

CHAPTER 406.

[Published April 1, 1876.]

AN ACT to amend chapter 164, of the private and local laws of 1858, entitled, "An act to incorporate the village of Whitewater," approved April 24, 1858, and chapter 589, of the private and local laws of 1867, approved April 11, 1869.

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

Amended.
Elections.

SECTION 1. Section 7, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: Section 7. At all elections held under this act all polls shall be opened at one o'clock p. m. and continue open until six o'clock p. m., and the trustees, or any two of them, and the clerk of said village, shall constitute the board of election.

Amended.
Abatement of nuisances.

SECTION 2. Subdivision 2, of section 17, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: "2d. To prevent, abate and remove all nuisances under the ordinances made in pursuance of this charter, the laws of this state, or at common law, and to take such measures for the public health and the general good of the citizens within the limits of the said village as they may deem proper, and to compel the owner or occupant of any place where spirituous, vinous or fermented liquors are manufactured, sold, or given away contrary to law, to the provisions of this charter, or the ordinances made in pursuance thereof, or contrary to any law of this state, to close up, remove or abate the same as a public nuisance, and to compel the owner or occupant of any grocery, cellar, tallow-chandler's shop, soap-factory, tannery, stable, barn, privy, sewer, or other unwholesome nauseous house or place, to cleanse remove or abate the same from time to time, as often as it may be necessary for the health, comfort or convenience of the inhabitants of said village, and to punish the authors of any such nuisance as is described in this subdivision, by penalties, fine and imprisonment, and to define and declare what shall be deemed nuisances, and to authorize and direct the summary abatement thereof, but nothing in this act shall be so construed as to oust any court of its jurisdiction, to abate and remove nuisances in the streets or any other part of the village, by indictment, information or otherwise."

SECTION 3. Subdivision 15, of section 17, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: "15th. To restrain and prevent obscenity in the streets or other public places in said village, and to provide for arresting and removing and punishing any person or persons who may be guilty of the same, to prevent and restrain drunkenness and persons intoxicated in any public place in said village, or in the streets or highways therein, and to cause any such person or persons so found intoxicated in any public place, or in the streets or highways in said village, to be arrested and brought before some justice of the peace, therein to be dealt with according to law, and punished either by fine or imprisonment in the county jail, or both, and to provide for any such person being kept in some jail, lock-up or other safe and convenient place, if necessary, until such person shall answer on oath correctly where, when and of whom he obtained the liquor so intoxicating him or her, and what particular kind of liquor it was.

Amended.

Prevention of obscenity, drunkenness and disorderly conduct.

SECTION 4. Section 2, of chapter 589, of the private and local laws of 1867, is hereby amended so as to read as follows: Section 2. The 19th subdivision of section 17, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: "19th. To have the exclusive power within the limits of the village of Whitewater to grant licenses for selling spirituous, vinous or fermented liquors, and to revoke any license so granted for the violation, by the person or persons to whom the said license was granted, of any law of this state, or for the violation of any ordinance of said village. The sum to be paid for such license shall not be less than one hundred and fifty dollars, nor more than three hundred dollars for retailing to be drunk on the premises of the license, and the sum to be paid for such license for wholesaling shall not be less than forty dollars, and not more than one hundred dollars, both to be paid to the treasurer of said village, and no license so granted shall remain in force any longer than the residue of the term of office of the board granting the same. Said board shall have power to license and regulate auctioneers, taverns, groceries and victualing houses, and to revoke the same for the violation of any ordinance of said village. If any person shall vend, sell, give away, deal or traffic in any spirituous, ardent or intoxicating liquors or drinks in any quantity what-

Amended.

Granting of licenses for selling liquors.

ever, within the limits of the village of Whitewater, without first having obtained a license therefor in accordance with the general laws of this state of the board of trustees of said village, he shall be deemed guilty of misdemeanor, and on conviction thereof shall be punished therefor by a fine of not less than ten nor more than forty dollars, besides the cost of suit, or in lieu of such fine by imprisonment in the county jail of Walworth county not to exceed sixty nor less than twenty days, and in case of punishment by fine as above provided, such person, unless the fine and costs be paid forthwith, shall be committed to said jail until such fine and costs are paid or until discharged by due course of law, and in case of any subsequent conviction of the same person the punishment shall be by fine and imprisonment in the discretion of the court.

