

## CHAPTER 151.

[Published March 24, 1860.]

AN ACT to authorize the city of Portage to maintain a levee.

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

SECTION 1. The city of Portage, in order to protect Authority to said city from the periodical overflows of the Wisconsin build levee. river, is hereby authorized to repair and maintain so much of the levee, originally constructed by Webb and Bronson, along the banks of the Wisconsin river, as lies within the corporate limits of said city, and also to build such additions to the same, along said river, within said corporate limits, as the common council of said city may deem necessary to protect said city from the overflow of said river.

SEC. 2. It shall be lawful for said city, their officers, Powers of city engineers, agents, and contractors, at any time, to enter officers. upon the lands on which said levee is constructed, to repair and maintain said levee, and to take from any land, within the corporate limits of said city, gravel, stone, earth, brush, or other material, for embankments and structures necessary to the construction and repair of said levee, and also to enter upon adjacent lands, and make such necessary drains, and give such direction to water courses, by such means as the common council of said city may deem necessary for the preservation of said levee, and the prevention of the overflow of said river as aforesaid—subject, however, to the payment of such compensation for damages as said city may agree to pay therefor, or as shall be ascertained in the manner herein provided.

SEC. 3. Whenever in the judgment of the common City to pay council of said city, it shall be necessary for said city to damages. enter upon the lands aforesaid, for the purposes aforesaid, it shall be lawful for said city to tender to the owner or owners of said land an amount sufficient, in the judgment of said common council, to cover the damages so done, or to be done to said land, and if the owner or owners of said land shall refuse to accept the amount so tendered, as compensation for said damages, or if the owner or owners of said land shall be under any legal disability, or residing out of or absent from the city, it

shall be the duty of the county judge for the county in which the lands lie, on application of either party, to appoint five disinterested persons, residents and freeholders of said city, as jurors to view and examine said lands and estimate the injury or damage, if any, in their judgment, will be sustained by such occupancy and appropriation, and report the same at such time as said judge shall appoint, under oath or affirmation, to the clerk of the circuit court for said county; whereupon said clerk, if any damages shall have been awarded by said jury, shall enter judgment in said court against said city and in favor of the party to whom the damages were so awarded. The application to said county judge, the appointment of said jury, the report of said jury, and the proof of tender by said city, as aforesaid, if any tender was made, shall constitute the judgment roll. Said jurors shall be entitled to the sum of two dollars each, for their services in viewing said lands, and making their award, to be deposited by the party applying for said jury, with said county judge, at the time of making such application, and to be paid to said jury at the time of their appointment. The fees of officers shall be the same as the law provides for similar services in the circuit court. All costs shall be recovered against the city, in case the damages awarded by said jury shall exceed the amount that may have been tendered by said city to said owner or owners of said land. In case the damages awarded by said jury shall be the same or shall be less than the amount that may have been tendered by said city as aforesaid, then the costs shall be deducted from the amount of damages awarded by said jury. And should said jury award no damages against said city, then judgment shall be entered for costs against the party applying for said jury.

Duty of city when award is made.

SEC. 4. It shall be lawful for said city, when said jury have made their award of damages, and reported the same to the clerk of the circuit court, and said clerk shall have entered judgment thereon, to deposit with said clerk, for the benefit of the party in whose favor said judgment was entered, the amount of said judgment; whereupon said city may take, appropriate and occupy such lands, for the purposes aforesaid, without awaiting the issue of further proceedings.

Proceedings when parties are dissatisfied.

SEC. 5. In case either party shall be dissatisfied with the award of said jury, such party may, at any time within six months after the entry of said judgment, by

giving ten days notice to the opposite party, make an application to said circuit court, and shall be entitled to an order of said court that said judgment be set aside, and that an issue be made up between the parties to said judgment, and said issues shall be tried as other issues arising in said court. If, on the trial of said issue, a larger judgment for damages shall be obtained against said city, than the judgment set aside, then the costs of said trial shall be recovered against the city. If the judgment obtained shall not be larger, or shall be less than the one set aside, or less than the amount tendered by said city, then all costs in the entire proceedings shall be deducted from the amount of the judgment for damages so obtained. If no judgment for damages shall be obtained against said city, then judgment for costs shall be entered against the opposing party.

SEC. 6. The said jurors, in assessing the damages to said lands, shall take into consideration the benefits accruing, as well as the damage done to said lands so occupied and appropriated, in maintaining the levee aforesaid, and restraining the overflow of said Wisconsin river. Benefits to be considered.

SEC. 7. Section four, chapter ten, of the charter of said city, approved March twenty-third, 1858, shall not be applicable to work done under the provisions of this act, in cases of great danger of immediate overflow, where protection works should, in the judgment of the common council, be constructed forthwith. Sec. 4; chap. 10, of city charter not to apply.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved March 20, 1860.

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## CHAPTER 152.

[Published April 7, 1860.]

AN ACT to enable the corporation of the village of Sparta to construct sidewalks, and otherwise improve the streets of said village.

(See Supplement to Local Laws.)