

## CHAPTER 28.

AN ACT TO AMEND AN ACT TO AMEND AND CODIFY THE CHARTER OF THE CITY OF HASTINGS, IN THE COUNTY OF DAKOTA, MINNESOTA, APPROVED MARCH FOURTH, (4th) EIGHTEEN HUNDRED AND SEVENTY-ONE (1871), AND ACTS AMENDATORY THEREOF.

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

SECTION 1. That section two (2) of chapter four (4) of said act, to amend and codify the charter of the city of Hastings, in the county of Dakota, Minnesota, approved March fourth (4th), eighttee hundred and seventy-one (1871), be amended by adding thereto the following subdivisions:

*Thirty-second.* To license and regulate the selling or contracting for the sale of any goods, wares or merchandise by sample, when such goods, wares or merchandise are hereafter to be sent or delivered to the purchaser; *Provided,* That not less than five dollars (\$5) nor more than two hundred dollars (\$200) shall be required to be paid for any license under this act, and the fee for issuing the same shall not exceed one dollar (\$1), and said common council may revoke any license granted under this act for misconduct in the course of trade.

SEC. 2. That section three (3) of chapter five (5) and the whole of chapter six (6), consisting of section one (1) to section twelve (12) inclusive, and not including the "miscellaneous provisions," be struck out, and the following inserted in lieu thereof:

## CHAPTER VI.

SECTION 1. Said city of Hastings shall have power to take private property, and in addition to the taxes herein elsewhere authorized, may levy assessments for local improvements upon the property fronting upon such improvements, or upon the property benefited by such improvements, without regard to a cash valuation, for the purpose of laying out, opening, extending, widening, contracting, altering, straightening, filling, grading, levelling, paving, curbing, walling, bridging, graveling, macadamizing or

planking any street, lane, alley or highway within its corporate limits, and for keeping the same in repair; also for filling, grading, protecting, improving and ornamenting any public park, square or grounds now or hereafter laid out; also for constructing, laying, relaying and repairing cross and sidewalks, area walls, gutters, sewers and private drains, and constructing reservoirs and bridges. *Provided*, That cross foot walks over public streets, lanes or alleys, and all cross foot walks and sidewalks adjacent to public squares, public grounds or public parks, shall be constructed, altered and repaired out of the general fund of said city, and all improving and ornamenting of public squares or grounds shall likewise be at the expense of the general fund of said city.

SEC. 2. Whenever the city council is petitioned in writing to undertake any improvement hereinbefore authorized which requires the taking of private property or the assessment of the expense of such improvements upon property fronting upon or to be benefited by such improvements, and such petition is signed by a majority of the owners of property that in the opinion of the council would be benefited by such improvements, or whenever without any petition, a majority of all the members elect of said city council shall by vote determine the taking of private property or making any improvements necessary, they shall by resolution appoint three disinterested commissioners who shall be freeholders and qualified electors of the city, one of whom at least shall be a resident of the ward in which is situated the property proposed to be taken or affected by such improvement, to view the premises and assess the damages and benefit which may be occasioned by or result from the taking of such property, or the making of such improvement; said commissioners shall be notified as soon as practicable by the city clerk to attend at his office on a day fixed by him for the purpose of qualifying and entering upon their duties, and in case any such commissioners upon being notified shall neglect or refuse to attend as aforesaid, and qualify or enter upon and discharge his duties as such commissioner, he shall forfeit and pay to the city a fine not exceeding fifty dollars (\$50), and may be prosecuted therefor before the police justice of the city, as in the case of fines unpaid for the violation of ordinances of the city, and the city council shall thereupon fill the vacancy caused by his refusal to serve. The commissioners shall be sworn by any officer authorized to administer oaths, to discharge their duties as commissioners in the matter faithfully and impartially, and to make due returns of their said acts and doings to the city council, which said oaths shall be reduced to writing and subscribed by said commissioners and deposited with the clerk of the city, to be retained in his office as a portion of the record and parts of the proceedings.

