

ing, amending or modifying the same unless such purpose is expressly set forth in such law.

A public act.

SECTION 106. This act is hereby declared a public act, and shall be liberally construed in all courts of this state.

Repealed.

SECTION 107. All acts or parts of acts inconsistent and conflicting with the provisions of this act are hereby repealed, but the repeal of said acts or parts of acts shall not in any manner affect, injure or invalidate any contracts, acts or suits, claims, penalties or demands that may have been entered into, performed, commenced, or that may exist under or by virtue in or pursuance of the said acts, or any former act incorporating said city, or any of them, but the same shall exist and be enforced and carried out, and be completed as fully and effectually to all intents and purposes as if this act had not been passed.

SECTION 108. This act shall take effect and be in force from and after its passage and publication.

Approved April 17, 1889.

[No. 343, A.]

[Published April 23, 1889.]

## CHAPTER 492.

AN ACT to amend chapter 162, of the laws of Wisconsin for the year 1887, entitled, "An act to revise, consolidate and amend the charter of the city of La Crosse," and the several acts amendatory thereof.

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

Amendment to  
chapter 162,  
laws of 1887.

SECTION 1. Section 8, of sub-chapter 3, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended by striking out the words, "not exceeding fifteen hundred dollars," in the last line thereof, so that said section shall read as follows: Section 8. The city attorney shall conduct all the law business of the corporation and of all the departments thereof, and all other law business in which the city shall

be interested, when so directed by the common council. He shall, when requested, furnish written opinions on the subjects submitted to him by the mayor, or by the common council, or by any of its committees, or by any other department of the municipal government. He shall keep a docket of all the cases in which the city may be a party, in any court of record, in which shall be briefly entered all steps taken in such cases, and said docket shall at all times, be open to the inspection of the mayor or any member of the common council or any city officer. It shall also be the duty of the city attorney to draft all indentures, bonds, contracts, leases, conveyances and such other instruments in writing, as may be required by the business of the city, to examine and inspect tax and assessment rolls, and all proceedings in respect to the levy and collection of taxes and assessments and to perform such other duties as may be provided by the charter and ordinances of the city. He shall have power to appoint an assistant who shall be authorized to do all acts required by law to be done by the city attorney; provided, that the city attorney shall be responsible to the city for all the acts of such assistant; and that the city shall not be liable for the compensation of such assistant nor have any power to pay the same. The city attorney shall receive for his services an annual salary to be fixed by the city council, payable quarterly.

Duties of district attorney.

SECTION 2. Section 17, of sub-chapter 3, of chapter 162, of the general laws of Wisconsin, for the year 1837, is hereby amended so as to read as follows: Section 17. The common council shall annually provide that all printing, except job printing, authorized and required to be done for the use of the city, or any officer or department thereof, shall be let by contract to the lowest responsible bidder, for the term of one year, but no bid, except for the job printing, shall be considered unless made by the publisher of a daily newspaper, printed in the English language in the city of La Crosse, that has been published at least one year immediately preceding the date for receiving said bid, unless the bids of said publisher shall be higher than the legal rates of advertising, or unless said publisher shall fail to bid. All ordinances and other proceedings and notices required

Printing to be let to lowest bidder.

by this act, or by the resolution or ordinances of the common council to be published, shall be published in a newspaper selected under the provisions of this section, and the printer of such newspaper shall file with the clerk of said city his own affidavit, or the affidavit of his foreman or principal clerk, annexed to a printed copy of such ordinance, resolution, notice or other proceedings, taken from said paper, and specifying the time when, and the paper in which the same was published; and such affidavit shall be received in all courts and places as presumptive evidence of such publication, and of the facts therein stated. The common council shall have power to contract with the publishers of newspapers printed in foreign languages, for the publication therein of the proceedings of the common council and the annual reports of such city officers as the common council may order to be so published. The common council shall, at its first regular meeting in April in each year, or as soon thereafter as practicable, cause the board of public works to advertise for sealed proposals for doing the job printing of said city for the year next ensuing and to enter into contract for the same subject to the provisions of this act in relation to the letting of contracts by said board.

Amendment to sub-chapter 6, of chapter 162, laws of 1887.

City clerk to publish notice to owners.

SECTION 3. Section 3, of sub chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended by striking out the words, "and to appraise the same and to assess damages to the owners thereof," in the twentieth and twenty-first lines thereof, so that said section shall read as follows: Section 3. Within sixty days after the adoption of the report of the committee upon such petition, and the approval of such bond as is mentioned in section 1, of this chapter, or after the passage of any such resolution as mentioned in section 2, of this chapter, the city clerk shall publish a notice to the owners or occupants of the lands proposed to be taken, which notice shall contain the same description of the whole body or bodies of land as is set forth in the petition or resolution, as the case may be, or in the several petitions or resolutions united in the same proceedings and the purpose or purposes for which it is proposed to take the same, and shall state

that at a certain time and place therein named, which time shall not be less than four weeks after the first publication thereof, application will be made to the county judge of La Crosse county, or to a justice of the peace resident in said city, for the appointment of a jury to view the said lands, and to determine whether or not it is necessary to take the same for the purpose or purposes in said notice specified. Such notice shall be published in the official paper of said city at least once in each week for four weeks. A copy of such notice shall be served by the chief of police or a policeman of said city upon every actual occupant of any part of such lands, and upon every person owning or claiming to own, or have any interest or estate of record in or to said lands, or any part thereof, who shall appear from the verified application mentioned in the next section hereof, to be a resident of the city of La Crosse; such service to be made in the manner prescribed by law for the service of a summons in an action in the circuit court; and the sworn return of the officer shall be conclusive evidence of the facts therein stated. As to all owners or occupants of such lands proposed to be taken or any interest therein or any part thereof, as to all guardians or committees of any such owner or owners, as to all corporations having no officer residing in said city of La Crosse upon whom service can be made, and as to all persons, corporations and officers whatsoever, who shall appear from said verified application or otherwise, to be unknown, or non-residents of the city of La Crosse, or whose place of residence shall appear from said application or otherwise to be unknown, said publication in the official paper of said city shall be a sufficient service of such notice upon them and each of them. Personal service, when required, shall in all cases be made at least three days prior to the date of the application fixed in the notice.

