

CHAPTER XXV.

An Act to amend Section one (1) of Chapter seven (7), of an act entitled "an act to reduce the act incorporating the city of Rochester, in the county of Olmsted, and State of Minnesota, and the several acts amendatory thereof, and the act to organize a Board of Education for the city of Rochester, and the several acts amendatory thereof to one act, and to amend the same," approved March ninth, one thousand eight hundred and sixty-seven.

March 3, 1871.

- SECTION 1. Amendment to Section one (1), Chapter seven (7), Special Laws of 1867.
 Council to have control of public highways, etc.—In case of taking private property for public use, to appoint Commissioners to assess damages, etc.
2. When act to take effect.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. That section one of chapter seven of an act entitled "An act to reduce the act incorporating the city of Rochester, in the county of Olmsted, and state of Minnesota, and the several acts amendatory thereof, and the act to organize a board of education for the city of Rochester, and the several acts amendatory thereof, to one act, and to amend the same," approved March ninth, one thousand eight hundred and sixty seven, be and the same is hereby amended so as to read as follows :

Section 1. The common council shall have the care, supervision and control of all public highways, bridges, streets, alleys and grounds within the limits of said city, and shall cause all streets, alleys or highways within the city to be kept open and in repair, and free from nuisance, and shall have the same authority for laying out public roads in the unplatted part of said city, as is given to supervisors in the townships by the general laws of the state. No street or alley, which shall hereafter be dedicated to public use by the proprietor or proprietors of grounds within said city, shall be recognized as a public

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street or alley of said city, unless the common council shall first approve the plat thereof, or accept such dedication, or afterwards confirm the same by ordinance specially passed for such purpose. The common council of said city by a vote of not less than two-thirds of the members present, and constituting a quorum of any dated or special meeting, such vote to embrace a majority of all the members elect, shall have power to lay out, open, alter and vacate public squares, streets, grounds, highways and alleys, and to widen and straighten the same; *Provided*, That whenever it shall be required to take private property for the purposes above stated, they shall proceed in the manner hereafter provided.

First.—The common council, upon ordering an improvement above mentioned to be made, shall appoint as many commissioners as there may be wards of said city, selecting one from each ward, who shall be a disinterested freeholder and qualified voter of said city, to view the premises, and assess the damages which may be occasioned by the taking of private property or otherwise in making said improvements. Said commissioners shall be notified as soon as practicable by the recorder of said city, to attend at his office at a time to be fixed by him for the purpose of qualifying and entering upon their duties; and in case any such commissioners, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said city not exceeding fifty dollars, and shall be liable to be prosecuted therefore before the city justice of said city as in the case of fines imposed for a violation of an ordinance of said city, and the commissioners in attendance shall be authorized to appoint another commissioner or commissioners in place of any absentee or absentees aforesaid, selected from the ward in each case not represented, and possessing the qualifications aforesaid. In all other cases of vacancy the common council shall fill such vacancy.

Second.—The commissioners shall be sworn by the recorder to discharge their duties as commissioners in the matter with impartiality and fidelity, and to make due return of their actions and doings to the common council.

Third.—The said commissioners shall, with all reasonable speed, with the assistance of the city surveyor of said city, cause a survey and plat of the proposed improvement to be made and filed with the city recorder, exhibiting, as far as practicable, the land or parcels of property

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required to be taken, or which may be damaged thereby, and shall thereupon give notice by publication in the official newspaper of said city, for at least ten days, to the effect that such plat has been filed and that the said commissioners will meet at a place and time designated by them, and thence proceed to view the premises and assess the damages for property to be taken, or which may be damaged by such improvement.

Fourth.—At the time and place appointed according to said notice the said commissioners shall view the premises, and may hear any evidence or proof offered by the parties interested, and adjourn from day to day, if necessary, for the purpose aforesaid. When view and hearing aforesaid shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by said improvement, and in so doing shall take into consideration the value of the property proposed to be taken with such other damages as may be incident thereto, and also the advantages, which will accrue to such owner or owners in making such improvement.

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Fifth.—If there should be any building standing in whole or in part upon the land to be taken, the said commissioners shall in each case determine and assess the amount of damages, which should be paid to the owner or owners thereof, in case such building or so much thereof, as might be necessary, should be taken, and shall also determine and assess the amount of damages to be paid to such owner or owners, in case he or they should elect to remove such building, and the damages in relation to buildings aforesaid shall be assessed separately from the damages in relation to the land, upon which they are erected.

Sixth.—If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee the injury or damage done to such persons or interests respectively, may be awarded to them by the commissioners less the benefit resulting to them from the improvement.

Seventh.—The said commissioners, having ascertained and assessed the damage aforesaid, shall make and file with the city recorder, a written report to the common council of their action in the premises, embracing a

schedule or assessment of the damages in each case with a description of the land and the name of the owners if known to them, and also a statement of the costs of the proceeding.

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Eighth.—Upon such report being filed in the office of the city recorder, said city recorder shall give at least ten days notice by publication in the official newspaper of said city to the effect, that such assessment has been returned, and that the same will be confirmed by the common council at a meeting thereof, and be named in said notice, unless objections are made in writing, by persons interested in any land required to be taken. Any persons interested in buildings standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified in said notice, notify the common council in writing, of their election, to remove such buildings according to the award of the commissioners. The common council upon the day fixed for the consideration of such report, or at such subsequent meeting, to which the same may stand over or be referred, shall have power in their discretion to confine, revise or annul, the assessment, giving due consideration to any objections interposed by parties interested.

Ninth.—The damages assessed shall be paid out of the general funds of said city, and shall be paid or tendered or deposited and set apart in the treasury of said city, to and for the use of the parties entitled thereto, within six months from the confirmation of such assessment and report, and the land or property required to be taken for the purposes aforesaid, 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 deposited and set apart for his use as aforesaid, and in case the said city should be unable to determine to whom the damages in any particular case so awarded should be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited by order of the common council, in the district court of the county in the same manner as moneys are paid into court, until the parties entitled thereto shall substantiate their claim to the same.

Tenth.—In case any owner or owners of buildings as aforesaid, shall have elected in manner aforesaid, to remove his or their buildings, he or they shall so remove them within thirty days from the confirmation of said report, or within such further time as the common coun-

oil may allow for the purpose, and shall therefore be entitled to payment from said city, of the amount of damages awarded in such case in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same within the time prescribed, such buildings or so much thereof, as may be necessary, upon payment or depositing the damages awarded for such taking in manner aforesaid, may be then taken and appropriated, sold or disposed of as the common council shall direct, and the same extra proceeds thereof shall belong to said city.

Eleventh.—When any known owner of lands or tenements affected by any proceeding under this act shall be an infant or labor under legal disabilities, the judge of the district court, or, in his absence, the judge of any court of record may, upon application of said commissioners or of said city, or such party or his next friend, appoint a suitable guardian for such party, and all notices required by this act shall be served upon such guardian.

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Twelfth.—Any person feeling himself aggrieved by such assessment may, by notice in writing served on the mayor of said city, a copy whereof, which proof of service shall be filed in the office of the clerk of the district court of the county within twenty days from the time of confirmation of said report or assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the court and jury as in ordinary cases; but no pleadings shall be required, and the party appealing shall specify in the notice of appeal the grounds of objection to such assessment, and shall not be entitled to have any other objections than those specified considered; and a transcript of such report, certified by the city recorder, or the original thereof, shall be prima facie evidence of the facts therein stated, and that such assessment was regular and just, and made in conformity to law. The judgment of such court therein shall be final. Such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeal from justices of the peace in civil suits.

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

When act to take effect.

Approved March 6, 1871.