Amended.

Actions to be brought in name of village

SECTION 5. Section 19, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: Section 19. In all actions brought to recover any penalty or forfeiture under this act, or the ordinances and by-laws made in pursuance thereof and all prosecution for any violations of any of the provisions of this act, or any ordinance or by-law thereof, shall be brought in the name of the village of Whitewater. It shall be lawful to declare generally in debt for such penalty as forfeiture, stating the section of this act or the number of the ordinance or by-law under which the penalty or forfeiture is claimed, and to give the special matter in evidence under it.

Form of summons.

Subdivision 1. The first process shall be by a summons unless oath be made for a warrant, as in criminal cases before justices of the peace. When the action is commenced by summons, such summons may be substantially in the following form:

COUNTY OF WALWORTH, }
Village of Whitewater, } ss.

The State of Wisconsin to the marshal of said village:
You are hereby commanded to summon A. B., if he shall be found within said county, to appear before the undersigned, a justice of the peace in and for said county, at my office, in said village, on the — day of —, 18—, at — o'clock in the — noon, to answer to the village of Whitewater in a plea of debt, to the damage of said village two hundred dollars or under.

Given under my hand at said village, this — day of —, 18—.

C. D., Justice of the Peace.

Such summons shall be made returnable in the same time and served in the same manner and by the same officers as is now or hereafter may be prescribed by the laws of this state for the commencement of action before justices of the peace by summons, and in all proceedings in the action except as hereinafter provided, shall be governed by the laws of this state relative to actions commenced by summons and triable before justices of the peace. When the action is commenced by summons, the complaint may be substantially in the following form:

How summons served and made returnable.

The village of Whitewater,)
 against)
 A — B —,) Before C. D. Justice.

The plaintiff complains against the defendant for that the defendant on the — day of —, 18—, at the village of Whitewater did violate, (section — of this act, or ordinance or by-law, number — of said village) which said ordinance or by-law is now in force. By reason of such violation an action hath accrued to said village to recover of the defendant the sum of — dollars debt, wherefore the plaintiff demands judgment against the defendant for the sum aforesaid, besides the cost of this action.

Form of complaint.

C. D. Att'y for Plft.

Subdivision 2. In all cases where oath is made for a warrant, the complaint shall be made on oath of the complainant, and no other affidavit shall be necessary, which last mentioned complaint may be substantially in the following form:

Form of complaint when oath is made for warrant.

COUNTY OF WALWORTH.)
 Village of Whitewater,) ss.

Before C. D., Justice.

—, being duly sworn, doth on oath depose and say that A. B. did, on the — day of —, 18—, at the village of Whitewater, in said county, violate (section — of this act, ordinance or by-law, number —, of said village), which said — is now in force, as the deponent verily believes, and prays that the said A. B. may be arrested and held to answer the said village of Whitewater therefor.

Subscribed and sworn to before me this — day
of — 18—. —, —.

It shall be sufficient to give the number of the section of chapter 164, or the number of the ordinance or by-law violated in the foregoing form of complaint, which may be sworn to before any officer authorized to administer oaths. Upon filing said complaint with the justice of peace, he shall issue a warrant substantially in the following form:

COUNTY OF WALWORTH, }
Village of Whitewater, } ss.

The State of Wisconsin, to the marshal of said village greeting:

Form of warrant.

Whereas, — — has this day complained to me in writing, on oath, that A. B. did, on the — day of —, 18—, at said village, in said county, violate section — of this act or ordinance, or by-law number —, of said village, which said — is now in force, as the said complainant believes. Therefore, you are commanded to arrest the body of the said A. B. and bring him before me forthwith to answer to the village of Whitewater on the complaint aforesaid.
C. D., Justice of the Peace.

When case adjourned, defendant to give security for appearance.