SECTION 4. Section 4, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended by striking out the words "and appraise damages," in the sixty-fifth line thereof, so that said section shall read as follows: Section 4. On or before the time appointed in said notice, there shall be filed with the justice or judge named therein a copy or copies of the reso-

Amend section 4, sub-chapter 6, chapter 162, laws of 1887.

Application to be verified by city attorney

lution or resolutions, or petition or petitions with a copy or copies of the bond or bonds annexed, referred to therein, on which the city clerk shall have endorsed or have annexed thereto, his certificate that the same is a true copy or copies of the original petition or petitions and bond or bonds, or resolution or resolutions, referred to in the notice, including in said certificate a certified statement from the records of the common council of all the proceedings upon the reception, reference, approval and adoption or passage thereof; and the city attorney shall present therewith an application signed by him for the appointment of a jury. Such application shall refer by general description to the lands mentioned in the published notice, and shall also describe by some sufficient description each several tract of land, the whole or any part of which is proposed to be taken and appropriated. It shall contain, with the description of each several tract or parcel, the name of the party or parties in possession of, or who own, or have or claim to own, or have any estate or interest of record in, or to the same, and the place of residence of each and all such parties if known, and if any such parties are known to be infants, persons of unsound mind or under guardianship for any cause, or if any such owners or occupants are unknown or their residence is unknown, or if they are known to be non-residents of the city of La Crosse, such fact shall be stated. Such application shall be verified by the city attorney or by some other person, who shall make oath that he has investigated and inquired into the matters therein stated, or the same may be verified by the several affidavits of two or more persons, each verifying as to any facts or class of facts therein stated, which may have been investigated and inquired into by him. Such verification or verifications shall be sufficient if made substantially in the manner allowed by statute for the verification of a pleading by a party to an action. There shall be attached to such application a plat or plats of the land to be taken, showing as near as may be the several separate tracts, the whole or parts of which are proposed to be taken and condemned and having marked thereon, as near as may be, the whole amount of land in each such several tracts, and

the amount thereof proposed to be taken. At the time and place named in such notice such judge or justice shall make a list of twenty-four persons, not interested, and having the qualification of jurors in the circuit court of La Crosse county, and residents and freeholders in said city. He shall hear and decide any challenges for cause or favor made to any one, and if such challenge be sustained, shall replace the name of the person challenged with an unobjectionable juror, until the list shall be perfected. Thereupon under the direction of such magistrate, each party, the city by its representative on the one side, and the owners of the land, or their agents present, or if none be present, or they disagree, a disinterested person appointed by the judge or justice, on the other side, shall challenge six names, one at a time, alternately, the city beginning. To the twelve jurors remaining such judge or justice shall issue a precept, requiring them at an hour on a day named, not more than ten nor less than three days thereafter, to appear before him to be sworn and serve as a jury to view the lands, and at the same time shall publicly adjourn the proceedings to the time and place so named. Such precept shall be served by the chief of police or policeman of said city at least one day before such appointed time, by reading the same to such juror, or by leaving a copy at his usual place of abode, in presence of a member of his family. After striking said jury, and before adjournment as aforesaid, the judge or justice shall then and there make a further list of not less than twenty persons, not interested, having the qualifications of jurors in the circuit court of La Crosse county, and residents and freeholders in said city. He shall hear and decide all challenges for cause or favor, made to any person on said last mentioned list, and if such challenge be sustained, shall replace the name of the person challenged with an unobjectionable juror, until said list shall be perfected. If at any time prior to the day named in the precept, the magistrate shall learn from the return of the officer thereto, or otherwise, that any juror or jurors named in the precept will be unable or unwilling to attend, or if any should be excused by him, he may, by endorsement on said precept appoint others in

Judge to issue  
precept.

their stead, in all cases taking such substitutes from the persons named in said last mentioned list, and the precept shall be served on the person so substituted as above provided at any time before the final organization of the jury. If, upon the day appointed in said city clerk's notice it should appear that any person a resident of the city of La Crosse and not present at such hearing, and entitled to personal service of notice, has not been properly served therewith, whether such person be named in the verified application or not, the judge or justice shall orally adjourn such hearing long enough to allow proper service to be made upon such person. And no further notice of such hearing need be given to any other parties. And if any person so served with notice be a person of unsound mind or an infant having no guardian or committee living in said city, the judge or justice shall on the day fixed for hearing such application, appoint for him a guardian for the purpose of such proceeding, who shall act for such ward; for which purpose also the magistrate may orally adjourn such hearing, and notice may be served upon a guardian so appointed at any time before the actual hearing. Such magistrate upon application to him therefor, may appoint such guardian at any time previous to the day fixed in the notice. It shall not be necessary to appoint as such guardian an attorney at-law, and the person so appointed shall be subject to the same rules as to giving security as provided by statute in case of guardians ad litem appointed in the circuit court, such security when required to be approved by the county judge or justice.

Notice may be served on guardian.

Amendment to sec. 5, sub-chap. 6, chap. 162, laws of 1867.

Relating to jurors.

