

CHAPTER 102.

[Published March 11, 1876.]

AN ACT to amend chapter 59, private and local laws of 1868, entitled, "An act to incorporate the city of Fond du Lac, etc., approved February 14, 1868, and limiting the bringing of actions against the city."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 12, of said chapter 59, of the private and local laws of 1868, is hereby amended to read as follows:

CHAPTER XII.

PUBLIC IMPROVEMENTS.

SECTION 1. Whenever a petition shall be presented to the common council, signed by at least twenty-five freeholders residing in said city, praying for any improvement to be made or done, particularly specifying the same, and such improvement will not require the taking of private property against the consent of the owner, the common council may order the same to be done by resolution or ordinance, stating how and when the same shall be done.

Council may order improvement.

SECTION 2. Whenever a petition shall be presented to the common council, signed as aforesaid, and asking for an improvement to be made, and particularly describing the same as aforesaid, stating the name of the person or persons owning the property proposed to be taken if known to the petitioners, and it shall appear to the common council that in making the improvement sought by the petition it will be necessary to take private property against the consent of the owner or owners thereof, such improvement shall not be made unless the common council, by a resolution in writing (which need not be published), declare by a vote of the majority of the members elect, that the improvement sought by the petition is a work of public necessity, and in addition thereto, the necessity of taking private property therefor, and the compensation to be made to the owners thereof, be determined by a jury of twelve freeholders residing in said city.

When improvement requires taking of private property,

SECTION 3. Whenever it shall be necessary to have a jury of freeholders for the purpose in the last sec-

Drawing and empanneling of jury.

tion specified, the common council shall by resolution (which need not be published) direct the city attorney to apply to the judge of the county court of Fond du Lac county for the drawing and empaneling the same, and for a hearing upon the matters mentioned in said petition, and to give notice thereof to all whom it may concern in the manner hereinafter provided.

What notice to contain.

SECTION 4. The notice required by the last section shall briefly state in substance, that the common council have determined to make an improvement, describing it as described in the petition, and stating what particular property will be taken in making such improvement, and that on behalf of the city of Fond du Lac, the city attorney will apply to the county judge of the county court of Fond du Lac county, at his office, on a day and hour in such notice to be specified, which time shall not be less than ten days after the date of the last publication next hereinafter provided, to have a jury of twelve freeholders drawn and empaneled to determine the necessity for taking and using the private property therein described for public use in making the proposed improvement. And in case they shall determine such necessity to exist, to fix the compensation to be paid therefor, and also stating that such jury will meet at the office of said county judge immediately after they shall be empaneled and sworn, and proceed to the discharge of all the duties required of them by this act, which notice shall be signed by the city attorney.

Duty of city attorney to publish notice.

SECTION 5. The city attorney shall cause a copy of such notice to be published in such daily or weekly newspaper printed in said city as the common council by resolution may designate, two successive weeks, once in each week. And he shall also cause personal service thereof to be made upon the owners or occupants of the premises proposed to be taken, whenever they can with reasonable diligence be found within the city; but in case any owner or occupant cannot so be found, then, and in every such case, a copy of such notice shall be posted in a conspicuous place upon the premises so owned or occupied by the person or persons who are not able to be found within the city. Such publication and such service, personally or by copy posted, must be perfected and completed at least five days before the date specified in said notice for drawing and empaneling said jury.

Petition to be filed in county court.

SECTION 6. It shall be the duty of the city attorney, immediately after the publication is complete and

the service is made, as in the last section provided, and at least three days before the time fixed in said notice, to file in the county court of Fond du Lac county the original petition asking for the improvement, with the resolution of the common council, as provided in section 2 of this chapter, attached thereto, and certified by the city clerk under the seal of said city. Also, proof of the publication, service and posting of said notice, as in last section provided; and thereupon the said court and the judge thereof shall be vested with full jurisdiction in the premises, and the owners of the property and all persons interested therein shall take notice of and be bound by all subsequent proceedings without further notice; *provided, however*, that the court, or the judge thereof, at any time before the final termination of the proceedings before the jury, upon its being made to appear that injustice has been done to any owner of property or other person interested therein, by reason of want of notice to such person or persons, shall have the power to give such owner or persons interested an opportunity to be heard, and to take such steps as may be necessary to protect his or their interest; but this shall in no case be construed to give power to extend the time for a right of appeal.

SECTION 7. It shall be the duty of the judge of said court, upon the papers being filed in said court as is required in the last preceding section, to nominate and select without delay twenty-four disinterested freeholders of said city, qualified by law to serve as jurors, and make a list of the same and attach his certificate thereto, showing the purpose of the list and the date of selection, and file the same as a part of the papers in the proceeding.

Duty of judge to select freeholders.

SECTION 8. When the said judge shall have made and filed said list, he shall thereupon issue a writ of summons, under the seal of the said court, directed to the chief of police or any policeman of said city, commanding him to summon the several persons so selected and nominated, as in the last section provided, to be and appear before him at his office on the day and hour in said notice specified, to serve as jurors in the matter of the application of the city of Fond du Lac, for the condemnation and appraisal of private property for public use, against all whom it may concern.

Judge shall issue writ.

SECTION 9. The chief of police or policeman serving this writ, shall read the same to each person

How writ to be served.

therein named, if to be found within the city, and make return of his doings thereon on or before the time at which such writ is returnable, by an affidavit thereon sworn to before some officer authorized to administer oaths in said city.

Duty of jurors to attend.

SECTION 10. Each and every person named and summoned as a juror, as is provided in the two preceding sections, shall be bound to attend and serve as jurors until discharged. And said judge shall impose a fine of not less than five dollars upon each and every juror who shall neglect to obey the said summons when served; *provided*, that the judge for good cause shown may remit such fine or excuse any juror from serving as such.

How jury empaneled.

SECTION 11. The judge upon the return of the summons, shall write the name of each person personally served upon separate slips of paper and deposit the same in a box preparatory to empaneling said jury. And at the hour specified in said notice, shall call the parties to the proceedings as designated in said summons, and if the city of Fond du Lac be present, he shall at once proceed to draw said jury in the same manner as petit juries are drawn in the circuit court, but if said city shall fail to appear, the proceeding shall abate. And if, from any cause, a sufficient number of jurors from the original jurors summoned, cannot be had to fill the panel, the said judge shall designate tales men and direct the chief of police or some policeman to summon the same, until the panel shall be completed.

Right of challenge.

SECTION 12. The right of challenge shall be allowed as in civil cases under the laws of this state; *provided*, that no person shall be incompetent to serve as judge, juror, or officer to summon a jury, by reason of his being a resident or tax-payer in said city; *and provided, further*, that the parties adversary to the city shall be entitled in all to three peremptory challenges and no more.

Oath of jurors.

SECTION 13. The jury so empaneled shall be sworn by the judge that they are freeholders of said city and not interested in the property proposed to be taken, and that they will faithfully and impartially discharge their duties according to the best of their abilities, when they may appoint or choose a foreman.

View of premises by jury.

SECTION 14. After the jury shall have been empaneled and sworn as aforesaid, said court shall be in session for all the purposes of such hearing, and the judge

may exercise the same power and control over the jury as in civil cases under the laws of this state. Immediately after the commencement of the session of the court by the swearing of the jury, the petition shall be read to them and a copy of said notice shall be furnished them, and the judge shall send out said jury upon the premises to view the intended improvement and the property intended to be taken therefor and described in the notice. The jury may be accompanied in taking their view by the city attorney and city surveyor, and such other persons as the judge may direct. Before said jury shall leave court to view the premises as aforesaid, the judge may caution the jury or instruct the jury as to their duties and the law applicable to the case, and shall fix the time when the jury shall return into court after taking such view, and adjourn the court and proceeding to that time. At the time fixed by the adjournment, the jury having taken their view, shall return into court and shall immediately proceed to enquire into the necessity of taking the property described in said petition for public use, the value thereof and the just compensation to be allowed therefor, and may examine witnesses touching the same, and shall hear the proofs and allegations of the parties, if any be offered; *provided*, that no person shall be heard or allowed to contest the taking of his property unless he shall first file his objections thereto, in writing in the office of the county judge, before or at the time of the coming in of the jury, which objections shall state particularly the interest of such person in the property proposed to be taken, and the facts to be presented against such taking, and shall be verified by the affidavit of the party. All objections shall be heard together, and separate hearings shall not be allowed.

