

[No. 136, A.]

[Published March 16, 1881.]

CHAPTER 71.

AN ACT to amend chapter three hundred and twenty-three, of the laws of 1880, entitled, an act to revise, consolidate and amend the city charter of the city of Wausau.

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

SECTION 1. Chapter three hundred and twenty-three, of the general laws of Wisconsin for the year 1880, is hereby amended by adding to the provisions of said chapter the words and figures following:

TITLE XIV.

OPENING STEETS ALLEYS, GROUNDS AND SO FOURTH,
OR DISCONTINUING THE SAME.

Laying out public grounds, streets and alleys.

SECTION 176. The common council of the city of Wausau shall have power to lay out public squares, grounds, streets and alleys, and to alter and widen the same, as follows: Whenever ten or more freeholders, residing in any ward, shall, by petition, represent to the common council that it is necessary to take certain lands within the ward where such petitioners may reside, for the public use, for the purpose of laying out public squares, grounds, streets or alleys, or the enlarging of the same, the courses and distances, metes and bounds of the lands proposed to be taken, together with the names and residences of the owners of such premises, if the same shall be known to such petitioners, to be set forth in said petition, the common council shall thereupon cause notice of such application to be given to the occupant or occupants of such land, if any there be, or if any portion of said lands shall not be in actual occupation of any person, then the common council shall cause such notice, describing as near as may be, the premises to be taken, to be published in the official paper or papers four weeks successively, at least once in each week, and proof of such service or publication, by affidavits, shall forthwith be filed with the city clerk.

Application for appointment of jurors to view premises.

SECTION 177. Such notice shall state that upon a day therein to be named, not less than ten days from the service of such notice, or the expiration of such publication, as the case may be, application will be made to the county judge or court commissioner for the county of Marathon, for appointment of twelve jurors to view said premises, and to determine whether

it will be necessary to take the same for the purposes specified in said petition.

SECTION 178. Upon the presentation of such application, and upon proof of the publication or service of the notice hereinbefore required, the said judge or court commissioner shall thereupon appoint twelve reputable freeholders, residents of said city, but not residents of the ward in which said premises may be, nor interested in the result of such application. The said judge or court commissioner shall thereupon issue his precept, directed to said jurors, requiring them within ten days to view the premises to be specified in said precept, and to make returns under their hands to the common council, whether in their judgment it is necessary to take such premises for the purposes specified in such application, and the said jurors, before entering upon the discharge of their duties, shall take and subscribe an oath faithfully and impartially to discharge their duties as such jurors in the premises, which oath may be administered by any person authorized to administer oaths, which shall be filed in the office of the city clerk.

Appointment of Jurors.

SECTION 179. The city marshal shall serve his precept immediately, on the jurors therein named, by reading the same to every one that can be found; and immediately after such service he shall return the said precept to the judge or court commissioner who issued the same, together with his doings thereon.

Duty of city Marshal.

SECTION 180. If any of the jurors so appointed cannot be found, or shall be disqualified from acting, or shall refuse to act, the judge or court commissioner shall appoint others in their places, and a memorandum of such substitution shall be indorsed on the precept.

Disqualification of juror, or failure to qualify.

SECTION 181. The said judge or court commissioner, or any justice of the peace, shall thereupon administer an oath to said jurors, that they are freeholders of said city, and not interested in the premises proposed to be taken, and that they will faithfully and impartially discharge the trust reposed in them.

Oath of juror.

SECTION 182. The said jurors, at such time as they shall agree upon, shall proceed in a body to view the premises in question, and shall hear such testimony as shall be offered by any party interested, which testimony shall be reduced to writing by one of the jurors and either of the jurors shall be authorized to administer the necessary oaths to the witnesses. After viewing the premises in question, and hearing such tes

Viewing of premises.

mony as may be offered, the jurors shall make a report of their proceedings, which shall be signed by them respectively, and which shall state whether in their judgment it is necessary to take the premises in question for public use, which said report, testimony and precept, shall be returned to the common council within the time limited in said precept. Should the jurors report that it is necessary to take the premises, the common council shall enter an order among its proceedings confirming said report, and direct the same jurors, within twenty days thereafter, or such future time as shall be necessary, to again view said premises for the purpose of ascertaining and determining the amount of damages to be paid to the owner or owners of said property proposed to be taken, and to assess and return, within the time limited, such damages to the common council. And after the jurors shall have made their report as to the taking of any lands or premises, under this act, and the same shall have been confirmed, the common council shall have power to appoint new jurors in the place of any who shall neglect or refuse to serve in ascertaining the amount of compensation as above; and all the jurors, before entering upon the discharge of the duties in the premises, shall severally take an oath before some competent officer that they are freeholders in said city, and are not interested in the premises to be taken, and that they will faithfully and impartially discharge the trusts reposed in them.

Valuation of
buildings.

SECTION 183. If there should be any building, in whole or in part, upon the land to be taken, the jurors, before proceeding to make their assessment, shall first estimate and determine the value of such building to the owner, aside from the value of the land, and the injury to him in having such building taken from him; and, secondly, the value of such building to him to remove.

Notice of de-
termination.

SECTION 184. At least ten days' personal notice of such determination shall be given to the owner or his agent, if known and a resident of the city, or left at his usual place of abode. If not known, or a non-resident, notice to all parties interested shall be given by publication in the official paper or papers of said city, three successive weeks. Such notice shall specify the building and the award of the jurors. It shall require the parties interested to appear by a day therein named, or give notice of their election to the common council either to accept the award of the jurors, and

allow such building to be taken with the land appropriated, or their intention to remove such building. He shall have such time for this purpose as the common council may allow.