SECTION 5. Section 5, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1867, is hereby amended by striking out the words, "and if found necessary the damages occasioned thereby," in the twenty-sixth and twenty-seventh lines thereof, so that said section shall read as follows: Section 5. The jurors summoned shall appear at the time and place named. If for any reason a full jury be not present, or any be excused by the magistrate, he shall direct other qualified and disinterested persons to be forthwith summoned as talesmen in their stead, until twelve be obtained, or he may fill the vacancy or vacancies by appointing as jurors any of the persons

named in the list of persons possessing the qualifications of jurors made pursuant to the provisions of the preceding section. Persons so summoned as talesmen shall be subject to challenges for cause or favor, which shall be heard and decided by the magistrate, and either of the parties, the city by its representative, on the one side, and the owners of the land or their agents present, or if none be present, or they disagree, a disinterested person appointed by the judge or justice, on the other, shall have the right to challenge peremptorily, three of the persons so summoned as talesmen. The magistrate may adjourn the proceedings, from time to time, for such length of time as may be necessary to procure the empanelling of a full jury. When such jury shall have been obtained, the magistrate shall administer to them an oath, that they are freeholders of said city and not interested in the property mentioned in the application, and that they shall well and truly inquire into and determine the necessity of taking the said lands, and faithfully to discharge their duties as jurors as prescribed by law. At any time after said jury are sworn, and before the rendition of the separate unanimous verdict of condemnation, the magistrate may, for cause, excuse or discharge any juror from further service thereon, and in case of any vacancy in the panel of said jury arising from such action of the magistrate or from death or other cause the magistrate shall, by endorsement, on the precept, appoint a new jury or new jurors to fill such vacancy or vacancies taking such new juror or jurors from the list of persons possessing the qualification of jurors theretofore made pursuant to the provisions of section 4, of this chapter, or by summoning qualified and disinterested persons as talesmen, subject to challenge as hereinbefore in this section provided. When such vacancy or vacancies shall have been filled, the magistrate shall administer to such new member or new members of the jury the oath required in this section; and thereupon the jury shall proceed as if no vacancy had occurred, but if the jury shall have viewed the lands to be taken prior to the occurrence of such vacancy or vacancies, they shall again view said lands in a body and proceed as before.

SECTION 6. Section 6, of sub chapter 6, of chap-



Amendment to  
sec. 6, sub-  
chap. 6, chap.  
162.

Lands may be  
condemned.

ter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that the said section shall read as follows: Section 6. Under the direction of such magistrate, and accompanied by him, the jury shall view the lands to be taken, and shall sit before him at his office, or any other more convenient place to which he shall orally adjourn the proceedings, to hear such competent evidence as shall be produced by any party; and for such purpose such magistrate shall possess the same powers as a court in session with a jury, and if there be necessity, may adjourn the sitting from day to day. The jury shall render a separate, unanimous verdict in writing signed by them, in which they shall find whether it be necessary to take such lands or any part thereof, for such purpose, describing in such unanimous verdict the whole body or bodies of land, which they find necessary to be taken, and when the jury have agreed upon their verdict, the magistrate may orally adjourn the proceedings to such time as may be necessary to reduce the same to form, and to a time when they shall appear before him and sign the same. Any technical error in such verdict may be immediately corrected, with the consent of the jury. In case the jury shall disagree as to the necessity of taking the whole or any part of the lands mentioned in the application, the magistrate shall make a list of twenty-four jurors, from whom to empanel a jury to pass upon the question left undecided, and shall proceed therewith in all respects as for the empaneling of the first jury, as hereinbefore directed. If two juries disagree the proceedings shall be dismissed. If the jury render a verdict that it is necessary to take such premises, or any part thereof, the magistrate shall make an order and file the same with the city clerk, confirming the whole of said verdict or any part of said verdict that finds it necessary to take any part of said premises, and discharging said jury. The city clerk shall thereupon give notice of application by said city to said magistrate, and the time and place, when and where the same will be made, and that said city will thereupon move said magistrate on the verdict of the jury aforesaid, for the appointment of three disinterested commissioners, residents of said city, to assess the damages and benefits to each piece or parcel of

Proceedings to  
be dismissed if  
two juries  
disagree.

land injured or benefited by the proposed improvement; such notice shall briefly state in substance what such verdict is and shall refer by general description to the land to be taken, and shall be addressed to the parties in possession, and the owners thereof, and shall be published in the official paper of said city for three successive weeks, once in each week, immediately preceding the time of such application. Upon confirmation of said verdict and proof of publication of the aforesaid notice, said magistrate shall make and file an order appointing three disinterested and competent freeholders, residents of said city of La Crosse, as commissioners to view said premises and ascertain and determine the compensation to be paid to the owners or persons interested in the real estate to be taken and appropriated, and also what lands whether lying in said body or bodies necessary to be taken or not lying therein will be benefited by such taking, and to assess the amount of the damage and benefits to each of the parcels of land affected by such improvement whether lying in said body or bodies of land or not, and to make return of the same to the common council of said city; said order shall fix the time and place of the first meeting of the commissioners, and said commissioners shall, before entering upon their duties, take and subscribe the oath prescribed by the twenty-eighth section of the fourth article of the constitution of this state, and that they are freeholders, residents in said city, and are not in any way interested in the premises to be taken. If for any reason any of the commissioners appointed by said order shall be unable or shall refuse to act, said court or justice shall have power to modify said order by the appointment of commissioners in the place of those unable or refusing to act, and may modify his order also as to the time and place when and where such commissioners shall first meet. Such commissioners before meeting to perform their duties shall give one week's notice in the official paper of said city, of the time and place when and where they will first meet to enter on their duties. At the time and place specified in such notice the commissioners shall view the premises described in the petition and proposed to be taken, and also all premises which will, in their judg-

Magistrate to  
appoint three  
freeholders to  
view premises.