Investigation
by jury.

SECTION 15. The hearing before the court and jury shall be conducted in the following order: after hearing the proofs and allegations of the parties, if any be offered, which shall in the first instance be confined to the necessity of making the proposed improvement, and the taking of the property specified in the petition therefor, the jury shall first determine whether it is necessary to take such property for public use against the consent of the owner or owners thereof, and if they shall decide this question in the negative, the proceeding shall abate; but if decided by them in the affirmative, then they shall make and

Proceedings in
case jury de-
cide that prop-
erty shall be
taken.

each sign a verdict in writing in proper form, to that effect, stating their decision, and return the same into court, which shall be filed by the judge with the papers in the proceeding, and upon filing such verdict, the court shall thereupon forthwith enter judgment, briefly reciting the proceedings had, the property to be taken, and adjudging that it is necessary to take such property for public use as specified in the petition. Upon the return of a verdict in the affirmative, the jury shall then immediately proceed to hear the proofs and allegations of the parties, if any be offered, as to the value of the property proposed to be taken, and the damages and compensation to be awarded therefor, and shall award to the respective owner or owners of the property to be taken, such damages or compensation as they shall deem just.

Duty of judge.

SECTION 16. The judge of the court shall administer the oaths to witnesses, decide all questions of law as to the admissibility of evidence or other matters arising on such hearings, and may at any time instruct the jury as to their duties and the law applicable to the case, and in the event of an issue or contest, the trial, so far as practicable, shall be conducted in the same manner as in civil cases in circuit courts under the laws of the state. The judge may at any time send out the jury to review the premises described in the petition. The judge shall also have power for good cause to adjourn such hearings from time to time, not exceeding thirty days in all; *provided*, that this shall not exclude his power to recall the jury to revise or reconsider their verdict or report, and all persons interested shall take notice and be bound by all adjournments and proceedings of the judge, court and jury, had or made at and after the time named in the notice of the city attorney for the appointment of the jury.

When buildings are on street or alley to be opened.

SECTION 17. Whenever there shall be any building or buildings standing in whole or in part upon any street, alley or other place proposed to be opened, the jury shall estimate the cost of the removal of said building or buildings from the line of said street, alley or other improvement, provided said buildings can be removed and located on the same lot or premises upon which they are situated, and which is owned or occupied by the person or persons to whom the compensation is to be paid therefor, in such case the jury shall award damages for the removal of said building or buildings.

SECTION 18. Whenever such building or buildings, in the last section specified, cannot be removed as therein provided, the jury shall estimate and award as damages, the cost of taking down that portion of the building upon the line of the improvement, deducting therefrom the value of the materials so taken down, and shall also estimate and award the damages to that portion of the building remaining, aside from the value of the land taken; *provided*, that if the owner or the person having the right thereto shall appear before the jury and agree to remove said building or buildings off the line of said street, alley or improvement, the jury may award damages for the removal thereof, instead of damages for the taking down of said building or buildings, as above provided.

When building cannot be removed.

SECTION 19. The person or persons to whom damages are awarded under the two preceding sections, shall remove or take down, as the case may be, the building or buildings on the line of the street, alley or other improvement, within ten days after the common council shall so direct, and in case of neglect or refusal so to do within such time, the common council may cause the same to be removed or taken down, and the costs and expenses thereof shall be deducted from the amount awarded such person or persons; but if the costs and expenses exceed the award, the surplus shall be a charge and lien on the premises, and a certificate for the amount thereof shall be issued and collected the same as all other certificates for benefits and costs are issued and collected under the provisions of this act.

Persons to whom damages awarded to remove building.

SECTION 20. If the property taken, or any part thereof, shall be subject to a valid mortgage, lien, lease or agreement, or either, and such facts shall be made to appear to the jury, then the said jury shall apportion the award of compensation to the owner of the property, the parties in interest to such mortgage, lien, lease or agreement in such manner as they shall deem legal and just.

When property subject to mortgage.

SECTION 21. Said jury, after completing the aforesaid duties, shall make in writing, and each sign, a report to the county court of Fond du Lac county of their doings after their verdict, and in the award of damages or compensation for the property to be taken, which shall be known as the report of the jury, and shall file the same in said court immediately upon the completion of their duties, and the judge shall give notice thereof to the city attorney.

Jury to make report.

Report of jury
to state award
made.

SECTION 22. In all cases where said jury shall find that it is necessary to take private property for said improvement, they shall state in their report the just compensation ascertained and awarded by them to the owner of any private property, or to any person claiming an interest therein by virtue of any valid mortgage, lien, lease or agreement to which said property may be subject, together with the name of such owner or claimant if known, and a description of the property intended to be taken; and in all cases where compensation is awarded to any person claiming an interest in such property by virtue of any valid mortgage, lien, lease or agreement to which such property may be subject, the report shall state, in addition to the name of the claimant, if known, the date of the mortgage, lien, lease or agreement or assignment by virtue of which such claimant has an interest in the property intended to be taken.

Court to make
order.

SECTION 23. The city attorney, upon receipt of notice that the report of the jury is filed, shall apply to the court in which it is filed for an order confirming the same, and thereupon the court shall make an order, reciting briefly that the jury have rendered a verdict establishing the necessity of taking private property for public use, describing it as in the petition, that judgment has been entered upon such verdict in accordance therewith, and that the jury have made a report of the damages and compensation to be awarded for the property to be taken, and fixing a time when the report of the jury and the objections thereto, if any, will be considered by the court, which time shall not be more than ten days after the filing of the application of the city attorney for the confirmation of the report.

Notice of time
and place to be
given by city
attorney.

SECTION 24. The city attorney shall give notice of the time and place fixed for the consideration of such report, by publishing a copy of the order of said court in a weekly or daily newspaper published in said city, at least five days before the time fixed in such order for the hearing. And proof of the publication of such order as herein directed by the affidavit of the printer or publisher of the newspaper in which the same was published, made and filed with the court before the hearing, shall be sufficient evidence of service to charge all persons interested with notice of such hearing and of the entry of judgment on the verdict of the jury.

SECTION 25. The city of Fond du Lac and each and every person having an interest in the property proposed to be taken, or any part thereof may file in said court at any time before the time fixed for the hearing, objections in writing to the confirmation of the report, particularly specifying the ground of each objection, and no general objection shall have any force or effect, or be considered at any stage of the proceedings in the county court or upon appeal.

Owners may file objections.

SECTION 26. At the time fixed in said order, the said court shall proceed to the consideration of the said report and the objections filed thereto, but the said court shall disregard all objections as to matter of form, and consider only objections of law and to matters of substance, but in all cases the compensation awarded to any person or persons, for any lot, or part of lot, premises or subdivision if objected to by such person or persons, or the city of Fond du Lac, as being excessive or small, may be enquired into and considered by the court; *provided*, that if for any cause the court shall deem it proper, at the time fixed for the hearing, or after the hearing shall have commenced, to adjourn the same, it may be so adjourned from time to time in the discretion of the court.

Consideration of report by court.

SECTION 27. If no objections are filed as aforesaid, the court shall make an order confirming the report, and such order so made shall be final and not subject to appeal or review, except for errors in the proceeding going to the jurisdiction of the court.

In case no objection is made.

SECTION 28. If objections are filed in form as hereinbefore provided, the court after considering the same may in its discretion, confirm or set aside the report or may refer it to the same jury for reconsideration and revision as to the jury may seem just and necessary, after being instructed by the court in reference to the errors complained of and which are the cause of the re-submission. And, thereupon, the said jury may revise, review, correct, and alter such report in such particulars as they may deem just, and return the same into court so revised and corrected, or without change therein, within twenty-four hours after the same shall have been re-submitted to them, (Sundays excepted.) And thereupon, without further notice, the court shall make an order confirming or setting aside said report.

In case objections are filed reconsideration by jury may be had.

