



CHAP. 30.

An Act to Incorporate the Esquimalt Water Works Company, 1885.

[9th March, 1885.]

WHEREAS a petition has been presented by Theodore Lubbe, Preamble]
of the City of Victoria, British Columbia, Merchant; William P. Sayward, of the same place, Lumber Manufacturer; Edgar Crow Baker, of the same place, M.P.; Joshua Davies, of the same place, Auctioneer; and Walter S. Chambers, of the same place, Accountant; for an Act to empower them to construct, manage and maintain Water Works to supply the Town of Esquimalt, the Royal Naval Dockyard, the Royal Naval Hospital, and the residents of the peninsula bounded by Victoria Arm and Harbour, the Straits of Fuca and Esquimalt Harbour; and for the purpose thereof to take water from Thetis Lake, Deadman's River, and their tributaries, and to build flumes, aqueducts, lay pipes, erect dams, acquire lands, and do all other acts and things necessary for the purpose aforesaid;

And whereas it is expedient to grant the prayer of the said petition;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Theodore Lubbe, William P. Sayward, Joshua Davies, Edgar Crow Baker and Walter S. Chambers, and such other persons and corporations as shall, in pursuance of this Act, become shareholders, are hereby constituted a body corporate and politic, by the name of "The Esquimalt Water Works Company," and hereinafter called the Company. Incorporation.

2. The Capital Stock of the Company shall be \$150,000, with power to increase to \$250,000, divided into 15,00 shares of \$100 each, which shall be applied, first, to the payment of all costs and expenses in obtaining the passage of this Act, and the remainder for the purpose of the Company's undertaking. Capital stock

<p>A.D. 1885. Provisional Directors.</p>	<p>3. The persons named in the first section of this Act shall be and are hereby constituted Provisional Directors of the Company, of whom three shall form a quorum for the transaction of business, and they shall hold office until the first election of Directors under this Act, and shall have power to open Stock Books and procure subscriptions of Stock for the undertaking.</p>
<p>Head office.</p>	<p>4. The office of the Company shall be at the City of Victoria, or at a place within the District of Esquimalt, as the Company may elect.</p>
<p>First general meeting.</p>	<p>5. The first general meeting of the Shareholders shall be held upon two weeks' notice being given, at such time as the Directors shall specify therein.</p>
<p>Annual meeting.</p>	<p>6. The subsequent annual general meeting of Shareholders shall be held as may be determined by the By-Laws of the Company.</p>
<p>Power to borrow money.</p>	<p>7. The Company shall be entitled to borrow money on mortgage or bond.</p>
<p>Power to construct and maintain water-works.</p>	<p>8. The Company and their servants may, and shall have full power to design, construct, build, purchase, improve, hold and generally maintain, manage and conduct Water Works and all buildings, materials, machinery and appliances therewith connected in the Town of Esquimalt, and the peninsula adjacent thereto, bounded by the Victoria Arm and Harbour, the Straits of Fuca and Esquimalt Harbour, and other parts as hereinafter provided.</p>
<p>Power to enter on lands.</p>	<p>9. It shall be lawful for the Company, their servants, agents and workmen, from time to time, and at all times hereafter, as they shall see fit, and they are hereby authorized and empowered to enter into and upon the land of any person or persons, bodies politic or corporate, in the Town of Esquimalt, or within ten miles of the said Town, and to survey, set out and ascertain such parts thereof as they may require for the purposes of the said Water Works, and to divert and appropriate the waters of Thetis Lake and Deadman's River, and its tributaries, as they shall judge suitable and proper, and to contract with the owners and occupiers of the said lands, and those having an interest or right in the said waters, for the purchase of the same respectively, or of any part thereof, or of any privilege that may be required for the purposes of the Company, and for the right to take all or any timber, stone, gravel, sand and other materials from the aforesaid land or any lands adjacent thereto, for the use and construction of the said works, and in case of disagreement between the Company and the owners and occupiers of the said lands or any person having an interest in the said waters or the natural flow thereof, or any such privilege or privileges, right or rights, as aforesaid, respecting the amount of purchase money or value thereof, or as to the damages such appropriation shall cause</p>
<p>Purchase money or damage to be ascertained by arbitration</p>	

