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COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT,

SUFFOLK COUNTY.

No. 4478.

IN EQUITY.

In the matter of the Petition of CHARLES FRANCIS ADAMS *et al.*, Metropolitan Park Commissioners, for Appointment of Commissioners to determine payments by cities and towns under Acts of 1893, Chapter 407.

DECREE.

And now, upon the above-entitled petition, it appearing to the court that due notice thereof was given to all cities and towns, respondents, according to the order of the court, and in accordance with the recommendations made to the court by a meeting of the several respondents held after due notice, no person objecting, it is ordered that William C. Endicott of Salem, Charles W. Clifford of New Bedford, and Hiram P. Harriman of Wellfleet, be and they are hereby appointed commissioners under section 10 of chapter 407 of the acts of the year 1893, to determine the proportion in which each of the cities and towns named in said act shall annually pay money into the treasury of the commonwealth for the term of five years next following the year of the first issue of scrip or certificates, as provided for by said act to meet the interest and sinking fund requirements for each of said years, as estimated by the treasurer of the commonwealth, and to meet the expenses of preservation and necessary care of said public reservations as estimated by said board and certified to said treasurer, and any deficiency in the amount previously paid in, as found by said treasurer; and to do and perform all the other duties prescribed for them by said act, and to exercise all the powers thereby and by law reposed upon the said commissioners, as provided for by said act and hereby appointed.

By the Court,

JOHN NOBLE, *Clerk.*

May 28, 1894.

A true copy. Attest: JOHN NOBLE, *Clerk.*

The commissioners, William C. Endicott, Charles W. Clifford, and Hiram P. Harri-
man, appointed by the court upon the above-entitled petition as commissioners under section
10 of chapter 407 of the acts of the year 1893, to determine, in such manner as they should
deem just and equitable, the proportion in which each of the cities and towns named in said
act shall annually pay money into the treasury of the commonwealth for the term of five
years next following the year of the first issue of scrip or certificates as provided for by said
act for the purposes therein set forth, and to perform all other duties prescribed for them
thereby, appointed a time and place for hearing all the parties interested in the matters sub-
mitted to their determination, and gave due notice thereof to the attorney general, to the
treasurer of the commonwealth, to the board of park commissioners, and to each of the
cities and towns named in said act. And all said cities and towns by their respective officers
or counsel have attended at the time and place appointed for said hearing, or at the adjourn-
ments thereof, with such witnesses and evidence as they saw fit to produce, and were heard
by all of said commissioners. Said public hearings were held at the court house in Boston
on the 16th day of July and 14th day of November, 1894, on which latter day the hearing
was adjourned to the 3d day of December, 1894.

In the month of November, 1894, after said adjournment, Hon. William C. Endicott
resigned his position on said commission. His resignation was accepted, and George F.
Richardson was appointed commissioner to fill the vacancy occasioned by such resignation,
and to do and perform all the duties prescribed for said commissioners by said act, and to
exercise all the powers thereby and by law reposed in said commissioners as provided for
by said act. The order of the court filling said vacancy is as follows:—

“COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, SS.

SUPREME JUDICIAL COURT.

CHARLES F. ADAMS *et als.*

Comm'rs &c. Petitioners &c. &c.

In the above-entitled case upon the petition of Charles Francis Adams and others, Met-
ropolitan Park Commissioners filed November 27, 1894, praying 'for the appointment of a
Commissioner as successor to, and to fill the vacancy occasioned by, the resignation of
Honorable William C. Endicott, heretofore appointed' by this Court, 'one of the Commis-
sioners to perform the duties prescribed by said Act,' Chapter 407, of the Acts of 1893,—

It is ordered,—that Hon. George F. Richardson, of Lowell, be and he hereby is
appointed a Commissioner to fill the vacancy occasioned by the resignation of Hon. William
C. Endicott,—and to do and perform all the duties prescribed for said Commissioners by

said Act, and to exercise all the powers thereby and by law reposed in said Commissioners, as provided for by said Act.

By the Court,

JOHN NOBLE, *Clerk.*"

November 28, 1894.

A true copy. Attest: JOHN NOBLE, *Clerk.*

On the 3d of December, 1894, being the day to which the hearing had been adjourned, the newly appointed commissioner attended, and from and including said day sat and acted with his associates, Messrs. Clifford and Harriman.