SECTION 29. At any time before the time fixed for the hearing upon the report of the jury, any person interested who was not personally served with notice

Persons not notified may file objections, and case may be re-opened.

of the application for the appointment of the jury and had not personal knowledge thereof, feeling aggrieved by the verdict of the jury and the judgment entered thereon, may file his objections thereto, particularly specifying his interest in the property to be taken, the grounds of complaint, that injustice has been done him, and upon affidavits showing such facts and excusable neglect for not appearing prior to the time of filing his objections, the court after notice to the city attorney and an opportunity given him to file affidavits in opposition thereto, in its discretion may reopen the judgment as to such party, fix the time of hearing, and recall the jury into court to hear the proofs and allegations of such person. If the jury after such hearing, shall decide that it is necessary to take the property of such person for public use, they will find and return a verdict to that effect to the court, and thereupon the court shall enter an order setting aside the order reopening the judgment as to such person, and ordering that the former verdict and judgment shall stand as the verdict and judgment in the case, and such re-hearing shall not in any way affect or prejudice the proceedings subsequent to the entry of such judgment; but if the jury shall find that it is not necessary to take the property of such person for public use, and that the proposed improvement cannot be made without taking such property, then all proceedings in the county court subsequent to filing the petition and resolution there-in shall abate. The judgment of the court entered upon the verdict of the jury shall be final and not subject to appeal or review, except for error in the proceeding going to the jurisdiction of the court.

In case of disagreement of jury.

SECTION 30. In case the jury fail to agree, or find a verdict against the necessity of taking the property described in the petition for public use, or their verdict is set aside, or from any cause the jury fail to find a verdict as hereinbefore provided, the city attorney, by direction of the common council may apply for a second jury in the matter, as hereinbefore prescribed, and all the steps and proceedings after such application shall be the same as if no previous proceedings had been had under the petition and resolution of the common council, filed in the court as aforesaid.

When jury fail to agree on award of damages.

SECTION 31. If the jury shall have rendered a verdict establishing the necessity of taking the property specified in the petition for public use, against the

consent of the owner or owners thereof, but said jury shall fail to agree upon the damages or compensation to be awarded, or fail from any cause to make their report, or such report be set aside by the court, and the verdict and judgment has not abated or been set aside, the city attorney when directed by the common council, shall apply to the judge of said court for the appointment of a new jury for the purpose only of determining and awarding the damages or compensation to be paid the owner or owners of the property to be taken, and give notice thereof to all whom it may concern as hereinafter provided.

SECTION 32. The notice required in the last section shall briefly state the substance of the verdict of the former jury, with a description of the property to be taken, and that, on behalf of said city, the city attorney will apply to the judge of the county court of Fond du Lac county, at his office on a day and hour in such notice specified, which time shall not be less than five days after the date of the last publication next hereinafter provided to have a jury of twelve freeholders drawn and empaneled to determine, fix and report the damages or compensation to be awarded for the property to be taken; and also that such jury will meet at the time and place fixed for such application, or as soon thereafter as a jury can be obtained and sworn; which notice shall be signed by the city attorney.

What notice to contain.

SECTION 33. The notice prescribed in the last section shall be published two successive weeks, once in each week, in a daily or weekly newspaper published in said city, the last publication to be at least five days prior to the time of such application. And proof of the publication of such notice as herein directed by the affidavit of the printer or publisher of the newspaper in which the same was published, made and filed in the matter with the court, two days before the time of such application, shall be sufficient evidence of service to charge all persons interested with notice of the proceeding.

Publication of notice.

SECTION 34. It shall be the duty of the judge, upon filing said notice and proof of service as required in the last preceding section, to nominate and select twenty-four freeholders to serve as jurors in the manner provided in section 7, of this chapter, issue his writ of summons as provided in section 8, except that the object for which the jury is called shall be stated to suit the case, and the said jury shall be summoned,

Duty of judge to select freeholders and issue summons.

drawn, empaneled, and sworn as hereinbefore provided for obtaining a jury in the first instance, and said new jury shall assemble, proceed and discharge the same duties and have the same powers as hereinbefore prescribed for the first jury subsequent to the verdict, and all the steps and proceedings shall be the same as hereinbefore provided, except that the jury shall not be required to determine upon the necessity of taking private property for public use.

In case of vacancy in jury.

SECTION 35. In case of a vacancy in any jury empaneled under this act, after such jury has been sworn, from death, sickness, or any other cause, the court in its discretion may fill such vacancy or vacancies by the appointment of some suitable person or persons qualified to act as jurors in the premises who shall be sworn and possess the same powers and be subject to the same duties and liabilities as the jurors previously sworn; *provided*, that in all such cases the vacancy or vacancies shall be filled by a person or persons designated for that purpose by an order of the court in writing, which shall be preserved, and be a part of the record in the proceeding.

When report of jury confirmed.

SECTION 36. Whenever the report of a jury shall be confirmed, under the provisions of this chapter, by the county court, the city attorney shall apply to the judge of said court for an order appointing three commissioners, to apportion and assess the compensation awarded for the property necessary to be taken for the proposed improvement, by the report of the jury as confirmed by the court as aforesaid, and in addition thereto for the cost and expense of such improvement if certified to said judge by the city clerk as hereinafter provided.

Notice to be published.

SECTION 37. It shall be the duty of the city attorney, before making the application provided in the last section, to cause a notice of such application to be published in a weekly newspaper published in said city, at least ten days before the time stated in such notice when the application will be made.

Form of notice.

SECTION 38. The notice mentioned in the next preceding section shall be directed "to all whom it may concern," and shall state in substance, that upon a time therein stated the city attorney, on behalf of the city, will apply to the county judge of Fond du Lac county for the appointment of three suitable persons, commissioners to apportion and assess upon the lots or parts of lots, subdivisions and premises benefited by the proposed improvements, describing it as de-

scribed in the original petition, the gross amount of compensation to be paid for the property proposed to be taken for such proposed improvement, as fixed by the award of the jury in the matter, confirmed by the order of the county court of Fond du Lac county, giving the date of such order, and also, if certified to by the city clerk, the costs and expenses of the improvements, stating the amount thereof, which notice shall be signed by the city attorney.

SECTION 39. At the time and place specified in such notice, upon proof being made and filed of the publication of such notice, as in the last section provided, by the affidavit of the person publishing the newspaper in which such notice was published, the judge shall nominate three discreet, respectable, disinterested freeholders, residents of the city, to make the apportionment and assessment designated in the notice prescribed in the last preceding section. But every person having an interest in the property affected thereby shall have the right to appear at the time and place fixed for the appointment and make objection, if any there be, to the fitness of any or either of the persons nominated as commissioners by the judge, and if it shall appear that any of the objections are valid, the said judge shall nominate some other person or persons until the three persons nominated shall have no valid objection presented against either of them, which persons shall be, by the said judge appointed such commissioners, by an order under his hand.

Appointment of persons to make apportionment and assessment.

SECTION 40. It shall be the duty of the said judge to notify the persons so appointed to appear before him at some time and place in such notice to be specified, to be sworn and enter upon their duties, at which time said persons shall appear as therein directed; but in case either or all of such persons shall fail to appear, or be excused by the judge from serving, said judge shall appoint anew or fill any and all vacancies in the commission without further notice, and shall notify the persons appointed anew or to fill any and every vacancy, to appear forthwith before him, until said commission shall be filled by three persons qualified as aforesaid, who shall appear, to be sworn and enter upon the duties of the commission.

Persons appointed to be notified.

SECTION 41. Every person appointed a commissioner, as hereinbefore provided, and who shall fail to report when notified by the judge as aforesaid, or who shall fail to accept the appointment and dis-

Penalty for failure to report or serve

charge the duties, shall pay a penalty of not less than ten dollars, to be imposed as a fine by the said judge, or be collected in the name of the city; *provided*, that the judge for good cause shown under oath, may excuse any person or persons so appointed, and such when so excused shall be relieved from the penalty fixed by this section.

Duty of judge to swear commissioners and issue warrant.

