

CHAPTER 102.

[Published March 22, 1861.]

AN ACT to amend an act entitled "An act to amend an act entitled an act to incorporate the city of Beloit," approved March 3d, 1857.

(See Supplement to Local Laws.)

CHAPTER 103.

[Published March 26, 1861.]

AN ACT to authorize the city of Portage to build and maintain a Levee, and to authorize the town of Caledonia to aid in building and maintaining said Levee.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows :

SECTION 1. The city of Portage is hereby authorized to levy and collect a special tax by and with the consent of the voters of said city as hereinafter provided, for the purpose of constructing and building a levee on the southerly side or bank of the Wisconsin river, from a point as near as practicable to the north-west corner of town number twelve, (12) north of range eight, (8) east, to the highlands on sections seventeen and eighteen, (17 and 18) in town twelve, (12) north of range nine, (9) east; said tax to be levied and collected in the manner and at the time other taxes are levied and collected in said city of Portage, and said tax not to exceed the sum of three thousand dollars.

SECTION 2. Said levee shall be constructed and built as near the bank of the Wisconsin river as practicable, and shall be built under the direction of three commissioners, to be appointed by the common council of the city of Portage: *provided, however,* that in case the town of Caledonia shall vote to aid in the building of said levee as hereinafter provided in this act, the common council of the city of Portage shall appoint two of said commissioners, and the supervisors of the town of Caledonia, one. And said commissioners shall have the power to appoint one of their number, who shall be

Special tax to build levee.

Where to be built—commissioners, &c.

acting commissioner, and shall have the immediate superintendence of the building and constructing of said levee, and shall receive therefor the sum of two dollars per day for every day actually spent by him in the superintendence of said work.

Duties of commissioners.

SECTION 3. Said commissioners shall have the entire control and superintendence of the work on said levee, and may employ such overseers, engineers, laborers, or let such contracts as they may deem necessary, and whenever they shall have caused work to be done thereon, and shall make satisfactory proof to the common council of the city of Portage that said work has been done, the said common council shall audit and allow such accounts, and draw orders on the treasurer of the said city of Portage for the payment thereof, out of the fund raised by said special tax: *provided, however*, that in case the town of Caledonia shall vote to aid in building said levee as hereinafter provided, the board of supervisors of the town of Caledonia shall audit and allow such accounts to the amount of one-third the value of such work, and draw orders on the treasurer of said town in payment thereof, until said town shall pay therefor, in all, the sum of one thousand dollars.

Supervisors of Caledonia.

May enter upon lands for certain purposes.

SECTION 4. It shall be lawful for the said commissioners, their officers, engineers, agents, contractors and laborers, at any time to enter upon the lands on which said levee is to be constructed, to build the same, and to take any gravel, stones, earth, brush or other material, for embankments and structures necessary to the construction and completion of said levee; and also to enter upon adjacent lands and make such necessary drains, and give such direction to water courses by such means as the said commissioners may deem necessary for the preservation of said levee; subject, however, to the payment of such compensation for damages as said city of Portage and the said town of Caledonia, in case the said town of Caledonia shall vote to aid in building said levee, as hereinafter provided, may agree to pay therefor, or as shall be ascertained in the manner hereinafter provided.

Tender of damages.

SECTION 5. For the purpose of awarding damages and settling for the same, the said commissioners are hereby authorized to tender to the owner or owners of any lands upon which said levee is built or from which any materials have been taken to build said levee, or

upon which any drains have been cut or any damage has been done in the construction of said levee, an amount sufficient in the judgment of said commissioners to cover the damages so done to said land; said commissioners in estimating said damages, to take into consideration the benefit accruing to said land from the building of said levee; and if the owner or owners of said land shall refuse to accept the amount so tendered, as compensation for said damages, or if the owner or owners of said land shall be under any legal disability or residing out of the county of Columbia, it shall be the duty of the county judge of the county of Columbia, on application of either party, to appoint three disinterested persons, residents and freeholders of Columbia county, as appraisers, to view and examine said lands and estimate the injury and damage, if any in their judgment is sustained by the contractors [construction] of said levee, and report the same at such time as such judge shall appoint, under oath or affirmation to the clerk of the circuit court for said county; whereupon said clerk, if any damages have been awarded by said appraisers, shall enter judgment in said court against said city of Portage and said town of Caledonia, in case said town shall aid in constructing said levee, as hereinafter provided, and in favor of the party to whom the damages were so awarded. The application to said judge, the appointment of said appraisers and their report and the proof of tender by the said commissioners as aforesaid, if any tender was made, shall constitute the judgment roll. Said appraisers shall be entitled to the sum of two dollars each for their services in viewing said lands and making their award, to be deposited by the party applying for said appraisers, with the said judge, at the time of making such application, and to be paid to said appraisers at the time of their appointment. The fees of the officers shall be the same as the law provides for similar services in the circuit court. All costs shall be recovered against the said city of Portage and the town of Caledonia, in case the said town shall aid in the construction of said levee, as hereinafter provided: *provided*, the damages awarded by said appraisers shall exceed the amount that may have been tendered by said commissioners to said owner or owners of said land. In case the damages awarded by said appraisers shall be the same, or shall be less

Appraisers may be appointed if commissioners, and owners cannot agree on damages.

than the amount that may have been tendered by said commissioners as aforesaid, then the costs shall be deducted from the amount of damages awarded by said appraisers, and should said appraisers award no damages against said city of Portage and said town of Caledonia, in case said town shall aid in building said levee, as hereinafter provided, then judgment shall be entered for costs against the party applying for said appraisers.