to them or otherwise, or as to the amount of damage arising through the construction of any dam, the same shall be decided by three arbitrators, to be appointed as hereinafter mentioned, namely: The Company shall appoint one, the owner or owners shall appoint another, and the two such arbitrators shall, within ten days after their appointment, appoint a third arbitrator; but in the event of such two arbitrators not appointing a third arbitrator within the time aforesaid, one of the Judges of the Supreme Court of British Columbia shall, on application of either party, appoint such arbitrator. In case any such owner or occupant shall be an infant, married woman, or insane, or absent from this Province, or shall refuse to appoint an arbitrator on his behalf, then it shall be the duty of one of the Judges of the Supreme Court of British Columbia, on application being made to him for that purpose by the Company, to nominate and appoint three different persons as arbitrators.

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Arbitrators, how appointed.

The arbitrators to be appointed as hereinbefore mentioned, shall award, determine, adjudge and order the respective sums of money which the Company shall pay to the respective persons entitled to receive the same, and the award of the majority of the said arbitrators shall be final.

Arbitration proceedings.

And the said arbitrators shall be and they are hereby required to attend at some convenient place, at or in the vicinity of the said Town of Esquimalt, to be appointed by the Company, after eight days' notice given for that purpose by the Company, then and there to arbitrate and award, adjudge and determine, such matters and things as shall be submitted to their consideration by the parties interested; and each arbitrator shall be sworn before some one of Her Majesty's Justices of the Peace for British Columbia (any of whom may be required to attend the said meeting for that purpose) well and truly to assess the value or damages between the parties to the best of his judgment.

Provided always, that any award under this Act shall be subject to be set aside on application to the Supreme Court of British Columbia, in the same manner and on the same grounds as in ordinary cases of arbitration, in which case reference may be again made to arbitration as hereinbefore provided, and that any sum so awarded shall be paid within three months from the date of the award or determination of any motion to annul the same, and in default of such payment the proprietor may resume possession of his property, and all his rights shall thereupon revive, and the award of a majority of the said arbitrators shall be binding on all parties concerned, subject as aforesaid.

10. The lands, privileges and waters, which shall be ascertained, set out or appropriated by the Company for the purposes thereof as aforesaid, shall thereupon and for ever after be vested in the Com-

Lands, &c., appropriated to be vested in the Company.

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Power to convey and distribute water.

Enter on lands.

Lay pipes, &c.

Works to be vested in the Company.

Penalty for injury to the water-works property.

pany, and it shall be lawful for the Company to construct, erect and maintain in and upon said lands all such reservoirs, water works and machinery requisite for the said undertaking, and to convey the water thereto and therefrom in, upon, and through any of the grounds and lands lying intermediate between the said reservoirs and water works and the springs, streams, rivers, bodies of waters or lakes from which the same are supplied, and the Town of Esquimalt and said peninsula as aforesaid, by one or more lines of pipes, as may from time to time be found necessary; and for better effecting the purposes aforesaid, the Company and their servants are hereby empowered to enter and pass upon and over the said grounds or lands intermediate as aforesaid, and the same to cut and dig up if necessary, and to lay down the said pipes through the same, and in, upon, over, under and through the highways and roads in Highland and Esquimalt Districts or any of them, and in, through, over and under the public ways, streets, lanes or other passages of the said Town of Esquimalt, and in, upon, through, over and under the lands and premises of any person or persons, bodies corporate, politic or collegiate, whatsoever, and to set out, ascertain, use and occupy such part or parts thereof as they, the Company, shall think necessary and proper, for the making and maintaining of the said works, or for the opening of new streets required for the same, and for the purchasing of any lands required for the protection of the said works, or for preserving the purity of the water supply, or for taking up, removing or altering the same, and for distributing water to the inhabitants of the Town of Esquimalt and the said peninsula, or of the proprietors or occupiers of the land through or near which the same shall pass, and for this purpose to sink and lay down pipes, make reservoirs and other conveniences, and from time to time to alter all or any of the said works as well in the position as in the construction thereof, as to the Company shall seem meet, doing as little damage as may be in the execution of the powers hereby granted to them, and making reasonable and adequate satisfaction to the proprietors to be ascertained in case of dispute by arbitrators as aforesaid, and all such water works, pipes, erections and machinery, requisite for the said undertaking, shall likewise be vested in and be the property of the Company.