If any com-  
missioner is  
unable to  
serve.

ment, be injured or benefited thereby; they shall hear such competent evidence as shall be produced by any party, which evidence shall be reduced to writing by one of their number; they shall proceed thereupon to make their assessment and to determine and appraise the value of the several parcels of real estate proposed to be taken, and the damage, and also the benefit arising to each parcel of land, in their opinion damaged or benefited by such proposed improvement; a majority of such commissioners, all being present, shall be competent to determine any matter properly before them, and they shall forthwith, after such appraisal is completed by them, make and file with the city clerk a reward and report thereof, to the common council, stating in such reward and report the damage and benefit to each parcel of land damaged or benefited by the proposed improvement, particularly describing the said several pieces of land, and giving the owner or owners of each, if known, and if unknown, it shall be so stated. A majority of the commissioners may adjourn from time to time, giving notice orally and publicly, of the time and place of holding the adjourned meeting. In making the said award and report, said commissioners shall assess and appraise to each lot or parcel of land, and to the owners thereof respectively, the injury arising or benefit accruing to the same from the proposed taking thereof. If said lands are both injured and benefited, they shall make allowance and deduction therefrom for any benefits which said lots and the owners thereof may respectively derive from such improvements, and if the damage to any lot or parcel of land shall be greater than the benefit received, or the benefits be greater than the damages, in either case the commissioners shall strike a balance and carry the difference forward to another column, so that their report will show what amount is to be received or paid by such owner or owners respectively, or by such lots or parcels of land respectively, and the difference only in such cases between such benefits and damages shall be payable to or by them. If any such tract or parcel of land taken in whole or in part, be subject to lease, mortgage or other lien, or if there be any estate therein less than a fee, the injury done to

A majority of the commissioners may adjourn from time to time.

the owner or owners thereof respectively, shall be awarded to them by the commissioners, less the benefits resulting to them respectively from the proposed improvements, or if the damages to any such owner or owners be greater than the benefits, the commissioners shall so appraise it. If there be any building or buildings, standing wholly or in part on the land taken, the commissioners shall estimate and determine, first the whole value of the same 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 the owner to remove, both of which valuations shall be stated. The fact that any such building belongs to any person or persons other than the owner or owners of the land, if known, and the name of the owner or owners of such building, if known, shall be stated and the award of damages on account of such building shall be made to the owner or owners thereof, when the land and building belong to different parties. When a street or alley shall be changed by proceedings under this chapter, so much of the original street or alley as shall be left out of it as changed, shall be deemed vacated without any other proceeding, and the fact of such vacation shall be taken into account in assessing benefits and damages by reason of the condemnation proceedings.

SECTION 7. Section 7, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so as that said section shall read as follows: Section 7. Within twenty days after such award and report of said commissioners is filed with the city clerk and approved by the common council, any person owning any interest in any lands, or owning any interest in any land and the building or buildings thereon; or the owner of any building not the owner of any land, found necessary to be taken, or any person owning any interest in any land benefited by the taking may appeal to the circuit court from said award and report; but if the appellant is the owner of lands and the building or buildings thereon, or is the owner of a building or buildings only, he shall not embody in his appeal both the value of such building or buildings aside from the value of the land and the injury to him in having

Amendment to  
sec. 7, sub-  
chap. 6, chap.  
162, laws of  
1887.

Party making  
appeal to file  
notice.

such building taken from him, and to remove, but shall elect which he will embody therein, and whichever he elects, such only shall be considered on said appeal; the owner of land and building or buildings thereon may appeal, either from the value of such building or buildings, aside from the value of the land and the injury to him in having such building taken from him, or to remove, without appealing from the balance of said award and report; but in no case shall any party be allowed more than one appeal. Any party desiring to make an appeal, shall make the same by filing with the magistrate a notice thereof, including therein the amount which he claims should be allowed him, or be assessed against him, in excess of or below the amount allowed or assessed by said commissioners in said award and report, and shall present with said notice of appeal an undertaking in the sum of five hundred dollars (\$500), with two sufficient sureties, to be approved by the magistrate, to pay all costs that may be awarded against said appellant on the appeal, and shall pay to the magistrate two dollars (\$2.00) for making his return, and one dollar (\$1.00) for state tax. And any party not so appealing shall be forever excluded by such verdict, appraisal and assessment. Upon an appeal being taken the magistrate shall transmit to the clerk of the circuit court at least fifteen days prior to the next ensuing term thereof, the notice of the appeal and undertaking. He shall, after the time for appealing is expired, file with the city clerk all the original papers not before filed, annexed together, with a certificate by him thereof, that no appeal has been taken, as herein provided, except as the facts are which he shall briefly specify: and the clerk shall preserve the same in his office. The city may in like manner appeal from any award and report, by filing a notice of appeal without any undertaking in like manner within twenty days after the meeting of the common council held next after the filing of the said original papers and certificate of said magistrate in the office of the city clerk. The appeal of any appellant other than the city shall be ineffectual unless the appellant shall also, within the time herein

allowed for appeal, serve a copy of his notice of appeal and undertaking upon the city attorney.

SECTION 8. Section 8, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 8. Upon filing such notice of appeal and undertaking when required, in the circuit court, the appeal shall be considered an action pending in such court, and be so entered, the owner of the land or building as plaintiff, and the city as defendant, and be subject to a change of place of trial and appeal to the supreme court. The court shall permit any person or persons interested in the damages or benefits mentioned in the notice of appeal to become parties to such appeal upon their petition setting forth the nature and extent of such interest, and any party to said action may make any party claiming an interest adverse to him or them, a party to said action on petition as aforesaid. The appeal shall be tried by a jury unless waived, and costs shall be awarded against the appellant, if a more favorable verdict be not obtained; otherwise against the respondent. Upon entry of judgment the clerk of the circuit court shall transmit a certified copy thereof to the city clerk.

Section 8 of sub-chap. 6, chap. 162, amended.

Relating to notice of appeal.

SECTION 9. Section 9, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 9. After the first meeting of the common council held next after the filing of the commissioners' award and report in the office of the city clerk, as prescribed in section 7, of this chapter, said council may confirm or reject the whole or any part of the verdict of condemnation and assessment of damages, and all proceedings shall abate as to the whole or any part rejected, and all the costs of the proceedings, or the proportion thereof which the allowance of damage on the part rejected bears to the aggregate allowance of damages, shall be paid out of the general fund of the city, or said common council may refer the same to a committee to examine and report upon the same at a future meeting, and upon receiving the report of such committee the council may confirm or reject the whole or any part of the verdict and award with like effect as hereinbefore in this section stated.