SECTION 185. If the owner shall refuse to take the building at the value to remove, or fail to give notice of his election as aforesaid within the time prescribed, the common council shall have power to direct the sale of such building at public auction, for cash, giving ten days' notice of such sale. The proceeds shall be paid to the owner, or deposited to his use.

Owner's refusal to accept determination.

SECTION 186. The said jurors, within the time limited, shall view and examine the premises proposed to be taken, and all such premises as will, in their judgment, be injured or benefited thereby. After hearing such testimony as may be offered by any party interested, and which shall be reduced to writing by one of said jurors, they shall proceed to make their assessment, and to determine and appraise to the owner or owners the actual value in money of the real estate so proposed to be taken, and the injury arising to them respectively in consequence thereof, which shall be awarded to such owners respectively as damages. In the estimates of the damages to the land, the jurors shall include the value of the building or buildings (if the property of the owner of such land), as estimated by them as aforesaid, less the proceeds of the sale thereof, or if taken by the owner at the value to remove, in such case, they shall only include the difference between such value and the whole estimated value of such building or buildings.

Appraisalment of value of real estate.

SECTION 187. If the lands or buildings belong to different persons, or if the land be subject to lease, judgment or mortgage, or if there be any estate in it less than an estate in fee, the injury done to such persons or interests respectively, shall be awarded to them by the jurors.

When less than an estate in fee.

SECTION 188. The award of said jurors shall be signed by them, and returned, together with the testimony taken, and the precept to the common council, within the time limited in such precept.

Findings of jurors to be returned to common council.

SECTION 189. Any person whose property is taken, or against whom any assessment is made, may within ten days from the return of the jurors to the common council, appeal from said assessment of damages, to the circuit court of Marathon county, by causing a written notice of such appeal to be served on the clerk of said

Appeal to circuit court.

city, and executing a bond in the manner prescribed in section forty-seven of chapter three hundred and twenty-three of the laws of 1880, and such appeal shall be tried by the court and jury, as in ordinary cases. The common council shall also have the right to appeal, by filing with the clerk a notice thereof, within ten days, as aforesaid.

Land not to be taken till damages are paid

SECTION 190. The land required to be taken for the purposes mentioned in this act shall not be appropriated until the damages awarded therefor to the owner thereof, shall be paid or tendered to the owner or his agent, or, in case the said owner or his agent cannot be found or is unknown, deposit to his or their credit in some safe place of deposit, and then and not before, such lands may be taken and appropriated for the purposes required, and the same shall thereafter be subject to all the laws and ordinances of the city, in the same manner as streets, alleys and public grounds, open or laid out.

Failure of one year to pay damages to vitiate proceedings.

SECTION 191. The damages assessed shall be paid or tendered or deposited, as herein required, within one year from the confirmation of such assessment and report; and if not so paid, tendered or deposited, all the proceedings in any such case shall be void.

Duty of common council when damages are paid.

SECTION 192. The city may pay or tender or deposit as herein required, at any time within one year from the confirmation of such assessment, and report the damages assessed in any such case; and whenever said damages have been so paid, tendered or deposited, it shall be the duty of the common council to enter an order among its proceedings, to take and appropriate such lands for the purposes required.

Discharge of leases, contracts, etc.

SECTION 193. When the whole of any tract or lot or other premises, under lease or other contracts, shall be taken by virtue of this act, all the covenants, contracts or engagements between landlord and tenant or any other contracting parties, touching the same or any part thereof, shall, upon the confirmation of such report, respectively cease and be absolutely discharged.

Discharge of leases, contracts, etc., in part.

SECTION 194. When only a part of a lot or tract of land or other premises so under lease or other contract shall be taken for any of the purposes aforesaid, all the covenants, contracts or agreements respecting the same, upon the confirmation of such report, shall be absolutely discharged as to the part thereof taken, but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved payable and to be paid for or in respect to the same, shall be so

proportioned so that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid or recoverable for or in respect to the same.

SECTION 195. When any known owner of lands or tenements affected by any proceedings under this act shall be an infant, or labor under legal disability, the judge of the circuit court of Marathon county may, upon the application of the common council, or such party or his next friend, appoint a guardian for such party, and all notices required by this act shall be served upon such guardian. Whenever any public grounds, street or alley, shall be laid out, widened or enlarged, under the provisions of this chapter, the common council shall cause an accurate survey and profile thereof to be made and filed in the office of the city clerk.

Appointment of guardian.

SECTION 196. The common council shall have the power to vacate or discontinue, in whole or in part, any highway, street, alley or public walk, within the corporation limits of the city: provided, however, the necessity of so vacating or discontinuing of the same shall be first established by a verdict or report of a jury in like manner as is provided for laying out public squares, grounds and streets in this chapter.

Vacating streets, alleys, etc.

SECTION 197. The cost of all proceedings under this chapter shall be paid by the city, and shall be estimated as follows: The jurors shall be entitled to one dollar per day for each day's attendance; the judge or court commissioner, in full for his services in any one case, five dollars; the marshal, ten cents for each service; the printer shall be paid according to legal rates.

Compensation for services.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 11, 1881.

[No. 106, A.]

[Published March 15, 1881.]

CHAPTER 72.

AN ACT to amend section four thousand six hundred and thirty-three of chapter one hundred and eighty-eight of revised statutes, entitled "crimes and the punishments thereof."

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

SECTION 1. Section four thousand six hundred and thirty-three, of the revised statutes, is hereby amended

Imprisonment for non payment of fine and costs.