11. If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the Company or any of their managers, contractors, servants, agents or workmen in the exercise of any of the powers and authorities in this Act authorized and contained, or if any person shall wilfully and maliciously let off or discharge any water, so that the same shall run waste and useless out of the said works, or if any person shall throw or deposit any injurious noisome or offensive matter into the said water or

water works, or upon the ice or in any way foul the same or commit any wilful damage or injury to the works, pipes or water, or encourage the same to be done, every person offending in any of the cases, aforesaid shall on conviction thereof, before any Justice of the Peace having jurisdiction within the locality where the offence shall or may be committed, forfeit and pay for every such offence a sum not exceeding five hundred dollars, together with the costs of conviction; one half to be applied to the use of the Company, and the other half to him or her who shall lay the information; and such Justice may in default of payment, condemn such person to be confined in the common gaol of the City of Victoria for a space of time not exceeding twelve calendar months, as to such Justice may seem meet; and such person or persons so offending shall be liable to an action at law at the suit of the Company to make good any damage done by him, her or them.

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12. The Company shall regulate the distribution and use of the water on all places and for all purposes, and shall from time to time fix the rent or price which any owner or occupant of any house or building, who shall use such water shall pay for the use thereof, but in no case shall the said Company fix a greater rent than sixty cents a thousand gallons for water, or one dollar a month from the owner or occupants of any house or building wherein the number of persons does not exceed four, and thirty cents a month per capita for each and every additional occupant; and the company shall have the power of electing whether they shall charge parties using water from their works by the gallon or per capita as aforesaid, or one dollar a month as aforesaid.

Regulation of the distribution and use of water.

Rates to be charged.

13. If any person or persons shall lay or cause to be laid any pipe or main to communicate with any pipe or main of the said water works, or in any way obtain or use any water thereof, without the consent of the Company or their Manager, he or they shall forfeit and pay to the Company the sum of ten dollars and also the further sum of two dollars and fifty cents for each day such pipe or main shall so remain, which said sum together with costs of suit in that behalf, may be recovered by civil action in any Court of law in the Province of British Columbia having civil jurisdiction to that amount.

Penalty for connecting pipes with the Company's mains, &c.

14. If any person shall bathe, or wash or cleanse any wool, cloth, leather, skins, or animals, or place any nuisance or offensive thing within or near the source of supply for such water works in any lake, river, pond, source or fountain from which the water of the said water works is obtained, or shall convey or cast, cause, throw or put any filth, dirt, dead carcasses or other noisome or offensive thing therein, or cause, permit or suffer the water of any sink, sewer or drain to run or be conveyed into the same, or cause any other

Penalty for fouling water.

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thing to be done whereby the water therein may be in anywise tainted or fouled, every such person shall, on conviction thereof before any Justice of the Peace, be by such Justice adjudged and condemned to pay a penalty for every such offence not exceeding two hundred and fifty dollars, together with costs, one-half to be paid to the Company as damages, and the other half to him or her who shall lay the information; and such Justice may, on default of payment, condemn such person to be confined in the common gaol at Victoria, for a space not exceeding one calendar month, with or without hard labour

Penalty for waste or improper use of
er.

15. If any person being occupant, tenant or inmate of any house, or otherwise supplied with water from the said Water Works by the Company, sells or disposes of the water thereof, or gives it away, or permits it to be taken or carried away, or uses it, or applies it to the benefit of others, or to any other than his or her own use or benefit, or wrongfully neglects or improperly wastes the water, every such person shall on conviction thereof before any Justice of the Peace, be by such Justice adjudged and condemned to pay a penalty for every such offence not exceeding \$25, together with costs, one-half to be applied to him or her who shall lay the information, and the other moiety to form part of the assets of the Company, as compensation for any damages done, and such Justice may, in default of payment, condemn such person to be confined in the common gaol in Victoria, for a space not exceeding one calendar month, with or without hard labour.

