assessment, they shall, with the assent of the Governor and Council, fix a scale of rates to be paid by consumers yearly or half-yearly as the Company shall decide, and any occupier into whose house or premises the necessary branch pipes shall have been introduced, who shall refuse to take the water, shall nevertheless be liable for the rate applicable to his case: Provided that the payment of the occupier's water rates shall not exempt the party from the owner's assessment where he is the owner of the premises on which he resides.

XXVIII. Occupiers of houses or tenements of a less annual value than Twelve Pounds currency, shall be exempt from the provisions of the 27th Section when they do not take the water.

XXIX. Until the said Water Works shall be completed, the said Company shall borrow a sum of money, to pay off the interest upon the principal stock upon such terms as the Governor in Council shall assent to, and the re-payment of such interest to the lenders thereof is hereby guaranteed by the Government of this Colony.