SECTION 42. It shall be the duty of the said judge to swear the persons appointed as commissioners to discharge their duties faithfully and to the best of their ability, and when so sworn to issue to them under his hand and seal of office, a warrant or order directing them to impartially and fairly apportion and assess the compensation awarded to be paid by the report of the jury, confirmed by the county court of Fond du Lac county, specifying the date of such confirmation, which report and order of confirmation shall be attached to the said warrant or order, together with the costs and expenses of the proposed improvement, when certified to the judge by the city clerk as hereinafter provided, upon the lots, parts of lots, subdivisions and premises by them deemed benefited by the proposed improvement, in proportion as they deem the same to be benefited, and to make return of their doings, under said warrant into the county court of Fond du Lac county, on some day therein to be named, not more than five days from the date of said warrant or order, but in case the commissioners are required to assess benefits for the costs and expenses of the improvement in addition to the amount awarded as compensation, the warrant shall be returnable at such time as the judge shall fix, not more than thirty days from its date.

Power of commissioners to examine witnesses,

SECTION 43. In the execution of their duties under said warrant said commission may hear and examine witnesses, under oath, touching the matter intrusted to them, and for that purpose either of said commissioners are hereby authorized to administer the oath.

Report of commissioners.

SECTION 44. The commissioners after having fully considered the premises, shall, within the life of their said warrant or order, fully obey the mandate thereof, and in their return to the county court, state particularly each lot, part of lot, subdivision and premises upon which they have apportioned and assessed benefits, and the amounts so by them assessed upon each lot, part of lot, subdivision and premises, together with the name of the owner or owners thereof, when

the same is known or can be ascertained by diligent inquiry.

SECTION 45. Upon the return of the said warrant executed in accordance with the provisions of the last section, the said judge shall give notice thereof to the city attorney, who shall thereupon give notice of an application on behalf of said city to the county court of Fond du Lac county, to confirm the apportionment and assessment of the said commissioners.

Notice of application to affirm assessment.

SECTION 46. The notice required in the last section shall be directed "to all whom it may concern," and shall state in substance that the warrant to the commissioners issued in the matter of the proposed improvement, stating the improvement as described in the original petition, has been returned, executed and filed in the county court of Fond du Lac county, and is open for inspection, and at a time therein to be named, not less than five days from the date of such notice, the city attorney, on behalf of the city of Fond du Lac, will move the said court for an order confirming the assessment of the commissioners, made in pursuance thereof, which notice shall be signed by the city attorney.

Form of notice.

SECTION 47. The notice prescribed in the last section shall be personally served on each of the persons in the assessment of the said commissioners, if to be found within the city of Fond du Lac after diligent inquiry, before the day fixed therein for the hearing, and by publication in a daily or weekly newspaper printed in the city of Fond du Lac, prior to the date of such hearing.

How notice to be served.

SECTION 48. The same proof of service and publication required on the application to confirm the report of a jury shall be made and filed in the court before the time fixed for the hearing mentioned in said last notice.

Proof of service.

SECTION 49. The court shall, at the time specified in the last mentioned notice, in case the proof of service, in the last section provided, shall have been filed, or at any other time or times, as it may be postponed or continued such hearing, may consider such report and assessment of commissioners, and the objection thereto, if any, shall have been filed, and may confirm or set aside the said assessment, or refer it back to the said commissioners for revision, reconsideration or correction.

Court may confirm or set aside assessment.

SECTION 50. The provisions of this chapter relating to the hearing on the application to confirm the re-

To what provisions of chapter shall apply.

port of the jury, and the decision thereof, and the right of the parties therein and thereafter, shall apply to and govern the proceedings on the application to confirm the assessment of the commissioners.

Appeal to supreme court.

SECTION 51. Any person who has filed objections to the confirmation of the report of the jury, as provided in this chapter, and who may feel aggrieved by the decision of the county court confirming the same, or any person interested who may feel aggrieved by the verdict of the jury and the judgment entered thereon, may appeal from such judgment or order confirming the report, to the supreme court, but not otherwise upon giving notice of appeal, particularly specifying the errors complained of, with an undertaking, as upon appeals from interlocutory orders by the laws of this state; *provided however*, that such notice of appeal must be served and undertaking given within ten days after the entry of the judgment or order appealed from; *provided*, that such appeal shall not be effectual to stay proceedings unless the appellant shall, within the time aforesaid, give a further undertaking, with two sufficient sureties, running to the city of Fond du Lac, in such sum as the judge shall fix, not less than five hundred dollars, conditioned to pay all damages which may be sustained by reason of the appeal in case the judgment or order appealed from is affirmed, in whole or in part. The sureties shall make affidavit, endorsed upon or attached to the undertaking that each is worth the sum therein specified over and above all his debts and liabilities, in property not exempt from execution, and such undertaking shall be approved by the judge of said court.

Right of appeal.

SECTION 52. The provisions of the last section, relating to and limiting appeals, shall apply to and govern the right of appeal from the order confirming the assessment of the commissioners.

Duty of county court in case of appeal.

SECTION 53. In case of any appeal as herein provided, it shall be the duty of the county court to transmit to the supreme court a certified copy of the record and proceedings in the case, with the notice of appeal and undertaking, within twenty days after the service of such notice and undertaking; *provided, however*, that no such return shall be required to be made until the party appealing shall deposit with the judge of the court the fees therefor, and a failure to make such deposit shall be taken to be and shall be a waiver and abandonment of such appeal, and no further proceedings shall be had thereunder.

SECTION 54. Upon the hearing of any appeal from any judgment, order, or proceeding under this chapter, the supreme court may reverse or affirm the judgment, order, or proceeding appealed from; *provided*, that no reversal shall be had or made except for errors of law, and only in regard to the appellant or appellants.

Supreme court may reverse or order.

SECTION 55. If there be a reversal for any error which may be corrected or supplied in the county court, with due regard to the public interest and the rights of individuals, the appellate court shall remand with instructions to the county court, to correct or supply the error; and thereupon said last named court shall correct or supply the error, and the judgment or order appealed from shall stand without any further right of appeal.

When appellate court shall remand case to county court.

SECTION 56. Whenever any judgment or order appealed from under the provisions of this chapter shall be reversed as to any appellant, the common council on behalf of said city may elect to pay the compensation claimed by the appellant or appellants, or remit such portion of any assessment as the appellant or appellants may demand. And upon filing a resolution in the county court to that effect, within twenty days after notice of such reversal, the order of the county court shall be reviewed and confirmed as to all persons interested therein, except such appellant or appellants, and without further right of appeal. But if the common council fails so to elect, all the proceedings shall be null and void, except in case of a reversal and remanding, with direction as in the last section provided. But the common council shall have the right and power to abandon and discontinue proceedings under this act at any time before the final confirmation of the assessment of the commissioners.

When case reversed as to appellant.

SECTION 57. The final confirmation of the order confirming the report of the jury, and the assessment of the commissioners shall be final and conclusive as to all persons interested in the premises affected thereby, and the assessment made by the commissioners from the date of the final confirmation thereof, until they are paid and satisfied, shall be a lien upon the premises as assessed respectively.

Assessment to be lien on premises.

SECTION 58. Whenever the report of the jury and the assessment of the commissioners shall be confirmed, and the time for appeal passed, the judge of the county court shall make up a judgment roll which

Judge to make judgment roll.

shall contain all the original papers filed in the matter of the condemnation and assessment, together with all the judgments or orders made therein, and the notices and proofs filed therein, and all papers and orders relating to any and all appeals taken therein, and the decision thereon, if filed in said court; and shall append thereto his certificate under his seal of office stating "that each judgment roll contains all of the original papers in the matter of such condemnation and assessment, and that the same contains a true and correct history of the proceedings and of the whole thereof."

Judgment roll to be filed and recorded by city clerk.

SECTION 59. The city attorney shall file such judgment roll in the office of the city clerk, and said clerk shall thereupon record such judgment roll in the records of said city, and shall append to such record his certificate that the same is a true and correct copy of the judgment roll certified back by the judge of the county court of Fond du Lac county, in the matter of the condemnation of private property, and assessment of benefits by reason of a certain public improvement, designating it with reasonable certainty, and of the whole thereof.

Judgment roll to be received in evidence.