The stenographer's report of the proceedings at the two prior hearings was submitted to and read by Mr. Richardson, to which no objection was made, and it was considered by him with the same effect as if he had been present at such previous hearings acting as one of the commissioners.

AWARD OF COMMISSIONERS.

The undersigned, George F. Richardson, Charles W. Clifford, and Hiram P. Harriman, duly appointed commissioners in the manner, under the authority, and for the purposes hereinbefore enumerated, and in addition to the duties so imposed being required by section 13 of chapter 288 of the acts of 1894, to determine in such manner as we shall deem just and equitable the proportion in which each of the cities and towns of the Metropolitan Parks district shall annually pay money into the treasury of the commonwealth for the term of five years next following the year of the first issue of the scrip or certificates therein named for the purposes therein set forth, and to perform all the other duties, and to exercise all powers imposed by law upon them, have attended to the duties assigned to them, and now make the following report:—

That we appointed a time and place for hearing all parties interested in the matters submitted to our determination, and due notice thereof was given, as hereinbefore fully set forth, and that such of said cities and towns as desired so to do have, by their respective officers or counsel, attended at the time and place appointed for such hearing, or at the adjournments thereof, with such witnesses and evidence as they have seen fit to produce, and have been heard by all of us sitting together as fully as they desired. Said public hearings were held by adjournment at the court house in Boston on the 3d and 4th days of December, 1894, and on the 27th day of April, the 1st, 2d, 7th, and 8th days of May, 1895. In addition to the information laid before us at said hearings, with the assent of all parties in interest, we visited together the several public reservations and parkways, and such cities and towns in the district as we were, by their respective officers or counsel, requested to visit, on the 29th and 30th days of April, and on the 1st, 2d, 3d, and 6th days of May, 1895.

After it had appeared in evidence that of the entire amount of \$2,300,000 placed at the disposal of the park commissioners under the various acts of 1893 and 1894 more than \$1,800,000 had either been expended by said board or applied in such a manner as to make the commonwealth liable therefor, the counsel for the town of Wakefield objected to the taking of further testimony on the ground "that the park commissioners had not yet made such a complete case as would warrant calling upon the towns for any evidence in the matter." We overruled the objection, and the counsel duly excepted.

The same counsel also objected "to the admission of any evidence of existing parks in any town or city." This objection was overruled, and exception was duly taken.

And now, after hearing the parties, their evidence and arguments, and carefully considering all the facts and considerations which have been presented to us, we determine and award as follows:—

In pursuance of the authority contained in chapter 407 of the acts of the year 1893, a Metropolitan Park Commission was appointed, and authorized in the name and for the benefit of the commonwealth to acquire, maintain, and make available to the inhabitants of the thirty-seven cities and towns hereinafter named, which were to constitute the Metropolitan Parks district, open spaces for exercise and recreation. To meet the expenses which might be incurred under the provisions of said act, and of all other acts in amendment thereof (see Sts. 1894, c. 483, sec. 4), the treasurer and receiver general, with the approval of the governor and council, was required to issue scrip or certificates of debt in the name and behalf of the commonwealth to an amount not exceeding one million dollars, which limitation was subsequently, by the act of 1894 before cited, fixed at \$1,500,000.

By chapter 483 of the acts of 1894 the Metropolitan Park Commission was empowered to acquire any of the land, flat or beach, in the town of Revere lying along, upon, or near, and including so much of the location and railroad of the Boston, Revere Beach & Lynn Railroad Company as said board might deem best, and to hold, maintain, and care for the same as a park or public open space for exercise and recreation, in the manner prescribed in the act of 1894 hereinbefore referred to.

By chapter 509 of the acts of 1894, the said commission, for the purpose of acquiring open spaces for exercise and recreation along or near Charles river from the Essex-street bridge, so called, at Cottage Farms towards the source of the river, were authorized to expend the sum of \$300,000 in addition to the amounts before appropriated.

By chapter 305 of the acts of the current year the said commissioners, for the purpose of carrying out the provisions of the acts before cited, were authorized to expend the further sum of \$500,000 in addition to all sums hitherto authorized to be expended by it.