SEC. 3. Said city council, upon the appointment of commissioners as aforesaid, shall cause to be prepared and filed in the clerk's office, an accurate survey and plan of the contemplated improvements, showing the land or parcels of property, proposed to be taken or which may be damaged thereby, together with specifications of the work to be done, where the same is practicable, and

necessary to enable the commissioners to determine the cost of the improvement; and when said plans and specifications are completed and filed, said council shall cause proposals for doing said work, to be published in the official paper of the city, which proposal shall refer bidders to the plans and specifications filed with the clerk for definite information, and fix a time on or before which will be received at the clerk's office, sealed bids for doing all work necessary to be done to complete the improvements according to said plans and specifications, which proposal shall be published in not less than two (2) successive issues of said paper, before the expiration of the period allowed for persons to file their bids as aforesaid. All bids shall be sealed and directed to the city council and accompanied with a bond to the city of Hastings, in a sum of not less than twenty (20) per cent. of the cost of the work according to the price bid, executed by the bidder, and two (2) responsible sureties, conditioned that he shall execute the work for the price mentioned in his bid, according to the plans and specifications filed in the clerk's office, in case the contract is awarded to him, and if such contract is awarded to him and he fails to perform the same said bond shall be enforceable against him and his sureties for any sum the city may reasonably expend in completing the performance of the work covered by said contract in excess of the amount called for by his contract. On the day appointed the city council shall open the several bids and award the contract to the lowest responsible bidder on condition that the improvement ultimately be determined upon; and said bid and award shall be binding upon said bidder and his sureties and said city, during the pendency of the proceedings for assessing benefits and awarding damages and until the same are finally determined.

SEC. 4. The city council shall immediately furnish said commissioners with a statement of the costs of said contemplated improvements, based upon the terms of the accepted bid; and said commissioners shall immediately fix a time and place, when and where they will meet to assess the damages and benefits to the property to be taken or affected by said contemplated improvements, of which time and place, notice to all persons shall be given by publication in the official paper of said city, for not less than two successive weekly issues, the last of which publications shall not be less than six (6) days before the day of hearing, in which notice they shall specify what property is to be taken or what such assessment is to be for, and the property to be injured or benefited thereby as near as practicable, referring to the plans and specifications in the clerk's office, which shall always be open to public inspection; and said commissioners shall give like notice, either personally or by mail, to all owners or agents of owners, resident in the city of Hastings, if known to them, at least six (6) days before the day of hearing, but the failure to give such personal notice shall in no wise affect the validity of said assessment or any of their proceedings. All persons interested in any such assessment, shall have the right to be present and be heard either in person or by counsel; and the said commissioners shall receive

any legal evidence offered, touching the subject matter of their investigation, and for that purpose any of said commissioners may administer oaths to witnesses, and they may adjourn from time to time and place to place, during their investigation, and when their hearing shall be concluded they shall determine and assess the damages to be paid to the owners of each parcel of property proposed to be taken or damaged by such improvements, and in so doing shall take into consideration the value of the property proposed to be taken and such other damages to the owners thereof as may be incidental thereto, and also the advantage that may accrue to such owner or owners in making such improvements, and at the same time they shall determine what real estate will be damaged or benefited by such improvement, and assess the damages, cost of such improvement and the cost of the proceedings on the real estate by them deem benefited, in proportion, as nearly as may be, to benefits resulting to each separate parcel of property benefited, briefly describing every parcel so assessed.

SEC. 5. In the assessment of damages and benefits for the opening of any street or alley, it shall be lawful for said commissioners or city council, in their discretion in making such assessment, where part of the land to be laid out into such streets or alleys, has been theretofore donated by any person or persons for such street or alley, to appraise the value of the land so donated and to apply the value thereof as far as the amount so appraised shall go, as an offset to the benefits assessed against the person or persons making such donation, or those claiming under them; but nothing herein contained shall authorize any person or persons by whom such donation is made, to claim from the city the amount of such appraisal, except as an offset as herein provided. And where the assessment is one for the widening of any street which may have been theretofore either in whole or any part donated to the public by the proprietors of the adjoining land, it shall also be lawful for said commissioners in their discretion, to make such allowance therefor in their assessment of benefits as shall in their opinion be equitable and just.

SEC. 6. If the damage to any person be greater than the benefit received, or if the benefit be greater than the damages in either case, the said commissioners shall strike the balance, and carry the difference forward to another column, so that the assessment shall show what amount is to be paid by or to the party against whom or in whose favor it shall be found, and the difference only shall in any case be collectable of them, or paid to them or either of them.