SECTION 60. The judgment roll herein provided, shall be received in evidence in all courts and places, and have the same force and effect, and the benefit of the same presumptions as if it were the judgment of a court of general jurisdiction, and be conclusive evidence of the regularity of all the proceedings had in the matter, and the record thereof, made and certified by the city clerk as aforesaid, on the records of the city of Fond du Lac, shall be received in evidence, and with the same force and effect as the original judgment roll.

City clerk to make copy of award.

SECTION 61. The city clerk, after said judgment roll is filed in his office as aforesaid, shall make a copy of the award and assessment contained in said roll, and certify the same to the city treasurer.

City treasurer to collect assessment.

SECTION 62. The city treasurer, upon the receipt from the city clerk of the award and assessment, as in the last section provided, shall, as in the next section provided, notify all persons whose property is assessed in such assessment, to pay into the office of the city treasurer the amount of such assessment, after deducting therefrom the amount of any award due any person, which notice shall contain a copy of the assessment made by the commissioners, and shall require all persons named therein, or having an inter-

est in the property therein described, to pay the amount assessed against their property, less the amount of compensation, if any, stating it, within sixty days from the date of such notice, or that in defiance thereof certificates will be issued against such premises for such amount, drawing interest at the rate of twenty-five per cent., and collectable as other taxes are collected.

SECTION 63. The notice designated in the last preceding section shall be published in one or more newspapers, published in said city, for four successive weeks, once in each week, and the last publication thereof shall be at least ten days before the expiration of said sixty days from the date of such notice. And proof of the publication of such notice as herein directed by the affidavit of the printer or publisher of the newspaper in which the same was published, made and filed with the city treasurer, shall be conclusive evidence of such publication and shall be sufficient evidence of the service of such notice on all persons therein named or interested in the property or any part thereof therein described.

Notice to be published in newspaper.

SECTION 64. The affidavit of any policeman, of inability to make personal service of any notice under this act, because of inability to find the party to be served within the city, shall be conclusive evidence of diligence. And the affidavit of any person to the fact of service of any notice in either of the methods prescribed in this act, shall be presumptive proof that the service was rightly and properly made, as therein stated. Proof of the publication of the notice required in the last section shall be made and filed with the city treasurer, and a duplicate thereof shall be made and filed in the office of the city clerk and by him attached to the judgment roll and recorded in the records of the said city.

Personal service.

SECTION 65. The city treasurer, as soon as may be after the lapse of time specified in the notice, shall certify to the comptroller, a list of the assessments remaining unpaid and delinquent, specifying particularly the property chargeable therewith and the name of the owner thereof, if known, accompanying the same with the proofs of the notice aforesaid.

Delinquent assessments.

SECTION 66. It shall be the duty of the comptroller, forthwith to make out certificates upon the several lots, parts of lots and premises in said list shown to be delinquent, stating the amount chargeable to such lot, part of lot and premises respectively, which cer-

Comptroller to make out certificate.

tificates shall bear date the day succeeding the sixty days given by the notice or the proof of service shall show the same to be, and shall upon their face draw twenty-five per cent. interest, and be transferable by endorsement, and shall each be numbered, and when complete, he shall present the same to the city clerk who shall sign the same, and the said comptroller shall thereupon enter in the books of his office, a complete list thereof, and shall countersign and deliver the several certificates to the city treasurer to be held or collected for the benefit of whoever may be interested therein, and if the same shall be paid within thirty days next preceding the levying of the general city taxes, the same shall be entered in the tax-roll against the premises in the certificate described, and collected the same as other taxes are collected.

Council to pay amounts awarded.

SECTION 67. The common council shall, within ninety days after the final confirmation of the condemnation, proceedings and assessment of benefits, pay or tender to the respective persons entitled thereto, the several amounts awarded by the report of the jury as confirmed or elected as above provided for, to be paid by the common council, less the amount assessed to such persons respectively for benefits; *provided, however*, that every person claiming damages for the taking of land, shall, before he or she shall be entitled to receive any pay for the same, present to and leave with the city attorney, for the use of the city and subject to his approval, an abstract of title of the premises taken, and in which damages may have been awarded, showing an estate in fee simple in the said claimant.

When proper proof of title is not made.

SECTION 68. But in case no person shall make the proper proof of title as provided in the last section, the common council may deposit the amount in the treasury of the city, subject to the order of the person or persons entitled thereto, on proper proof made and upon such payment, tender or deposit, the city may enter upon, take possession of and convert the property and premises so condemned as aforesaid for the use and purpose for which it was condemned.

When property subject to lien or mortgage.

SECTION 69. In all cases where any real estate subject to any mortgage, lien, lease or agreement shall be taken as aforesaid, all the covenants and stipulations thereof so far as they relate to the lands taken shall cease, determine and be discharged upon the final confirmation of the condemnation proceedings. And upon application of the city attorney, the person hold-

ing the same shall release the land taken from the effect of such mortgage, lien, lease or agreement by an instrument in writing, executed and acknowledged so as to be entitled to record according to the laws of the state.

SECTION 70. If in case there shall be any doubt as to who is entitled to damages or compensation for land or property taken, the city may require of the claimant a bond, with good and sufficient sureties to hold said city harmless from all loss, costs and expenses, in case any other person should claim said damages or compensation.

When bond shall be required.

SECTION 71. All the provisions of this chapter relating to the appointment of commissioners, their powers and duties and the method of collecting and payment of benefits assessed, shall apply to and govern in all cases of public improvements in said city, but shall not apply to the construction or repair of sidewalks, or any work or improvement, designated in other chapters of this act or the act of which this act is amendatory unless by special reference the same are made applicable.

Cases governed by provisions of this chapter.

SECTION 72. Whenever the petition presented to the common council, as aforesaid, shall ask for any improvement, particularly describing the same, which in addition to the payment of the compensation for the property taken, will involve the expenditure of money or the doing of work, after the condemnation of the land, or require the letting a contract to do such work, then in such case, after the confirmation of the report of the jury awarding the compensation for the property to be taken, and before applying for the appointment of commissioners, the city attorney shall procure and file in the city clerk's office a certified copy of the report of the jury awarding compensation, and the order confirming the same, whereupon the common council shall have the power to make and may order the improvement made, and the city clerk by direction of the common council shall advertise for such time as they deem proper in one or more of the newspapers printed in said city, for proposals for the doing of said work, reserving the right to reject any and all bids, and the common council shall let the same to the lowest responsible bidder, reserving always the right to exercise their discretion and to reject any and all bids; such contract, when let, to be in the name of the city, but in nowise rendering the city at any time or in any manner liable for the

When improvement asked for involves expenditure of money or doing of work.

work done under it; but if no bids are received or none are made acceptable to said council they shall cause the work to be done at as low and reasonable sum as the same can be done.

Duty of clerk and county judge when contract is made.

SECTION 73. When the contract for doing the work mentioned in the last preceding section, shall have been made, the city clerk, by direction of the common council, shall certify the amount of the contract price for doing such work and the costs and expense of making such improvement, to the county judge, and the said judge shall add the costs and expense of making such improvement to the sum awarded by the jury as compensation for the property to be taken, and in his warrant to the commissioners the judge shall require them to apportion and assess the gross amount upon the property by them deemed benefited by the improvement.

Appointment of commissioners.

SECTION 74. After the certificate of the city clerk shall be filed as aforesaid, the city attorney shall apply for the appointment of commissioners, and said commissioners shall be appointed by the judge in the same manner and with the same powers and duties as hereinbefore provided, and the same steps and proceedings shall be had as in the appointment and assessment of the compensation awarded for the property taken, but the costs and expense of making the improvement, as certified by the city clerk, shall be added to the award of commissioners, and the gross amount, as recited in their warrant, shall be apportioned and assessed by said commissioners upon the lots, parts of lots, subdivisions, and premises by them deemed benefited by the proposed improvement.

City surveyor to make profiles, etc.

SECTION 75. Whenever any improvements shall be made under the provisions of this chapter, beyond the condemnation of property for public use, the city surveyor, at the request of the common council, shall make profiles, plans, or specification of the proposed improvement, and shall cause estimates to be made of the whole expense thereof, and if deemed necessary by the common council, the number of cubic yards to be filled in or excavated in front of each lot or other subdivision of land, which plan and specification, together with the estimate, shall be filed in the office of the city clerk before advertising for proposals, but the failure to make or file the same shall not in any way affect or invalidate the assessment of benefits for such improvement.