The total amounts thus appropriated by chapter 407 of the acts of 1893 (the park act, so called) and the amendments thereto, is \$2,300,000.

The Metropolitan Park Commissioners, by chapter 288 of the acts of 1894, were authorized to connect any road, park, way, or other public open space, with any part of the cities or towns of the Metropolitan Parks district by a suitable roadway or boulevard; and to meet the expenses of taking and constructing the same the treasurer and receiver general was required, with the approval of the governor and council, to issue scrip or certificates of debt in the name of the commonwealth to an amount not exceeding \$500,000.

Of the amount appropriated by the original park act of 1893, viz., \$1,000,000, there has been applied by the Metropolitan Park Commissioners, the following sums: —

On account of Blue Hills reservation	\$250,000
On account of Middlesex Fells reservation	420,000
On account of Stony Brook reservation	200,000
On account of Beaver Brook reservation	30,000
	\$900,000

The total amount appropriated by amendments to said act, viz., \$1,000,000, has been applied by said commissioners on account of Revere Beach reservation.

The sum of \$300,000 which was authorized to be expended for the Charles river reservation has been applied by said commissioners.

Of the \$500,000 appropriated by the boulevard act, the said commissioners have applied, on account of the Mystic Valley parkway \$120,000, and on account of the Middlesex Fells parkway, \$175,000; and the balance, \$115,000, remains unapplied, for the reason that the selectmen of the town of Milton, in which the commissioners had taken streets and lands to be laid out as the Mattapan parkway, failed to concur in such taking.

The Blue Hills reservation is located in the city of Quincy and the towns of Milton, Canton, and Braintree; the Middlesex Fells reservation in the cities of Medford and Malden, and the towns of Melrose, Stoneham, and Winchester; the Stony Brook reservation in the city of Boston and the town of Hyde Park; the Beaver Brook reservation in the city of Waltham and the town of Belmont; the Charles river reservation in the cities of Boston, Cambridge, Newton, and Watertown; the Revere Beach reservation in the town of Revere. The Mystic Valley parkway is located in the city of Medford and the towns of Arlington and Winchester; the Middlesex Fells parkway is in the cities of Malden and Medford; the proposed Mattapan parkway was to be located in the town of Milton.

Chapter 407 of the acts of 1893 requires that fifty per cent of the total cost of the parks shall be paid by the city of Boston, and that the balance shall be assessed upon the remaining thirty-six cities and towns in the Metropolitan Parks district.

Chapter 288 of the acts of 1894 provides that of the total cost of the boulevards the

commonwealth shall pay fifty per cent, and that the balance shall be assessed upon the thirty-seven cities and towns comprising the Metropolitan Parks district.

These acts also make provision for the payment of the expenses in the preservation and care of the reservations and boulevards. As we are required to determine, in such manner as we shall deem just and equitable, the proportion in which the burdens imposed by the foregoing acts shall be apportioned on the several cities and towns in the district, it is proper that we should state what elements we have taken into consideration in making the apportionment, and our reasons therefor. The ordinary manner of distributing the burdens of taxation is upon the basis of valuation; but it is evident that the legislature did not deem such a method proper in this instance, otherwise they would have adopted it.

The reservations were acquired, and are to be maintained and made available to the inhabitants of the several cities and towns in the district as open spaces for exercise and recreation; and the expenses of such acquisition and maintenance might readily have been apportioned by statute on the basis of population.

From a consideration of the facts and circumstances which preceded and related to the enactment of chapter 407 of the acts of 1893, taken in connection with the language made use of in prescribing the manner in which the apportionment should be made, it is evident that the legislature intended that other elements than property and population, either or both, ought to be taken into consideration in determining the proportion in which the burdens created by that act should be borne.