SEC. 7. If there should be any buildings, in whole or in part, upon the land to be taken, the said commissioners shall in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such buildings, or so much thereof as might be necessary, should be taken, and also determine and assess the damages which should 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 shall be assessed sepa-

rately from the damages in relation to land upon which they are erected. If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment or other lien, or if there be an estate of less than the fee, the injury or damage done to such person or interests respectively, may be awarded them by the commissioners, less the benefits resulting to them by the improvements.

SEC. 8. Said commissioners having ascertained and assessed the damages as aforesaid, shall make and file with the recorder a written report to the common council of their action in the premises, embracing a schedule of the assessment and award in such case, with the description of the lands and the names of the owners, if known to them, and also a statement of the costs of the proceeding; upon such report being filed in the office of the city recorder, the council shall cause a notice to be twice published in the official paper of said city, to the effect that said assessment has been made and returned and filed, and that the same will be confirmed by the common council at a meeting then to be named in said notice, and shall be at least ten (10) days after the first publication thereof, unless objections are made in writing by persons interested in any lands so assessed, injured or taken. Any person interested in buildings, in whole or in part, upon land to be taken, shall on or before the time specified in said notice, notify the council in writing of their election to remove said buildings (if they so elect) according to the award of the commissioners. The common council, upon the day fixed for the consideration of such report, or at any subsequent meeting to be held, (the same may stand over or be referred) shall have power in their discretion to confirm, revise or amend the assessment, or to discontinue, or postpone indefinitely the whole or any part of the proceedings, giving due consideration to the claims and objections interposed by the parties interested.

SEC. 9. In case the owner or owners of any buildings as aforesaid shall have elected in the manner aforesaid to remove his or their buildings, he or they shall so remove within ten (10) days from the confirmation of such report, or such further time as the council may allow for such purposes, and shall only be entitled to such damages as may be due after such removal. When such person or persons shall not have elected to remove such buildings, or as much thereof as may be necessary, and upon the payment or depositing of the amount of damages as hereafter stated, the said building may be taken and appropriated, sold, or disposed of in such manner as the council may direct, and the proceeds thereof shall belong to said city. When any known owner of the lands or tenements affected by the proceedings under this act shall be an infant, or labor under any legal disability, the judge of the district court, or court commissioner of said county of Dakota, may, upon the application of the city attorney or the mayor, or the party laboring under such disability or his next friend, appoint a suitable person guardian for said person, which guardian shall stand in all respects for, and in the place of the party whoever he represents in such proceedings.

SEC. 10. Any person feeling aggrieved by such assessments or award, and who has filed objections to the assessments or award as hereinbefore provided, may by notice in writing served on the city clerk or city attorney of said city, the original whereof with proof of service shall be filed in the office of the clerk of the district court in said Dakota county, within twenty (20) days after the confirmation of such report, and upon the execution of a bond with one (1) or more sureties to said city, to be approved by the judge of the said district court, and file with the clerk of said court, may appeal from such assessment or award to the district court aforesaid; such appeal shall be tried by the court or jury, or both, as in ordinary cases, but no pleadings shall be required and the party appealing shall specify in the notice of appeal, the grounds of objections to such assessment or award, 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 said assessment or award was regular and made in conformity to law, and that all proper notices were given and proper proceedings had.

*Provided*, That no questions shall be considered on said appeal except the jurisdiction of said commissioners and city council, and the amount of damages awarded and assessment or benefit. The judgment of the district court thereon shall be final. In case of appeal, a copy of the assessment roll as confirmed as aforesaid shall at the expense of the appellant, be filed in the office of the clerk of the district court by the city recorder, within ten (10) days after such appeal is taken. Such appeal shall be docketed in the name of the appellant *vs.* the city of Hastings, as "an appeal from assessment," entered and brought on for trial, and be governed in other respects, as appeals from justices of the peace in civil actions; except that it shall be triable at the next term held more than ten (10) days after said appeal is perfected, and the judgment of the court shall be to modify, confirm or annul said assessment or award, and no appeal therefrom shall be.

SEC. 11. When said assessment or award shall have been confirmed, and no appeal taken therefrom, or if an appeal shall have been taken, when judgment of confirmation shall have been rendered, the same shall be a lawful and sufficient condemnation of the land or property ordered to be appropriated. The common council shall thereupon cause to be paid to the owner of such property, or to his agent, the amount of damages over and above all benefits which may have been awarded therefor, as soon as a sufficient amount of the assessment shall have been collected for that purpose; but the claimant shall in all cases furnish an abstract of title, showing himself entitled to such damages, before the same shall be paid. If in any case there shall be any doubt as to who is entitled to the damages for land taken, the city may require of the claimant a bond with good and sufficient sureties to hold the city harmless from all loss, costs and expenses, in case any other person shall claim such damages. In all cases the title of land taken and condemned in the manner aforesaid shall be vested absolutely in the city of Hastings in fee simple.