Upon the return of the warrant the justice shall proceed summarily with the case unless it be adjourned by consent or for cause. If the case be adjourned, the defendant, if required by the court so to do, shall recognize, with security to be approved by the court for his, her or their appearance in such sum as the court shall direct, or in default thereof may be put in charge of the officer who made the arrest, or be committed to the common jail of Walworth county. The complaint made as aforesaid, shall be the only complaint required, and the plea of "not guilty" shall put in issue all subject matter not embraced in the action. Said warrant shall be served and returned in the same manner as warrants are served and returned under the general laws of this state, and may be served by the sheriff or any constable of Walworth county, or by the marshal of said village.

Service and return of warrant.

Witnesses and jurors to attend without prepayment of fees.

SECTION 3. Witnesses and jurors shall attend before the justice issuing such warrant or summons in all village or criminal suits without the payment of

the fees allowed by law in advance or tender thereof upon process duly served and in default thereof, their attendance may be compelled by attachment as in other cases. In village prosecutions no jury shall be allowed either party and the findings of the court shall be guilty or not guilty. If guilty, the court shall render judgment thereon against the defendant for the fine, penalty or forfeiture set forth in the act, ordinance or by-law referred to in the complaint in said action, for the violation of which the defendant or defendants shall have been adjudged guilty, and for costs of suit, but if not so found guilty the costs of suit shall be taxed against the village. Upon the rendition of judgment against the defendant and the non-payment thereof, the justice shall forthwith issue execution as in cases of tort in case the action was commenced by summons, or a commitment in case the action was commenced by a warrant, and shall, in either case, determine and enter upon his docket the length of time the defendant shall be imprisoned, which in no case shall exceed three months, and shall also insert such time in the execution or commitment. Such execution may be in the following form:

When pay not
to be allowed.

COUNTY OF WALWORTH, }
Village of Whitewater. } ss.

To the sheriff or any constable of said county, or to the marshal of the village of Whitewater and to the keeper of the common jail of the said county,
Greeting:

Whereas, the village of Whitewater did on the — day of —, 18—, recover judgment before the undersigned justice of the peace in and for said village, against —, for the sum of — dollars, together with — dollars and — cents costs of suit, for the violation of (section —, of the charter of said village of Whitewater, or ordinance or by-law of said village of Whitewater number —), you are hereby commanded to levy distress of the goods and chattles of the said —, excepting as the law exempts, and make sale thereof according to law to the amount of said sums together with your fees and twenty-five cents for this writ, and the same return to me in thirty days, and for want of such goods and chattels whereon to levy, to take the body of said — and him convey and deliver to the common jail in Walworth coun-

Form of execution.

ty, and said keeper is hereby commanded to receive, keep in custody in said jail, the said ——— for the term ———, unless the said judgment together with all costs and fees are sooner paid, or he be discharged by due course of law.

Given under my hand this ——— day of ———, 18—
Justice of Peace.

Form of com-
mitment.

The form of the commitment shall be substantially the same as that of the execution, omitting all that relates to the levy and sale and return of writ.

Appeal to cir-
cuit court.

Subdivision 4. In any case where the judgment or fine imposed, exclusive of costs, is twenty-five dollars or more, the defendant may appeal from such judgment to the circuit court of Walworth county; *provided*, such defendant within twenty-four hours of the rendition of such judgment enter into a recognizance with one or more sufficient sureties to be approved by such justice conditioned to appear before said court at the next succeeding term thereof, and to abide the judgment of the court therein. The justice from whose judgment an appeal shall be made shall make a special return of the proceedings had before him, and shall within ten days after the appeal is so taken, cause the summons or warrant and return, together with the proceedings and a copy of the entries in his docket in the action with the recognizance, to be filed in the office of the clerk of said circuit court, and the village of Whitewater may appeal from any such judgment as in other cases before justices of the peace. Said appeal shall stand for trial by jury in the circuit court unless a jury be waived in the manner provided by law. No notice of trial in the circuit court shall be required to be given to or by either party. If the judgment of the justice shall be affirmed, or if upon the trial the defendant shall be convicted, the court shall inflict the penalty provided for by the act, ordinance or by-law, for the violation of which the defendant was prosecuted, and enter judgment against him or them and his or their sureties for such penalty, together with the costs in both courts, and enforce the same by executions as in actions of tort.