The Metropolitan Park Commissioners, appointed under the provisions of chapter 342 of the acts of 1892, submitted to the legislature in 1893 a bill which was subsequently enacted without material change, and became chapter 407 of the acts of that year. By the tenth section thereof the commissioners to be appointed by the Supreme Judicial Court to make the apportionment of the cost of the parks upon the thirty-seven cities and towns in the district, were required to "fix and return the proportion to be paid by the city of Boston for the first period of five years at fifty per cent of the whole." In their report to the general court accompanying said bill (House document No. 150) and explanatory thereof, the park commissioners say "that during the first five years of the existence of the proposed Metropolitan Parks district, the proportion of the total expense which may be incurred is, in the case of Boston, arbitrarily fixed at one half the whole, leaving the other half to be apportioned among the cities and towns of the district other than Boston. Fifty per cent of the whole would be unquestionably less than the proportion allotted to Boston on a division based upon either valuation or population; but on the other hand, the commissioners, in fixing this arbitrary allotment, had in mind the fact that Boston had already incurred, or is now incurring, an expense of \$11,000,000 in developing a system of parks at its own cost, which are free to the whole Metropolitan district."

The act itself, in terms prescribes that the commissioners, to be appointed by the Supreme Judicial Court, shall, "in such manner as they shall deem just and equitable, determine the proportion" in which the several cities and towns in the district shall annually pay money into the treasury of the commonwealth. And as the language quoted has in several cases received a judicial construction, we have, in making our award, taken into consideration and given due weight to all the elements which we might lawfully regard. In *Commonwealth v. Newburyport*, 103 Mass. 129-134, which was a case where the county commissioners of Essex county had, under a special act, laid out as highways certain bridges across Merrimac river, and fixed the relative portions of expense for maintaining the same which should be borne by said county and by any of the cities and towns lying near or contiguous to said bridges, in such proportion as in their judgment might seem just and equitable, Mr. Justice WELLS, in giving the opinion of the court, says the "relative proportion is to be fixed with reference to all the circumstances of benefit to the respective municipalities affected, and to their population, extent, and ability to bear the burden."

In the recent case of *Kingman and others, petitioners*, 153 Mass. 566-579, where commissioners were required, in such manner as they should deem just and equitable, to determine the proportion in which certain cities and towns should bear a burden imposed by statute on all, Mr. Justice CHARLES ALLEN, giving the opinion, says, —

"Where a great public work establishing an extensive system of sewerage is entered upon for the use of many different cities and towns, there are many elements which ought to be taken into consideration in apportioning the cost; for instance, the exigency or special need of such an improvement in particular localities, the area which can be accommodated, the present or probable population or wealth of the different cities and towns, the value of the land and its adaptability for houses, factories, or other places of business, and other elements which cannot be fully enumerated in advance. . . . The apportionment should be just and equitable under all the circumstances which may be found to exist. . . . In the determination there must necessarily be a large discretion as to the weight which is to be given to particular considerations."

Guided by such authority, we have, in making our apportionment, taken into consideration the valuation of the respective cities and towns which are to bear the burden imposed by the legislature because all taxation of a general public nature, whether levied for the benefit of the commonwealth, or counties, cities, or towns, is assessed upon property, with the single exception of the relatively insignificant tax on polls. As the acquisition and maintenance of these public reservations, and the parkways connecting the same,

were declared to be for exercise and recreation of the people, we have taken into consideration the population of each of said cities and towns.

Since the several reservations differ in size and are located in various parts of the district, it is manifest that some of the cities and towns will receive greater benefits therefrom than others. It is also apparent that to some there is greater need of the reservations than to others. We therefore determined it to be just and equitable that such special benefits should be taken into account in making the apportionment. In the application of this rule, due allowance has been made for the losses which certain cities and towns in the district have sustained by reason of the taking for public purposes of taxable property within their respective limits. We have also taken into account the fact that several of the municipalities, had, by parks, commons, or other open spaces, provided places for the exercise and recreation of their inhabitants.

In applying these principles under the park acts we pursued the following method:—

We took the population of each of the thirty-six cities and towns in the year 1890, that being the date of the latest official census, and added them together. We then ascertained the percentage which the population of each city and town bore to the total population of all.

We pursued the same method in respect to the valuation of the aforesaid cities and towns, and thus ascertained what percentage of the gross valuation the valuation of each city and town was. In this computation we used the valuations adopted by the commonwealth in assessing the state tax for the current year (chapter 90 of the acts of 1895), this being the latest official valuation, and it includes the value of bank and corporation stocks and ships and vessels, the taxes on which accrue to the several cities and towns in the district.