Amendment to sec. 9, sub-chap. 6, chap. 162, laws of 1887.

In case any appeal shall have been taken as in this act provided, the common council, by a vote of two-thirds of all the members elect thereto in favor thereof, shall have power to increase any award of damages or balance of damages and benefits made by the commissioners, conditioned upon the withdrawal of the appeal, when appeal has been taken; and any award of damages or balance of damages and benefits as fixed by the vote of said council in any such case, shall be substituted for and have like force and effect as the award of the commissioners originally made; provided, that in any such case the council shall not consider the question of benefits.

Amendment to  
sec. 10, sub-  
chap. 6, chap.  
163, laws of  
1887.

SECTION 10. Section 10, of sub chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1877, is hereby amended so that said section shall read as follows: Section 10. After the determination of any petition or settlement, and withdrawal of any appeal, and confirmation of the whole or any part of the verdict, and award and report of the commissioners as provided in the next preceding section, the common council shall within one year thereafter, by a resolution, appropriate and set apart in the hands of the city treasurer a sum of money equal to the amount of damages, or balance of damages and benefits, where the damages exceed the benefits, awarded by the commissioners, or so much thereof as is contained in the portion of said verdict and award confirmed by said council, and shall at the same time direct the city clerk to certify to said treasurer forthwith a copy of said award of damages, or balance of damages and benefits as aforesaid, or so much thereof as is contained in the portion of said verdict and award and report confirmed by said council. The city clerk shall publish in the official paper of said city for ten days, a notice entitled, in the matter of the proceedings of the passage of said resolution, and that the awards and damages and balance of damages and benefits as aforesaid therein are ready to be paid by the city treasurer of said city at his office. Said city treasurer shall pay said awards and balances upon demand to the person entitled thereto, taking from each a receipt describing the tract of land for the whole or part of which such damages and balances are awarded. At any time after said ten days' notice

shall have been given by the city clerk in the official paper, the city may enter upon and appropriate such property to the use for which the same was condemned; and the same shall thereafter be subject to all the laws and ordinances of the city to the same extent as streets, alleys and public grounds heretofore opened or laid out. The claimant of such damages and balances shall in all cases furnish an abstract of title showing himself entitled to the same before they shall be paid to him. If in any case there shall be any doubts as to who is entitled to the damages and balances for land taken, the treasurer may require of the claimant a bond to the said treasurer for the use of said city, with good and sufficient sureties, to hold said city harmless from all loss, costs and expenses in case any other person should claim and recover said damages or balances or any part thereof.

SECTION 11. Section 11, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 11. In case there shall be any building or buildings upon any portion of the land condemned, the common council, upon confirmation of the whole or any part of the verdict and assessment, but before making the appropriation mentioned in the next preceding section, shall cause a notice, to be signed by the city clerk, to be given to the owner and occupant, if any, of any such building, that the owner is required to file with the city clerk, within a time therein to be named, a written notice of election to accept the award and report of the commissioners, as to such building, and allow the same to be taken with the land appropriated, or of his or their intention to remove such building at the value set thereon by the commissioners to remove. If the owner be a resident of said city of La Crosse, such notice shall be personally served upon him by the chief of police or a policeman of said city, in the same manner provided by law for the service of a circuit court summons. The affidavit of any police officer of said city that he has attempted to serve said notice personally, and that he has not been able to find any such owner in said city, and that he has been, for any reason, unable to make such service as hereinbefore pro-

Amendment to  
sec. 11, sub-  
chapter 6,  
chap. 162, laws  
of 1887.

Notice, how  
served.



vided, shall be conclusive evidence of due diligence, and that such owner is a non-resident of said city, and thereupon the city clerk may publish in the official paper of said city, a like notice addressed to the owner of such building, by name if known, and if not known then to all parties interested, requiring him or them to file in his office, within a time therein designated, like notice of election and intention, as hereinbefore required. Such notice shall be published in said official paper once a week for three successive weeks, and the time therein designated shall be not less than thirty days from the date of the first publication of said notice. If the owner shall give or cause to be given, within the time prescribed, notice of his intention to remove the building at the value set thereon by the commissioners to remove, he shall have such time for that purpose as the common council may allow, and the amount of damages to be paid on account of said building shall thereby become fixed at the amount of the difference between the value of said building to the owner and its value to remove as assessed by the commissioners or amended by the common council before confirmation. If the owner shall give or cause to be given, within the time prescribed, notice of his refusal to take the building at the value set thereon to remove, or fail to give within the time aforesaid any notice at all, the amount of the damage to be paid to the owner on account of said building, shall thereby become fixed at the amount of the value of such building to the owner, as assessed by the commissioners or amended by the common council. After the final determination of the amount of the damages to be paid on account of any building or buildings as aforesaid, the common council may proceed by resolution to appropriate and set apart in the hands of the city treasurer a sufficient amount to pay the whole of the damages as directed in the next preceding section, and proceedings shall be taken for the payment of the same in the same manner and with the same effect as in said section prescribed. If, after all damages are appropriated and set apart in the hands of the treasurer as aforesaid, any such building which the owner refuses to take at the value set thereon to remove

cannot be sold at private sale for as much or more than the value thereof to the owner as fixed by the commissioners and confirmed by the council, said common council may direct the chief of police to sell the same at public auction, giving such notice of sale as the common council may direct. A bill of sale of such building upon such sale, executed by said chief of police to the purchaser, shall vest in such purchaser the absolute title and right of possession in and to any such building, and shall entitle such purchaser, his agents or servants, to go and remain on the land on which such building may stand, or on any land adjoining the same, whether public or private, so far as may be necessary for the purpose of removing such building. Such time may be allowed the purchaser for the removal of any such building as the common council may deem just; but such time shall be stated in the notice of sale, when the building is sold at auction. The proceeds of any such sale shall be paid into the treasury and belong to the general fund. When any owner of any building or buildings shall have appealed from the award of damages on account of such building or buildings, his election shall be determined as provided in section 12, of this chapter, and the common council may proceed without notice to such appellant.