Laying pipes across
vacant spaces.

16. In all places where a vacant space intervenes between a line of the street and the wall of the building into which the water is to be taken, the Company is empowered to lay the service pipe across such vacant space, such charge to be payable with the first water rates, and to be collected in the same manner from the said owners.

Service pipes, taps,
&c., to be under the
control of the Com-
pany.

17. The service pipe from the line of the street to the interior face of the outer wall of the building supplied, together with all branches, couplings, stop-cocks and apparatus placed thereon by the Company, shall be under the control of the Company, and if any damage be done to this portion of the service pipe or its fittings, either by neglect or otherwise, the Company may repair the same and charge the same to the occupant or owner of the premises; the stop-cock placed by the Company inside of the building shall not be used by the water tenant except in cases of accident, or for the protection of the building or the pipes, and to prevent flooding of the premises.

Taps.

18. All parties supplied with water by the Company may be required to place only such taps for the drawing and the shutting off the water as may be approved of by the Company.

19. The Company shall not be liable for damage caused by the breaking of any service pipes or attachment, or for any shutting off of the water, for the purpose of repairing, maintaining or clearing the pipes, provided notice be given of the intention to shut off the water, when the same is shut off more than six hours at any one time.

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Non-liability for damage by water.

20. The servants of the Company shall have free access at proper hours of the day, and upon reasonable notice given, and request made for that purpose, to all parts of every building in which water is delivered and consumed.

Right of access.

21. If any person or persons, not being in the employment of the Company, and not being a member of any duly constituted fire brigade in the Town or District of Esquimalt, and duly authorized on that behalf, shall wilfully open or close any hydrant, or obstruct the free access to any hydrant, stop-cock, chamber or hydrant chamber, by placing on it any building material, rubbish or otherwise, or take or appropriate to his own use any water from any public or private tap, any such person shall on conviction before any of Her Majesty's Justices of the Peace, forfeit and pay for each offence a sum not exceeding fifty dollars, or on default of payment be imprisoned in the gaol at Victoria for a term not exceeding thirty days; and each time the said hydrants are interfered with, and each day said obstructions shall continue, shall be considered a separate offence.

Penalty for interfering with hydrants &c.

22. If any suit or action be brought against any person or persons for anything done in pursuance of this Act, the same shall be brought within six calendar months next after the act committed, or in case there shall be a continuation of damages, then within one year after the original cause of such action arising.

Limitation as to time for bringing actions against the Company

23. The said Water Works shall be constructed, completed and finished to the Town of Esquimalt, the Royal Naval Dock Yard, and the Royal Naval Hospital, except as to the laying of additional pipes and mains, within three years from the passing of this Act.

Time limit for commencement and completion of the works.

24. In order to prevent the waste of water and settle disputes arising therefrom as to the quantity consumed, the Company are empowered to place water meters upon any service pipe or connection within or without any house or building where water is used, as they may deem expedient, and for this purpose, and for the purpose of protecting or of regulating the use of any such meter, to set or alter the position of same or of any pipe connection or tap, and to fix the price to be paid for the use of any such meter, and the times when and the manner in which the same shall be payable, and also to charge for and recover the expense of such alterations, may be collected in the same manner as water rates (and shall be a

Use of water meters,

Charges for the same.

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lien on the real estate to the same extent), and neither the meter nor any fittings thereunto belonging shall be subject to or liable for rent by the possessor or owner of any premises wherein the same may be.

Penalty for tampering with water meters.