We combined the percentages so ascertained, finding the average percentage of the two.

Starting again we took each reservation and first determined that in relation to special benefits each reservation should bear the same proportion of the burden that its cost, as given to us in evidence by the Metropolitan Park Commissioners, bore to the aggregate cost of all the reservations. To ascertain this we took the statement of the relative cost, made by said commissioners on page 5 of their report for the current year, showing the appropriation of \$900,000 of the first \$1,000,000, and we apportioned to the different reservations the remaining \$100,000 *pro rata*.

We then took, for the Revere Beach reservation, the appropriation made by chapter 483 of the acts of 1894 as amended by chapter 305 of the acts of 1895, amounting to \$1,000,000. To these we added the amount appropriated by chapter 509 of the acts of 1894 for the Charles river reservation, which was \$300,000, giving as the total appropriation \$2,300,000, and then ascertained the percentage of the gross appropriation which these several amounts for the different reservations bear to the whole. For example, we took the Blue Hills

reservation with the towns and cities which we had determined to be especially benefited thereby, and found the valuation of each, and by adding these valuations together ascertained the percentage which the valuation of each of said cities and towns bears to the gross valuation of all the cities and towns in said group. We then pursued the same method with relation to the population of said cities and towns, thus ascertaining the percentage which the population of each bears to the gross population of the group. We then determined the percentages which each of said cities and towns in said group should bear among themselves for special benefits, in respect to the total cost of said reservation. We then combined these percentages of valuation and population, getting their average, and combined this average with the special benefit per cent, getting the average of these two per cents, this being equivalent to assessing one half the amount charged to special benefits upon the average percentages of valuation and population combined, and the other half upon the special benefit percentage as fixed by us. The average per cent thus obtained was multiplied by the percentage of cost which this reservation bore to the gross cost of all the reservations as before stated. The resultant per cent was thus the percentage which each city and town in the group should bear of the gross amount assessed by us in respect to special benefits.

The same method was followed in respect to each of the other reservations, and the results were distributed to the several cities and towns in the district. The addition of the several percentages so charged to each city or town thus gave the per cent which each should bear of the gross cost in respect to special benefits.

We then determined that one half of the amount apportioned upon the several cities and towns should be assessed upon the average percentage of their valuation and population, and the other half upon the aforesaid percentages in respect to special benefits; and to obtain this we combined said percentages and found their averages.

As the statute provided that Boston should pay fifty per cent of the total cost, we took the percentages obtained by the method hereinbefore stated and divided them by two, and thus ascertained the final percentage of the gross cost which each city and town should pay. In other words, we apportioned one half of the entire cost, being the amount which remained after deducting the fifty per cent which, by the provisions of the statute, the city of Boston was required to pay, in the following manner, viz., twenty-five per cent upon the average per cent of the valuation and population combined of all the cities and towns in the district except Boston; and the remaining twenty-five per cent in respect of the special benefits which each city and town received on account of the reservations in the following manner: taking each group, one half was apportioned upon the cities and towns constituting the same upon their average percentage of valuation and population combined, and the other half upon the percentage of special benefits as determined by us.

In respect to the boulevard act, we adopted the same method, with two exceptions: first,

we included Boston in the district; second, in respect to that portion of the appropriation which had been set apart by the Metropolitan Commission for the Mattapan parkway, which, for the reason already stated, had failed of a legal appropriation for that object, instead of assessing it in respect of special benefits, we assessed it upon all the cities and towns in the district upon the average percentage of their valuation and population combined.

In other words, the effect of this apportionment is that one half of the fifty per cent not paid by the commonwealth is assessed upon the average percentage of valuation and population combined, and of the other half fifty-nine per cent is assessed in respect of special benefits, and forty-one per cent, representing the portion of the appropriation not yet applied, upon the average valuation and population per cent of all the cities and towns in the district.

We also determine and award that the several cities and towns shall annually contribute the same percentage to the expense of preservation and care incurred under said park acts and said boulevard act, which we have determined to be just and equitable in respect of the cost incurred under said acts. We deem that the same principle which governed us in our decision as to the assessment of cost should also apply in respect to the expense of preservation and care.