SECTION 76. The jury and the commissioners in the discharge of their duties respectively, may adjourn from day to day as they may think proper; *provided*, that there shall be no adjournment beyond the time in which they are respectively required to report.

Jury and commissioners may adjourn from day to day.

SECTION 77. The county court of Fond du Lac county shall be taken and deemed to be always open for the proceedings provided in this chapter, and there is hereby conferred upon the said court and the judge thereof special jurisdiction to do and perform all the acts and duties of this chapter directed to be done by the said court and the judge thereof.

County court to have special jurisdiction.

SECTION 78. The compensation to be paid the judge shall be five dollars per day, and the compensation and fees to be paid the jurors and commissioners under this chapter shall be fixed by the common council by resolution, and the same shall be paid out of the city treasury; *provided, however*, that in all proceedings under this chapter, the common council, before acting upon any petition may require a bond, with sufficient sureties, to be given the city, conditioned to indemnify and save the city harmless of and from all damages, costs and expenses, by reason of any proceedings taken had under the petition, if the same for any cause fail or be abandoned.

Compensation of judge, jurors and commissioners.

SECTION 79. Whenever the common council shall decide to make any public improvement under this chapter, or any other chapter of the charter, such common council, after having let the contract therefor, shall have the power and authority to appoint a superintendent of the work of making such improvement, prescribe his powers and duties, and fix the compensation to be paid him for his services.

Council to appoint superintendent.

SECTION 2. Chapter 13, of said chapter 59, of the private and local laws of 1868, is hereby amended by adding to said chapter 13, of said act the following sections:

Amended.

SECTION 13. Whenever a petition signed by at least twenty-five resident freeholders of said city, shall be presented to the common council representing that any street or alley or any part thereof, particularly describing the same, is in an unsafe condition for ordinary travel and use, or in want of repair so as to render travel thereon dangerous, and stating the name of the owner or owners of the property fronting on such street or alley, with a description of the premises and the number of feet frontage owned by each person so far as the same may be known to the

Repair of streets and alleys.

petitioners, the common council shall have the power by resolution to declare the same a public nuisance, and to cause such street or alley to be paved, planked, graded, graveled, macadamized, or repaired at the expense of the property fronting thereon, as hereinafter provided.

When repair not required by petition, jury may be appointed.

SECTION 14. If upon the consideration of the petition mentioned in the last section, the common council shall decide that such street or alley is in an unsafe condition for ordinary travel and use, or in want of repair, so as to render travel thereon dangerous and declare the same a nuisance, they shall adopt a resolution in writing stating their decision as aforesaid, and particularly describe the street or alley, and that in default of a petition from the owner or owners of three-fifths of the number of feet frontage on such street or alley, as required by section three of this chapter, being filed in the office of the city clerk within thirty days, the city attorney will apply to the judge of the county court of Fond du Lac county for the appointment of a jury to determine upon the necessity of grading, graveling, planking, paving, macadamizing, or improving such street or alley and the kind and character of improvement to be made thereon.

Resolution to be published.

SECTION 15. The resolution in the last preceding section mentioned, shall be published once in each week for two successive weeks, in a newspaper published in said city, and personal service of such resolution shall be made upon the owners or occupants of the premises fronting upon such street or alley, whenever they can, with reasonable diligence, be found within the city, by delivering to them a copy thereof; but in case any owner or occupant cannot be found, a copy of such resolution shall be posted in a conspicuous place upon the premises so owned or occupied by the person or persons who are not able to be found within the city. Such publication and such service personally or by copy posted, must be made and completed at least five days before the expiration of the thirty days from the passage of said resolution. Such resolution may be served by the chief of police or any policeman of said city, whose affidavit of such service, or his inability to find any one in said city, shall be conclusive evidence of such facts. Proof of publication shall be by the affidavit of the publishers of the newspaper in which such resolution was published. The proofs of service and publication as

aforesaid shall be made and filed in the office of the city clerk within thirty days after the passage of such resolution by the common council.

SECTION 16. If, at the expiration of thirty days from the passage of said resolution, a petition signed by three-fifths of the number of feet frontage on such street, sufficient, under section 3 of this chapter, to authorize the common council to grade, gravel, plank, macadamize or pave such street, has not been filed in the office of the city clerk, the city clerk shall transmit, duly certified, the original petition and resolution, with the proofs of the service and publication of the same, to the judge of the county court of Fond du Lac county, and also certify that no sufficient petition, signed by the owners of the requisite number of feet frontage on such street, to authorize the common council to improve the same, has been filed in his office, and shall notify the city attorney of his action.

When petition of lot owners not made, clerk's original petition to be considered.

SECTION 17. Upon the filing of the petition resolution, with proofs of service and publication, and the certificate of the city clerk in the office of said county judge, as prescribed in the last preceding section, the city attorney shall apply to the judge aforesaid for the selection and appointment of a jury of twelve freeholders to determine whether such street or alley is defective, in want of repair, and unsafe for ordinary travel and use, the necessity of improving the same, and the particular kind and character of the improvement to be made, and the city shall give notice of such application to all whom it may concern as hereinafter provided.

Appointment of jurors.

SECTION 18. The notice required in the last section shall briefly state in substance that the common council, upon the petition of twenty-five freeholders, have declared such street or alley to be in want of repair or unsafe for ordinary travel and use, and a nuisance, describing the street or alley or part thereof so declared in want of repair, unsafe and a nuisance as aforesaid, and that on behalf of the city of Fond du Lac, the city attorney will apply to the county judge of the county court of Fond du Lac county at his office, on a day and hour in such notice to be specified, which time shall not be less than ten days after the date of the last publication next hereinafter provided, to have a jury of twelve freeholders drawn, empaneled and sworn to determine whether such street or alley is in want of repair or in an unsafe condition for ordinary travel and use, and in case they shall

Form of notice of application to repair street.

find such street or alley to be in want of repair, or in an unsafe condition for ordinary travel and use, to determine and fix the particular kind and character of the improvement which shall be made on such street or alley, and that such jury will meet and enter upon the discharge of their duties at the office of said county judge at the time named for such application or as soon thereafter as they can be empaneled and sworn, which notice shall be signed by the city attorney.

Publication of notice and personal service.

SECTION 19. The city attorney shall cause a copy of such notice to be published in such daily or weekly newspaper, printed in said city, as the common council by resolution may designate, for two successive weeks, once in each week, and he shall cause personal service thereof to be made upon the owner or occupants of the premises, fronting on such street or alley, whenever they can with reasonable diligence be found within the city; but in case any owner or occupant cannot be found, then and in every such case a copy of such notice shall be posted in a conspicuous place upon the premises so owned or occupied by the person or persons who are not able to be found within the city. Such publication and such service personally, or by copy posted, must be perfected and complete at least three days before the date specified in said notice for drawing and empaneling said jury. The chief of police or any policeman of said city may serve such notice, whose affidavit of such service shall be sufficient evidence thereof, and of all the facts in such affidavit stated. Proof of the publication of the notice shall be by the publisher or printer of the newspaper in which the same was published.

Notice to be filed in office of county judge, same to have jurisdiction.

SECTION 20. It shall be the duty of the city attorney, immediately after the publication is complete, and the service is made as in the last section provided, and at least two days before the time fixed in said notice, to file such notice with the proofs of publication and service in the office of the judge of the county court of Fond du Lac county, and thereupon the said court and the judge thereof shall be vested with full jurisdiction in the premises, and the owners of the property fronting on such street or alley, and all persons interested therein shall take notice of and be bound by all the subsequent proceedings without further notice.

Selection of freeholders.

SECTION 21. It shall be the duty of the judge of said court, upon the paper being filed in said court

as hereinafter provided, to nominate and select without delay twenty-four disinterested freeholders of said city, qualified by law to serve as jurors, and make a list of the same, and attach his certificate thereto, showing the purpose of the list, and the date of the selection, and file the same as a part of the papers in the proceedings.