25. Any person who shall wilfully alter any meter, placed as in the last section mentioned, so as to lessen or alter the amount of water registered thereby, or so as to cause the quantity registered or used to be falsely indicated, shall incur a penalty of not less than five dollars nor more than one hundred dollars, to be recovered with full costs on summary conviction before any Justice of the Peace having jurisdiction in the locality in which the said offence is committed; and in case such penalty and costs are not paid forthwith, such Justice of the Peace may commit the offender to the common gaol at Victoria for a period not exceeding thirty days, unless the said penalty and costs are sooner paid.

Power to make rules for general management.

26. The Company shall have power from time to time to make rules and regulations for the general maintenance or management, and for the collection of the water rent, and for fixing the time and times when, and the places where the same shall be payable, and in case of default in payment to enforce payment by shutting off the water, or by suit at law before any court of competent jurisdiction, or both.

Certain sections of the "Land Clauses Consolidation Act, 1845," to apply.

27. The "Land Clauses Consolidation Act, 1845," as modified by the "Vancouver Island Land Clauses Consolidation Act, 1863," shall not apply, but the following sections of the "Land Clauses Consolidation Act, 1845," shall be read with and as part of the Act, so far as the same may be applicable, and except in so far as such sections, or any of them, may be varied or modified by the provisions of this Act, or are repugnant thereto: Sections 26, 29, 30, 31, 32, 33, 34, 36, 37, 69, 70, 71, 72, 73, 74, 76, 78 and 79; but in section 69 in lieu of the word "Bank" and the next following words there shall be read the "Treasury of British Columbia to the account of the Registrar of the Supreme Court of British Columbia;" and in section 70 and said subsequent sections, in lieu of the words "Court of Chancery in England" there shall be read "the Supreme Court of British Columbia;" and in sections 71, 73 and 76, in lieu of the word "Bank," there shall be read the "Treasury of British Columbia to the account of the Registrar of the Supreme Court of British Columbia."

Table A to the "Companies' Act, 1862," to apply.

28. The several clauses in Table A in the first Schedule of the Act of the Imperial Parliament, passed in the session of Parliament holden in the twenty-fifth and twenty-sixth years of the reign of Her Majesty Queen Victoria, Chapter 89, entitled "The Companies'

Act, 1862," which are not varied or inconsistent with the provisions of this Act, and are applicable to the Company, shall be read with and form part of this Act.

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29. Subject to the provisions of this Act, the Company may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the said Table A, or make new regulations to the exclusion of or in addition to all or any of the regulations of the Company; and any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the said Table, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

The Company may alter, &c., any of the regulations contained in said Table A.

30. A resolution passed by the Company shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person, or by proxy (in cases where by the regulations of the Company proxies are allowed) at any general meeting, of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the Chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notices of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

Special resolutions how passed.

Notice of meeting to be given.

In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Counting votes.

In default of any regulations as to voting, every member shall have one vote; and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the said Table A; and in default of any regulations as to the persons to summon meetings, five members shall be competent to

Votes and voters.

Notice of meetings.

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Copy resolution to be sent Registrar of Joint Stock Companies.	A copy of any special resolution that is passed by the Company under this Act, shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him.
Penalty for default.	If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every Director and Manager of the Company, who shall knowingly and wilfully authorize or permit such default, shall incur the like penalty.
Service of documents upon the Company.	Any summons, notice, order or other document required to be served upon the Company, may be served by leaving the same or sending it through the Post in a prepaid letter addressed to the Company at their registered office.
Service by post.	Any document to be served by Post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the Post Office.
Authentication of documents by the Company.	Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any Director, Secretary or other authorized officer of the Company, and need not be under the common seal of the Company, and the same may be in writing or in print, or partly in writing and partly in print.
Exemption from taxation for 3 years.	31. The water works to be constructed as aforesaid, and the lands, buildings, machinery, reservoirs, pipes, and all other property connected with or appertaining or belonging to the same shall be exempt from Provincial taxation for three years from the passing of this Act.
No Chinese to be employed.	32. It shall not be lawful for the Company or its contractors to employ any Chinese in or about the laying of the pipes of the said water works, or the maintenance thereof.
Short title.	33. This Act may be cited for all purposes as the "Esquimalt Water Works Act, 1885."