SECTION 12. Section 12, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 12. Upon final determination of any appeal, if judgment be in favor of the appellant said judgment shall be paid by said city out of the general fund; costs shall be allowed to the successful party on trial and determination of the appeal, and if in favor of the plaintiff, shall be added to the amount of the verdict, and if in favor of the defendant shall be deducted therefrom, and judgment shall be rendered according to the rights of the parties. If the appeal be from an assessment of benefits, either where no damages are allowed or the benefits exceed the damages, in such case if the verdict be for the plaintiff assessing said benefits, or the balance of damages and benefits at a less amount than found by the commissioners, the plaintiff shall file a transcript of the judg-

Amendment to  
sec. 12, chap.  
162, sub-  
chap. 6, laws of  
1887.

Judgment to  
be paid out of  
of the general  
fund.

ment entered thereon with the city treasurer, who shall thereupon credit the special tax assessed on account of said benefits or the proportionate amount thereof justly payable by said plaintiff, with the amount of said judgment or enough thereof to cancel said tax, and if said judgment is for more than said special tax then the said city shall pay such balance within the time in this chapter provided for the payment of judgments against said city, and said judgment shall thereupon be satisfied and paid, but if said verdict be in favor of said city and for more than the amount found by said commissioners, then judgment shall be entered against the plaintiff for said city, for the excess above said amount found by said commissioners, and the same shall be a lien against the lots or lands against which said benefits were assessed as well as against the plaintiff personally and may be enforced by execution. If the appeal include the valuation placed by the commissioners upon any building or buildings to the owner, and the injury to him in having such building taken from him, the appellant shall be held to have elected to allow the city to take such building or buildings, and the city may, at any time, after having made the appropriation and published the notice mentioned in section 10, of this chapter, sell or cause to be sold any such buildings; and the proceeds shall be paid into the general fund, and the purchaser shall have the same right upon such sale as mentioned in section 11, of this chapter. If the appeal include the valuation put by the commissioners on a building to remove, the appellant shall be held to have elected to remove such building, and judgment, if in his favor, shall be for the difference between the whole value of the building to the owner assessed, by the commissioners in the original award and report, and the value thereof to remove as fixed by the court or jury on trial of the appeal, besides costs, and in all such cases the city after having made the appropriation and published the notice mentioned in section 10, of this chapter, may require the appellant to remove his building or buildings, or in default thereon, may cause the same or so much thereof as stands on the land condemned to be torn down, doing no unnecessary damage to

the part left standing, and the expense thereof, when certified to, and audited by the common council, to be charged as a special tax on adjoining lands of the owner; or the city may sue for and recover such expense from such owner by action at law.

SECTION 13. Section 13, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 13. In case of appeal and final determination thereof, in the circuit or supreme court, with judgment against the city, such judgment, except as in section 12, of this chapter provided, shall be paid within six months from and after the rendering and docketing thereof. At any time pending an appeal the owners or parties entitled thereto shall be entitled to receive the amount of the award appealed from, as appropriated and set apart in the hands of the treasurer, without prejudice to the appeal taken; but if the city shall have appealed, such money shall only be so withdrawn from the hands of the treasurer upon filing a bond in such sum and with such surety as shall be approved by the court or judge to repay the amount by which award shall be abated on such appeal with costs.

Amendment to chap. 162, laws of 1887.

SECTION 14. Section 15, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 15. When the award and report of said commissioners or a majority of them, shall be made to the common council as provided in this chapter, it shall be confirmed by said common council, and referred by them to the board of public works and the tax commissioner as a board of assessment and apportionment. Said board shall as soon as may be, assess and estimate the expenses and costs of the proposed improvements, including the fees and compensation of the magistrate, jurors and commissioners, and the costs of their conveyance to and from the lands to be viewed, the fees of printers and officers for publishing and serving notices, abstracts of title, certified by the city attorney to be necessary, and all other reasonable costs and expenses connected therewith, including any reasonable expenses of said board of assessment and improvement which the common council may audit and

Relating to improvements.

allow. They shall view the premises and determine whether the whole cost of the proposed improvements shall be chargeable as benefits to the lots and lands subject to special assessment, or whether any part of such cost, and if so, what part, shall be chargeable to the general fund of said city, except that in cases where the damages assessed by the commissioners shall exceed the benefits assessed by them the amount of such excesses shall be chargeable to and payable out of the general fund of said city. They shall report to the common council the estimated cost of the proposed improvement, and, what proportion thereof, if any, over and above said excess of damages over benefits, shall be paid by the city; thereupon the common council shall have power, by resolution duly passed by an affirmative vote of a majority of the members elect thereto, to order the proportion of the estimated cost reported by said board, or any greater or less proportion thereof, but not less than one-half to be chargeable to and payable by said city, which shall be accordingly done, and thereafter the lots and lands benefited and the owners thereof shall not be assessed for more than the proportion which the estimated cost of the improvement reported by said board and finally fixed by the common council bears to the benefits assessed by said commissioners. Upon the report of said board being confirmed, or as made by the common council, or modified and adopted by them, the matter shall be a second time referred to said board, who shall make an assessment roll which shall contain a description of the parcels of lots and lands chargeable for the proposed improvement as reported by the commissioners, and the owner of said lots of land, if known (and if unknown), that fact shall be stated, and the amount chargeable to said parcels of land respectively, which amount shall be the same as fixed by said commissioners or less in proportion to the amount of said improvements determined by the council to be chargeable to the city, including the cases where the damages exceed the benefits, the said board shall report such assessment to the common council which shall act on the same without unreasonable delay; the council may confirm the same by resolution in whole or in part, which resolution

shall be published in the proceedings of the council or the matter may be referred back to the said board for correction. In such case the said board shall have the same power, and like proceedings shall be had as when the matter was before said board for the first time, and when said report of assessment shall be confirmed by the common council as aforesaid, said board shall file said assessment roll signed by them in the office of the comptroller, and the same, or a copy thereof, certified by said comptroller, shall be prima facie evidence in all courts and all places of the existence and legality of all the proceedings taken in relation to such assessment down to the date of such filing. The said comptroller shall, at the time of making his annual report to the common council of the lots or parcels of land subject to special tax or assessment, include therein the said lots or parcels of lands mentioned in said certified list and assessment with the amount chargeable thereto, for benefits, and such amounts shall be liens and shall be levied on the lots or parcels of land respectively to which they are so chargeable in like manner as other special taxes are levied in said city, and when collected the same shall be credited to the general fund.