We determine and award that the several cities and towns named in chapter 407 of the acts of 1893 (the park act, so called) shall annually pay money into the treasury of the commonwealth for the term of five years next following the year of the first issue of the scrip or certificate authorized by said act and the amendments thereto to meet the interest and sinking fund requirements for each of said years, as estimated by the treasurer of the commonwealth, and to meet the expenses of preservation and necessary care of said public reservations, as therein required to be estimated and certified, and any deficiency in the amount previously paid in, as found by said treasurer, in the proportions set against the names of said cities and towns respectively in the following table:—

City or town.	Per cent.
Boston . . . . .	.50000000
Cambridge . . . . .	.06831659
Chelsea . . . . .	.02752472
Everett . . . . .	.01739138
Lynn . . . . .	.04727503
Malden . . . . .	.02873053
Medford . . . . .	.01235497
Newton . . . . .	.02353063
Quincy . . . . .	.01358944
Somerville . . . . .	.04670557

City or Town.	Per cent.
Waltham . . . . .	.01463205
Woburn . . . . .	.01071622
Arlington . . . . .	.00631849
Belmont . . . . .	.00417344
Braintree . . . . .	.00408476
Brookline . . . . .	.03773741
Canton . . . . .	.00550393
Dedham . . . . .	.00921888
Dover . . . . .	.00043977
Hingham . . . . .	.00235310
Hull . . . . .	.00090814
Hyde Park . . . . .	.01574547
Melrose . . . . .	.01302584
Milton . . . . .	.01665028
Nahant . . . . .	.00403361
Needham . . . . .	.00150420
Revere . . . . .	.01310286
Saugus . . . . .	.00401696
Stoneham . . . . .	.00510434
Swampscott . . . . .	.00647503
Wakefield . . . . .	.00526433
Watertown . . . . .	.00947276
Wellesley . . . . .	.00262757
Weston . . . . .	.00133269
Weymouth . . . . .	.00674087
Winchester . . . . .	.00650233
Winthrop . . . . .	.00689581
	100%

We also determine and award under the requirements of section 8 of chapter 288 of the acts of 1894, the boulevard act, so called, that the said cities and towns shall annually pay money into the treasury of the commonwealth, during each of the five years next following the first issue of the scrip and certificates of debt authorized by said act to meet one half the interest and sinking fund requirements for each of said years, as estimated by the treasurer of the commonwealth, and one half the expense of care and maintenance, and

one half the office and running expenses of the Board of Metropolitan Park Commissioners occasioned by chapter 288 of the acts of 1894, as estimated by said board and certified to said treasurer, and one half of any deficiency in the amount previously paid in, in the proportion set against the names of said cities and towns, respectively, in the following table:—

PERCENTAGE OF THE ONE HALF NOT PAID BY THE COMMONWEALTH.

Boston	.40090844
Cambridge	.04652089
Chelsea	.01634719
Everett	.02720353
Lynn	.03373451
Malden	.07307157
Medford	.08090101
Newton	.02100782
Quincy	.01060804
Somerville	.11101999
Waltham	.01187175
Woburn	.02330687
Arlington	.01820872
Belmont	.00931859
Braintree	.00298878
Brookline	.01988327
Canton	.00283793
Dedham	.00440637
Dover	.00053047
Hingham	.00290661
Hull	.00104359
Hyde Park	.00604849
Melrose	.00571827
Milton	.00667015
Nahant	.00182568
Needham	.00186993
Revere	.00381745
Saugus	.00213707
Stoneham	.00336154
Swampscott	.00267574