SECTION 22. When the judge shall have made and filed said list, he shall thereupon issue a writ of summons under the seal of said court, directed to the chief of police or any policeman of said city, commanding him to summons the several persons so selected and nominated, to be and appear before him on the day and hour in said notice specified, to serve as jurors in the matter of the application of the city of Fond du Lac for the improvement of such street or alley against all whom it may concern.

Notice to be served.

SECTION 23. The policeman serving this writ shall read the same to each person therein named, if to be found within the city, and make return of his doings thereon on or before the time said writ is returnable, by an affidavit thereon sworn to before some officer authorized to administer oaths in said city.

And return made.

SECTION 24. Each and every person named and summoned as a juror, as is provided in the two preceding sections, shall be bound to attend and serve as jurors until discharged, and said judge shall impose a fine of not less than five dollars upon each and every juror who shall neglect to obey said summons when served; *provided*, that the judge for good cause shown may remit such fine or excuse any juror from serving as such.

Duty of jurors summoned to attend.

SECTION 25. The judge, upon the return of the summons, shall write the name of each person personally served upon separate slips of paper and deposit the same in a box preparatory to empaneling said jury, and at the hour named in such notice shall call the parties to the proceeding as designated in said summons, and if the city of Fond du Lac be present, he shall at once proceed to draw said jury in the same manner as petit juries are drawn in the circuit court, but if said city shall fail to appear the proceedings may be dismissed, and if for any cause a sufficient number of jurors from the original jurors summoned cannot be had, the said judge shall designate talesmen, and direct the chief of police or any policeman of said city to forthwith summon the same until the panel shall be completed.

Empaneling of jury.

Right of chal-
lenge.

SECTION 26. The right of challenge shall be allowed as in civil cases in the circuit courts under the laws of the state, but no person shall be incompetent to serve as judge, juror or officer to summon a jury by reason of his being a resident or tax-payer of said city; *and provided*, that the parties adversary to the proceedings on the part of the city, shall be entitled in all to three peremptory challenges, and no more.

Jurors to be
sworn.

SECTION 27. The jury so empaneled shall be sworn by the judge, that they are freeholders of the said city, and are not interested in the property fronting on the street or alley proposed to be improved, and that they will faithfully and impartially discharge their duties, according to the best of their abilities, when they shall select one of their number foreman, and thereupon said jury shall become and be deemed a jury in said county court, and the said court, and the judge thereof, together with said jury, shall be vested with full jurisdiction in the premises, and shall at once proceed to the discharge of their duties as hereinafter specified, and may adjourn from time to time as may be necessary, not exceeding thirty days in all.

Proceedings
after jury is
empaneled.

SECTION 28. After said jury shall have been empaneled and sworn as aforesaid, said court shall be in session for all the purposes of such hearing, and the judge shall have the same power and control over the jury as in civil cases under the laws of this state. The petition and resolution shall be read to the jury and a copy of said notice furnished them, and the judge shall send out the jury to view the street or alley described in the notice, and the jury may be accompanied in taking the view by the city attorney and city surveyor, and such other persons as the judge may direct. Before the jury shall leave the court to take their view, the judge shall fix the time when the jury shall return into court, and shall adjourn the court until that time. At the time fixed by the adjournment, the jury, having made the view, shall return into court and shall immediately proceed to inquire into the condition of the street or alley, and the particular kind and character of improvement to be made thereon, and may examine witnesses touching the same and shall hear the proofs and allegations of the parties interested, if any be offered; *provided*, that no person, adverse to the improvement, shall be heard, unless he shall first file his objections thereto in writing in the office of the county judge at or before the time of the coming in of the jury from their

view, which objection shall particularly state the interest of such person in the property fronting on such street or alley, the facts to be urged against the improvement, and shall be verified under oath, but the judge, for good cause shown, may allow such objections to be filed and heard at any time before the jury retire to make up their report; *provided*, if objections are filed by more than one person, they shall be heard together in one proceeding, and separate hearings shall not be allowed.

SECTION 29. The judge shall decide all questions of law arising on such hearing, and may instruct the jury as to their duties and the law applicable to the case, and may at any time permit the jury to review the street or alley. The city, upon such hearing, shall be allowed to show the previous condition of the street or alley in question, and accidents happening thereon, and the unsafety and want of repair of the same.

SECTION 30. After hearing the proofs and allegations of the parties, if any be offered, the jury may retire to consider and make up their report, (but no separation of the jury shall in anywise affect their report) and if they shall find that the street or alley is in want of repair, or in an unsafe condition for ordinary travel and use, and that it is necessary to improve the same, then such jury shall determine the particular kind or character of the improvement which shall be made on such street or alley, and they may decide that such street or alley shall be graded, graveled, planked, macadamized or paved with wood, stone or such other material as they may specify, and in such proportion or combination of materials as they may deem best, and if necessary, such jury may fix and establish the grade of the street or alley on which the improvement shall be made.

SECTION 31. The city surveyor, at the request of the jury, shall prepare profiles, plans or specifications of such improvement as they may decide upon, and perform such other duties as may be necessary to aid the jury in their labors, and the profiles, plans or specifications made by the surveyor, may, at the option of the jury, be attached to and made a part of their report; *provided*, that the surveyor shall not be consulted by the jury until they shall have decided that it is necessary to improve the street or alley, and the jury in making up their report may adjourn from

day to day as they may think proper for that purpose, not exceeding five days.

Jury to make report.

SECTION 32. Said jury, after completing the duties aforesaid, shall make in writing and each sign a report to the said county court of their doings and file the same within two days after completing their duties, which report shall state briefly in substance that such street or alley, describing the same, as in the notice, is in want of repair, or in an unsafe condition for ordinary travel and use, that it is necessary to improve the same, and stating the particular kind and character and extent of the improvement, which they have decided shall be made upon, over or along the same and of what materials it shall be constructed.

City clerk to file and record report.

SECTION 33. Upon filing the report, the judge of the county court shall make an order confirming the same and at the end of ten days, unless an appeal has been perfected staying all proceedings as hereinafter specified, the judge shall transmit said report together with the petition, resolution, and all other papers in the proceedings, duly certified to the city clerk, who shall file and record the same in his office, and the judge shall also certify the amount of his fees and the costs and expenses of the proceedings.

Appeal to supreme court.

SECTION 34. The order of the judge confirming the report of the jury shall be final and conclusive; *provided*, any person feeling aggrieved by the report of the jury may appeal from such report and order to the supreme court as prescribed in the next succeeding section and not otherwise.

When appeal taken security to be given.

SECTION 35. Any person having an interest in the property fronting upon such street, and feeling aggrieved by such report and the order confirming the same, may appeal therefrom to the supreme court within ten days from the entry of the order, upon giving notice of appeals, particularly specifying the errors complained of with an undertaking signed by two or more sufficient sureties, to be approved of by the judge in such sum as the judge may fix, not less than five hundred dollars, conditioned to pay all costs of such appeal, if the report and order be affirmed, and all damages sustained by the city of Fond du Lac, and all damages which the city may become liable to pay in consequence of the defective condition of such street or alley, pending such appeal, and thereupon all proceedings shall be stayed until the determination of such appeal.

SECTION 36. In case of any appeal as herein provided, it shall be the duty of the county court to transmit to the supreme court a certified copy of the record and proceedings in the case, with the notice of appeal and the undertaking, within twenty days after the service of such notice and undertaking; *provided, however,* that no such return shall be required to be made until the party appealing shall deposit with the judge the fees therefor, and a failure to make such deposit shall be taken to be a waiver and abandonment of such appeal, and no further proceedings shall be had thereunder.

Duty of court in case of appeal.

SECTION 37. Upon the hearing of the appeal from the report and order, the supreme court may reverse, affirm or modify the same, provided that no reversal shall be had or made, except for errors of law, and only in regard to the appellant or appellants.

Jurisdiction of supreme court.

SECTION 38. If there be a reversal for any error which may be corrected or supplied in the county court, with due regard to the public interest and the rights of individuals, the appellate court shall remand, with instruction to the county court to correct or supply the error, and thereupon the last named court shall correct and supply the error, and the report and order appealed from shall stand without further right of appeal, and the proceedings certified by the judge to the city clerk as hereinbefore provided.