SECTION 15. Section 16, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1837, is hereby amended so that said section shall read as follows: Section 16. The fees of the justice of the peace shall be as nearly as may be the same as are allowed to justices by law for services of the same general character, but he shall be entitled to three dollars for attending with a jury to view the premises, in addition to other fees. The compensation of the county judge shall be estimated and paid at the rate prescribed by statutes for his services in business other than probate. The compensation of the jurors and commissioners, which shall in all cases be certified by the magistrate to the common council, shall be two dollars a day, except that there shall be no allowance for travel. All such fees and compensation except the magistrate's fees for making return upon appeal to the circuit court as hereinbefore prescribed, shall be audited and paid by the common council and shall be subject to be

Fees of justice  
of the peace.

collected in whole or in part by assessment on property benefited.

Amend chap.  
162, laws of  
1887.  
Directions  
deemed only  
directory.

SECTION 16. Section 22, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 22. All the foregoing directions given in this chapter shall be deemed only directory, and no error, irregularity or informality in any of the proceedings under the provisions of this chapter of this act, not affecting substantial justice, shall not in any way affect the validity of the proceedings. In all cases of proceedings which may hereafter be instituted, under this chapter of this act, the common council shall have power by resolution to correct any substantial error of description of land or amount of assessment contained in any final report of any board of assessment filed with the comptroller, as provided in section 15, of this chapter, at any time before the city tax roll, in which the same shall be entered, is delivered to the city treasurer, as aforesaid. The common council upon being satisfied that any such substantial error exists therein in any special assessment made pursuant to this chapter, may authorize and require the treasurer to withhold from sale any land charged with such erroneous assessment, and when in like manner satisfied that substantial error has intervened it may order the cancellation of any tax sale certificate based upon or embracing such erroneous assessment, by appropriating to the holder the face thereof with seven per cent. interest to date of cancellation. When land shall be withheld from sale as aforesaid by reason of mistake in transferring the description of land or amount of assessment or both from the final report of the board of assessment to the tax roll, the corrected description and amount shall be entered in the next city tax roll to be made out and the assessment shall be collected as provided in section 15, thereof. When any lands shall be so withheld from sale from any other cause than error in copying from the final report of the board of assessment or the comptroller's report into the tax roll, whether so withheld by the direction of the common council as aforesaid or by virtue of any judgment or by decree of the circuit or supreme court, or where any such assessment

shall have been adjudged illegal in a suit for the foreclosure of a tax certificate, or in any proceeding involving the validity of a tax deed or a tax certificate, or where the common council shall have cancelled any tax certificate as herein provided, the common council shall refer the same, to the board of assessment and improvement provided for in section 15, of this chapter, as a board to re-assess the same, whereupon the same proceedings for the assessment and levy of any such tax by said board shall be had as in said section 15, is provided for the first assessment and levy thereof, so far as any such tax is concerned. No change made by subdivision in ownership or by platting such lands between the dates of commencement of the proceedings for condemnation and of re-assessment shall operate to exempt any portion of lands from such re-assessment. A list of such re-assessments having been made, reviewed, corrected, completed, certified and placed on file in the office of the comptroller in the manner and subject to the conditions mentioned in section 15, of this chapter, shall have the same effect as the list therein provided for, and the re-assessments therein contained shall be liens from the time of such filing, and shall be reported by the comptroller and entered in the next city tax roll and collected; and their collection enforced in the same manner as provided in said section in the case of special assessments thereunder. Hereafter no proceeding at law or suit in equity to set aside any assessment or enjoin any tax sale for any assessment under this chapter, shall be maintained against the said city or any of its officers, or against said city to set aside any tax certificate held or owned by the city of La Crosse, unless a petition stating the error or cause of complaint upon which such proceedings or suit is brought, shall have been filed with the city clerk, to be laid before the common council at its next regular meeting after such filing, nor until the expiration of seventy days after such petition shall have been laid before said council. Nothing in this section contained shall be construed to affect any suits now pending or which have heretofore been commenced.

SECTION 17. Section 23, of sub-chapter 6, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said sec-

Powers of the  
common coun-  
cil.



tion shall read as follows: Section 23. The common council shall have power to cause to be condemned and taken, as in this chapter provided, lands required for the sites of public school buildings, engine houses, public markets and other public city buildings, and for the premises attached to such buildings, and for enlarging the sites of such buildings; and to lay out, extend and enlarge public squares and public parks, or artificial lakes, adjoining and designed to be used with and form part of any park or parks hereafter to be laid out and established, or which may have been heretofore acquired by said city, and to condemn and take lands for such purposes; but no land shall be taken for the purpose of an artificial lake except low lying lands subject to overflow by rise of water in the La Crosse, Black or Mississippi rivers; also to take and acquire the use of any lands for the purpose of extending any water pipe or sewer below the surface or upon, along or through any lands in said city. Proceedings to condemn and acquire lands for the use thereof, for any of the purposes mentioned in this section and for all other public purposes except the laying out, opening, widening, extending of streets, alleys or public thoroughfares, shall only be commenced by the adoption of a resolution as provided in section 2, of this chapter, and shall be thereafter conducted in all respects as provided for the condemnation of lands for streets.

Nothing in this act shall effect actions now pending.