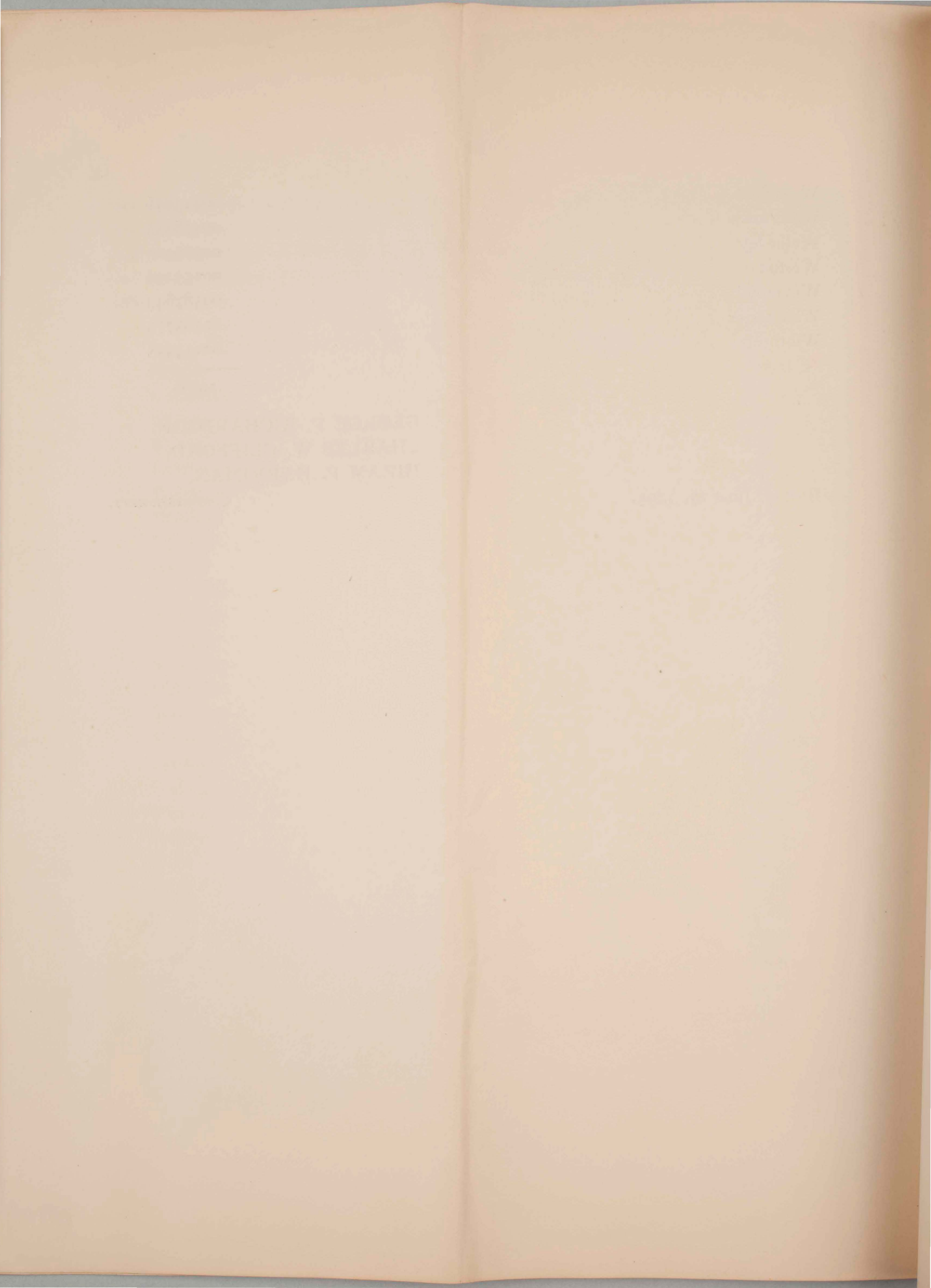
Wakefield	.	.	.	.	.	.	.	.	.	.	.	.00413976
Watertown	.	.	.	.	.	.	.	.	.	.	.	.00478335
Wellesley	.	.	.	.	.	.	.	.	.	.	.	.00309421
Weston	.	.	.	.	.	.	.	.	.	.	.	.00155299
Weymouth	.	.	.	.	.	.	.	.	.	.	.	.00587843
Winchester	.	.	.	.	.	.	.	.	.	.	.	.02565773
Winthrop	.	.	.	.	.	.	.	.	.	.	.	.00214325

 100%

GEORGE F. RICHARDSON,
 CHARLES W. CLIFFORD,
 HIRAM P. HARRIMAN,

Commissioners.

Boston, June 27, 1895.





No. 4478. Eq.

CHARLES FRANCIS ADAMS ET AL.,
METROPOLITAN PARK COMMISSIONERS.

REPORT OF COMMISSIONERS, &c.

Suffolk County.