Power of court
to sentence to
imprisonment.

Subdivision 5. In all cases where a defendant shall be convicted of any violation of any of the provisions of this act or any ordinance or by-law of the village of Whitewater, the court before whom the same was tried shall have power to sentence the defendant to

such term of imprisonment in the common jail of Watworth county as the act, ordinance or by-law prescribed, not exceeding three months.

SECTION 6. Section 21, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: "Section 21. Any ordinance, regulation, rule or by-law imposing any fine, penalty or forfeiture for the violation of its provisions shall be published for two weeks in some newspaper printed in said village before the same shall be in force, and proof of such publication may be made by the affidavit of any person knowing the fact, and a printed copy of any such ordinance, regulation, rule or by-law adopted by the board of trustees of said village, and published in a newspaper or pamphlet or book-form, purporting to be published by authority of the said board of trustees of said village, shall be *prima facie* evidence of its due adoption and publication, and shall be received in evidence in all cases cognizable before any court of this state.

Amended.

Publication of ordinances, etc.

SECTION 7. Section 23, of chapter 164, of the private and local laws of 1858, is hereby amended so as to read as follows: "Section 23. The trustees shall have power to appoint one street commissioner, and to lay out, open and repair, grade, pave, or otherwise improve streets, avenues, lanes, alleys, sewers and sidewalks and crosswalks, to insure the public property of the village, to direct in the prosecution and defense of suits in which said village may be a party, to procure the necessary blank books for records, and such other stationery as may be required for village purposes, to audit and allow all lawful accounts against said village, and to draw an order on the treasurer for the payment of the same, to fix the compensation of the clerk, treasurer, marshal and street commissioner, which compensation shall not be greater than town officers are allowed by law for the same or like services, to levy and collect taxes on all such property as shall be subject to town and county taxes within the limits of the said village corporation, which shall not exceed in amount one-eighth of one per centum of the assessed value of all real and personal property so liable in any one year, unless a majority of the electors voting at a meeting legally called for that purpose, notice of which and of the sum to be raised, and of the object for which it is to be raised and expended, shall have been given fifteen days previously, shall vote to allow a larger sum to be raised, but in no case shall the elec-

Amended.

Appointment of street commissioner and laying out and improvement of streets, public grounds, etc

tors be allowed to raise by vote more than one-half of one per centum on the assessed valuation of all the real and personal property liable thereto in the village limits. All taxes or assessments, general or special, levied under this act, shall be and remain a lien upon the lands and tenements upon which they may be assessed, and upon all personal property of any person or body politic assessed for personal taxes from the date of the warrant for the collection thereof, until such taxes shall be paid, and no sale or transfer of such real or personal property shall affect such lien. Any personal property belonging to the person taxed, may be taken and sold for the payment of taxes upon personal property.

Amended.

Act not to be affected by general laws.

SECTION 8. Section 43, of chapter 164, of the private and local laws of 1850, is hereby re-enacted so as to read as follows: Section 43. No general law of this state contravening the provisions of this act shall be considered as repealing, amending, or modifying the same, except such purpose be expressly set forth in such law.

SECTION 9. All acts and parts of acts contravening the provisions of this act, are hereby repealed.

SECTION 10. This act shall take effect and be in force from and after its passage.

Approved March 13, 1876.

CHAPTER 407.

[Published April 4, 1876.]

AN ACT to amend section two, chapter eighty-nine of the general laws of 1872, entitled, "An act for locating and changing county seats."

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

Amended.

When board of supervisors may submit removal of county seat to vote of county.

SECTION 1. Section two, of chapter eighty-nine, of the general laws of 1872, is hereby amended so as to read as follows: Whenever one-third of the legal voters of any county (to be determined by the county board from the poll-lists of the last previous general election held in such county, the names of which voters shall each appear on some one of the poll-lists of said election) shall present to the board of supervisors a petition signed by them, asking a change of