SECTION 18. Nothing in this act contained, shall affect or be construed to affect, any action or appeal, now pending from, or on account of any condemnation proceedings or assessment of benefits, under the charter of said city, as it now exists, but said action or appeal shall be continued, tried and completed, in the circuit court and in the supreme court, under the provisions of said charter as it now exists, the same as if this act had not been passed, and any re-assessment of benefits and tax, on account thereof shall be made under the provisions of said charter as it now exists, the same as if this act had not been passed.

Council may order sprinkling of streets.

SECTION 19. Section 11, of sub-chapter 7, of chapter 162, of the general laws of Wisconsin, for the year 1887, is hereby amended so that said section shall read as follows: Section 11. The common council shall have power, by resolution passed by

an affirmative vote of a majority of all the aldermen elected, to order the sprinkling of any macadamized street or part of a macadamized street in the city of La Crosse. Upon the passage of any such resolution, the board of public works shall advertise for sealed proposals for sprinkling such street or part of street. Such advertisement shall be published for at least six days in the official paper, and shall state the street or part of street to be sprinkled and for what length of time.

SECTION 20. Section 12, of sub-chapter 7, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended so that said section shall read as follows: Section 12. The cost of sprinkling such street or part of street shall be paid out of the general fund of the city.

Expense of sprinkling to be paid out of general fund.

SECTION 21. Section 13, of sub-chapter 7, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby repealed.

Repealed.

SECTION 22. Section 30, of sub-chapter 16, of chapter 162, of the general laws of Wisconsin for the year 1887, is hereby amended by striking the word, "one" out of the fourth line thereof, and inserting in lieu thereof, the word, "two," so that said section when amended shall read as follows: Section 30. The common council shall have power to appropriate and pay out of the general fund, to and for the support of the La Crosse public library, such sums of money not exceeding two thousand dollars in any one year, as it may deem expedient.

Amend chapter 162, laws of 1887

Money for the support of La Crosse public library.

SECTION 23. The common council of said city is authorized, and shall have power, to borrow such sum or sums of money, not exceeding the sum of forty thousand dollars, as it may deem necessary, to be used by or under its direction, in the purchase of grounds for, and in building, a city hall, or building, for a council room, court room, offices for city officers, a police station, and such other rooms as they may deem necessary, and to issue bonds of the city therefor, payable not more than thirty years after date, and bearing not more than five per cent. interest per annum, such bonds to be signed by the mayor and countersigned by the clerk, with the seal of the city attached; provided, the power herein given shall be exercised subject to the limitation of municipal indebtedness prescribed by the constitution, and provided that any bonds issued under the provisions hereof, shall not

Common council may borrow money.

be hypothecated or sold at less than the par value of said bonds.

Amend chapter  
162, laws of  
1887.

Relating to  
public markets.

SECTION 24. Sub-division 19, of section 3, of subchapter 4, of chapter 162, of the laws of Wisconsin of 1887, entitled, "An act to revise, consolidate and amend the charter of the city of LaCrosse, and the several acts amendatory thereof," is hereby amended so as to read as follows: To establish public markets, and make rules and regulations for the conduct and government of the same; to appoint suitable officers for overseeing and regulating such markets, and to punish and restrain all persons from interrupting and interfering with the due observance of such rules and regulations; to license and regulate butchers, and to regulate and restrain the sale of game, poultry, fresh meat, vegetables, fish, butter, fruit, eggs, milk and other provisions, and to cause the seizure and destruction or other disposition of tainted or unwholesome meat, game, butter, vegetables, fruit or provisions offered for sale, and to license, tax, regulate, suppress and prohibit hawkers, peddlers, solicitors and canvassers in the city of La Crosse; and to regulate the sale or traffic in merchandise, in the city of La Crosse, as they may see fit, and have power to grant license for the sale or traffic in merchandise, on such terms as they may deem proper; to compel the payment of such license as the common council may fix by ordinance or resolution or otherwise, by all transient dealers in goods, wares and merchandise, occupying stores or buildings in the city and engaged in the sale of such goods, at auction or otherwise. All merchants or dealers in goods or merchandise, whose stock of goods have not been assessed and taxed within the city for the fiscal year during any part of which they shall be engaged in such business, shall be deemed transient dealers, for the purposes of this sub-division.

Board of public  
works, how  
constituted.

SECTION 25. Section 1, of chapter 5, of chapter 162, of the laws of 1887, is hereby amended by striking out the words, "first Tuesday of May," in the eleventh line of said section and inserting in lieu thereof the words, "third Tuesday of April," so that said section, when amended, shall read as follows: "There is hereby established for the city of La Crosse an executive department to be known as the board of public works, which shall consist of three

persons, styled commissioners of public works. The members of said board shall be elected by the people; no two members of said board shall be residents of the same ward. All the members of said board shall be citizens and residents within said city and freeholders within the city limits. The term of office of the commissioners shall be two years, and shall commence on the third Tuesday of April. As often as a vacancy shall occur in said board, whether by death, resignation or otherwise, a person shall be elected in the manner heretofore provided, to succeed the person whose office shall so become vacant, for the remainder of his term. The commissioners shall elect annually from their own number, a president, and also from their own number, a secretary, who is hereby authorized to administer all oaths required by this act. The city engineer and the commissioners of said board may be removed for incompetency by the mayor, with the approval of two-thirds of all the members elect of the common council."

SECTION 26. This act shall take effect and be in force from and after its passage.

Approved April 17, 1889.

[No. 945, A.]

[Published April 26, 1889.]

## CHAPTER 527.

AN ACT to amend chapter 132, laws of 1882, being the city charter of the city of Portage, Wisconsin.

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

SECTION 1. Section 128, of chapter 132, laws of 1882, is hereby amended so as to read as follows: Section 128. The city of Portage in its corporate name may sue for and recover any and all fines, penalties and forfeiture, under this act, or under the ordinances, by-laws or police or health regu-

Amending ch.  
132, laws of  
1882.

Form of com-  
plaint.