Order for correction of error.

SECTION 39. After the judge shall certify the report of the jury, the order confirming the same with the other papers in the proceedings to the city clerk, as hereinbefore provided, and the city clerk shall have filed the same in his office, the common council shall have full power and authority to cause the street or alley to be improved in the manner specified in the report of the jury, and make the costs and expenses thereof chargeable to the property fronting on such street or alley, the same in all respects as they would upon a petition from the owners of three-fifths of the number of feet frontage upon such street or alley, under section 3, of this chapter, asking for similar improvement, and all the steps and proceedings in making such improvement shall be the same as hereinbefore provided upon the petition of the owners of the required number of feet frontage on such street or alley and the costs and expenses of such improvement shall be chargeable to and the benefits assessed upon the property fronting thereon, and certificates issued

Power of council to improve street or alley.

and collected the same as hereinbefore provided upon a petition under section 3, of this chapter.

Compensation
of judge.

SECTION 40. The compensation of the judge shall be five dollars per day, and the compensation and fees of the jurors shall be fixed by the common council by resolution, and the same shall be paid out of the city treasury; *provided*, that in all proceedings under this chapter the common council before acting upon any petition, other than from the property owners on the street, may require a bond with sufficient surety to be given, conditioned to indemnify and save the city harmless from all damages, costs and expenses by reason of any proceeding taken or had under such petition if the same for any cause fail or be abandoned.

Expense to be
assessed
against prop-
erty.

SECTION 41. The compensation and fees of the judge and jury and the expense of the proceeding up to the time the jury make their report, shall be added to and deemed a part of the expense of making such improvement, and shall be assessed upon the property fronting upon the street or alley with and as part of the other costs and expenses of such improvement.

Council may
abandon pro-
ceedings.

SECTION 42. The common council, at any time before a contract is entered into, to make the improvement specified in the report of the jury may, in their discretion, abandon the proceedings already had upon receiving the requisite petition from the owners of three-fifths of the number of feet frontage on such street or alley, asking for the improvement of the same, if it shall appear to them to be for the best interest of the public and the individuals to do so; *provided, however*, that if the common council shall decide to abandon the report of the jury and grant the petition of the property owners on the street or alley to be improved, such common council shall have the power and authority, if such petition is filed thirty days after the passage of the resolution specified in section 14, of this chapter, to order the whole costs and expense of the proceedings already had, shall be chargeable to and assessed upon the property fronting upon the street or alley, and if so ordered upon granting the petition, such costs and expenses shall be added to and become a part of the expense of the improvement asked for by the petitioners.

Street com-
missioners to
file report.

SECTION 43. Whenever the street commissioners shall have assessed benefits for any improvement under this chapter and issued certificates therefor, they shall make and file in the office of the city clerk, a detailed report of the amount assessed upon the lots and

premises fronting upon the street or alley improved, the amount charged in each certificate, and the name of the owner or owners of the lots and premises assessed so far as known to them.

SECTION 44. If the owner of any lot, tract of land or tenement shall deem himself aggrieved by the assessment or apportionment of benefits under this chapter, he may at any time within twenty days after the filing of the report of the street commissioners in the last section mentioned, appeal therefrom by notice in writing to the common council and ask for a review and rehearing thereof; and the common council shall hear and determine such appeal as they may deem just and proper. Should the appellant be dissatisfied with the decision of the common council upon his appeal, or should such council fail to decide upon his appeal for twenty days after the same shall have been presented to them, said appellant may, within thirty days after the making of such decision or after the expiration of twenty days, appeal from the decision of the common council or in case of their failure to decide, then from the report of the street commissioners, to the circuit court of Fond du Lac county, by filing with the clerk of said circuit court, his notice of appeal, setting forth his interest in the premises, and the grounds of his appeal, together with a bond to the city of Fond du Lac in the penal sum of five hundred dollars, conditioned for the payment of all costs that shall be adjudged against him on such appeal which bond shall be signed by at least two sufficient sureties, each of whom shall make affidavit, indorsed upon such bond, that he is worth five hundred dollars, over and above all his debts, in property not exempt from execution; and said bond and sureties, if objected to by the city attorney, shall be approved of by the judge of said court. Such appeal shall be ineffectual unless the appellant shall also within said twenty days, serve a copy of his notice of appeal and bond upon the city attorney. In case of any appeal under the provisions of this section the city clerk shall send a certified copy of the report of the street commissioners assessing the benefits and the proceedings and decision of the council on such appeal to them to the clerk of the circuit court. The appeal shall be tried as ordinary issues of fact are tried in said circuit court and the form of the issue shall be subject to the direction of the court. If on such trial the benefits adjudged by said common coun-

Right of person aggrieved to appeal—how appeal taken.

cil shall be diminished, or in case said council shall have failed to decide as aforesaid, the amount of benefits assessed by the street commissioners, shall be diminished, then in either case the appellant shall recover costs, otherwise the city shall recover costs on such appeal. Costs shall be given as on appeal from justice courts. Such appeal shall not affect the right of the city to have the improvement completed; but the certificate against the lot or parcel of land in question shall be given as if no appeal had been taken; and in case the appellant shall succeed, the difference between the amount charged in the certificate and the amount of benefits finally adjudged, shall be paid to the appellant out of the proper ward fund but not until he shall have paid the certificate issued as required by section 9, of this chapter.

Jurisdiction of circuit court.

SECTION 45. The circuit court upon such appeal may decree the cancellation of such certificate or certificates or any part thereof or grant any relief, legal or equitable, in the premises consistent with the facts of the case, as fully and amply as it might or could in an action originally commenced in said court.

Appeal to be only remedy.

SECTION 46. An appeal to the circuit court as provided in the two last preceding sections, shall be the only remedy for damages or wrongs sustained by the acts and proceedings of the said city or its officers in the matter to which the assessment relates; and no action at law or in equity except as hereinbefore provided shall be had or maintained on account of such injuries or on account of such acts and proceedings.

Board of public works abolished.

SECTION 3. The board of public works in the city of Fond du Lac is hereby abolished and hereafter the common council of said city, shall have no power or authority to appoint or elect a board of public works or any member thereof.

Amended.

SECTION 4. Chapter 14, of said chapter 59, private and local laws of 1868, entitled, "Board of public works," is hereby amended to read as follows:

CHAPTER XIV.

LIMITING THE BRINGING OF ACTIONS AGAINST THE CITY, ETC.

Liability for damages.

SECTION 1. Whenever any injury or damage shall happen to any person or property in said city of Fond du Lac, by reason of any insufficiency, want of repair, defect or incumbrance of any street, sidewalk

alley or public ground or from any cause, for which the city would be liable; and such insufficiency, want of repair, defect or incumbrance or other cause of such injury or damage, shall arise from, or be produced or caused by the wrong, neglect of duty, default or negligence of any person or corporation, such person or corporation, so guilty of such wrong, neglect of duty, default or negligence, shall be primarily liable for all damages for such injury and the person sustaining such damages shall have a right to sue for and recover the same against such person or corporation in any court having jurisdiction thereof, and the said city shall not be liable therefor until all legal remedies shall have been exhausted to collect such damages from such person or corporation.

SECTION 5. All acts and parts of acts which contravene the provisions of this act are hereby repealed.

SECTION 6. This act shall be considered a public act, and shall take effect and be in force from and after its passage and publication.

Approved March 3, 1876.

CHAPTER 103.

[Published March 7, 1876.]

AN ACT to incorporate the city of Platteville.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

CHAPTER I.

CITY OF PLATTEVILLE—ITS CORPORATE POWERS.

SECTION 1. All that district of country in the county of Grant hereinafter described, shall be a city, by the name of Platteville, and the people now inhabiting, and those who shall inhabit said district, shall be a municipal corporation, by the name of the city of Platteville, and shall have the general powers possessed by municipal corporations, at common law, and in addition thereto, shall have and possess the powers hereinafter specifically granted, and the authorities thereof shall have perpetual succession, and shall be capable of contracting and being contracted with, ^{Corporate powers.}