Amount of judgment deposited with clerk.

SECTION 6. It shall be lawful for said city of Portage and said town of Caledonia, in case said town aids in the building of said levee, as hereinafter provided, when said appraisers have made their award of damages, and reported the same to the clerk of the circuit court, and said clerk shall have entered judgment thereon, to deposit with said clerk, for the benefit of the party in whose favor said judgment was rendered, the amount of said judgment; whereupon said commissioners may take, appropriate and occupy such lands for the purposes aforesaid, without awaiting the issue of further proceedings.

How award may be set aside and issue tried.

SECTION 7. In case either party shall be dissatisfied with the award of said appraisers, such party may, at any time within ninety days after the entry of said judgment, by giving ten days' notice to the opposite party, make an application to said circuit court, and shall be entitled to an order of said court, that such judgment be set aside, and that issue be made up between the parties to said judgment; and said issue shall be tried as other issues arising in said court. If, on the trial of said issue, a larger judgment for damages shall be obtained against said city of Portage and said town of Caledonia, in case said town shall aid in constructing and building said levee, than the judgment set aside, the (*the*) costs of said trial shall be recovered against said city and said town. If the judgment obtained shall not be larger, or shall be less than the one set aside, or less than the amount tendered by said commissioners, then all of the costs in the entire proceedings shall be deducted from the amount of the judgment for damages so obtained. If no damages shall be obtained against said city and said town, then judgment for costs shall be entered against the opposing party.

Benefits.

SECTION 8. The said appraisers in assessing the damages to said lands, shall take into consideration the

benefits accruing as well as the damages done to said lands so occupied and appropriated in building said levee aforesaid.

SECTION 9. At the annual election, to be held in the city of Portage on the 2d day of April, 1861, the question shall be submitted to the qualified voters of the city of Portage, whether the said city shall be taxed to build said levee, and each voter shall endorse upon his ballot the words "For levee," or "Against levee." Such votes shall be canvassed and returned in all respects as now provided by law for votes cast for city officers, and if it appears that a majority of the ballots cast on the question are "for levee," the said special tax shall be levied and collected as hereinbefore provided of the city of Portage, and the said levee shall be built by the city of Portage and the town of Caledonia: *provided*, that the said town of Caledonia shall aid in building said levee, as provided in this act, but in case the town of Caledonia shall vote against said levee, and shall refuse to aid in building the same, the city of Portage may proceed to build said levee as provided in this act without the aid of said town.

Question of tax to be submitted to vote of electors of Portage.

SECTION 10. The question shall be submitted to the qualified voters of the town of Caledonia at the annual town meeting, to be held in said town on the 2d day of April, 1861, whether said town shall raise a special tax to aid the city of Portage in building the levee hereinbefore described in this act, and each voter shall endorse on his ballot "For levee" or "Against levee." Such votes shall be canvassed and returned in all respects as now provided by law for votes cast for town officers, and if a majority of the votes cast on the proposition shall be "for levee," the said town is hereby authorized to levy and collect a special tax in the manner and at the time other taxes are collected in said town, said tax not to exceed one thousand dollars; and in case the said city of Portage shall vote to raise the special tax in said city hereinbefore described, then this act shall be in full force and effect, and said levy shall be built by said city, aided by said town as herein provided. But in case a majority of those voting on the question in the town of Caledonia shall vote against the levee, then all of this act that relates to the town of Caledonia shall be null and void.

Ibid. Caledonia.

SECTION 11. It shall be the duty of the mayor or

Notice of vote in Portage.

clerk of the city of Portage, to give notice, by posting up in eight or more public places in the city of Portage, at least six days before the said annual election, a written or printed notice, setting forth that at said annual election the proposition will be voted upon by ballot, whether said city of Portage shall raise a special tax not exceeding three thousand dollars, to build a levee on the southerly bank of the Wisconsin river, from a point as near as practicable to the north-west corner of town twelve, (12) north of range eight, (8) east, to the highlands on sections seventeen and eighteen, (17 and 18) in town twelve, (12) north of range nine (9) east. Those favoring said proposition voting "For levee," those opposing, voting "Against levee."

Ibid. Caledonia.

SECTION 12. It shall be the duty of the chairman of the board of supervisors of the town of Caledonia, or the clerk of said town, to give notice by posting up in four or more public places in said town, at least six days before the said annual town meeting, a written or printed notice, setting forth that at said town meeting the proposition will be voted upon by ballot, whether said town shall raise a special tax not exceeding the sum of one thousand dollars, to aid the city of Portage to build a levee on the southerly bank of the Wisconsin river, from a point as near as practicable to the north-west corner of town twelve, (12) north of range eight (8) east, to the highlands on sections seventeen and eighteen, (17 and 18) in town twelve, (12) north of range nine (9) east. Those favoring said proposition voting "For levee," those opposing, voting "Against levee."

SECTION 13. It shall be lawful for the said city of Portage and the said town of Caledonia, and the said city and said town are hereby authorized, at any time to enter upon the lands upon which said levee is built, to maintain and repair the same, and may use for that purpose any materials necessary, subject, however, to the payment of damages hereinbefore provided, and the expense of maintaining and repairing said levee shall be borne equally by said city and said town.

Public act.

SECTION 14. This act is hereby declared a public act, and shall take effect and be in force from and after its passage and publication.

Approved March 22, 1861.