SEC. 12. As soon as the money is collected and ready in the hands of the treasurer, to be paid over to parties entitled to damages for property condemned or injured, ten (10) days' notice thereof by one publication shall be given by the city treasurer in the official paper of the city, and the city may then, and not before, enter upon, take possession of, and appropriate the property condemned, and whenever the damages awarded to the owner of any property condemned by said city for public use shall have been paid to such owner or his agent, or when sufficient money for that purpose shall be in the hands of the city treasurer, ready to be paid over to such owner, and ten (10) days notice thereof shall have been given in the official paper of the city, the city may enter upon and appropriate such property to the use for which the same was condemned.

SEC. 13. When the whole of any lot or parcel of land, or other premises under lease or other control, shall be taken for the purposes aforesaid by virtue of this act, all the covenants, contracts and engagements between landlords and tenants, or any other contracting parties touching the same, or any part thereof, shall, upon publication of the notice required in the preceding section, respectively cease and be absolutely discharged.

SEC. 14. When part only of any lot or parcel of land or other premises so under lease or other control, shall be taken for any of the purposes aforesaid by virtue of this act, all the covenants, contracts, agreements and engagements respecting the same, upon publication of the aforesaid notice, shall be absolutely discharged as to the part thereof so taken, but shall remain valid as to the residue thereof; and the rents, considerations and payments reserved, payable and to be paid for in respect to the same, shall be so proportioned as that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid and recoverable for the same.

SEC. 15. Any proceedings taken by the said commissioners in carrying out the provisions of this chapter, shall be recorded in a book, or books, kept for that purpose by the clerk of said city, who shall be ex-officio clerk of said commissioners, describing particularly the respective improvements, and the real estate taken and assessed. The said books in which said proceedings have been entered as aforesaid, and the official files and papers of said commissioners shall be deemed public records and be *prima facie* evidence of the facts therein contained and stated, and certified copies thereof, by the clerk, with the seal of said city attached, shall be evidence in all courts to the same effect as if the originals were produced. The clerk of said city shall be entitled to receive from any private party, for any certified copy or transcript aforesaid, furnished such private party, the like fees as are received for such services by the clerk of any court of record in this State.

SEC. 16. The common council of said city may cause sidewalks to be constructed, relaid or repaired whenever they deem that the public interest requires it, without the appointment of commissioners. Whenever said council shall order the construc-

tion of such sidewalks, they shall cause proposals for doing said work to be advertised for in the official paper of said city, in the same manner and for the same length of time as in the case of other public improvements, specifications for doing the same being first deposited with the clerk of said city, and said work shall be let and placed under contract in the same manner and under the same regulations as provided for in other cases of public improvements for which an assessment is to be made. As soon as the contract is let, the said council shall give at least ten (10) days notice by publication in the official newspaper of said city, to the effect that at a certain time and place they will proceed to make an assessment to pay for constructing, relaying or repairing said sidewalk. Said notice shall briefly describe the location and nature of said improvement, and shall be published at least two (2) times, which period of ten (10) days shall commence with the first (1st) publication of said notice. At the time and place specified in said notice, or such other time and place as may be fixed by adjournment, the said council shall assess the amount as nearly as they can ascertain the same, which will be required to defray the cost of such improvement, including the necessary expenses of making and collecting such assessment upon the real estate or lots of land fronting on said improvements. In making said assessment, the said expense and cost shall be apportioned in accordance with the number of lineal feet of said real estate or lots of land fronting either side of a street on said improvement as aforesaid. When said assessment is completed, the said council shall give fourteen (14) days notice by one publication in the official newspaper of the city to the effect that at a time and place therein specified, that said assessment will be confirmed unless cause is shown to the contrary, and that objections must be filed one day before such time of meeting, with the clerk of said city. Such objections shall be made and filed in the same manner, and said council shall proceed in hearing the same and have the same power to revise, correct, confirm or set aside such assessment or proceed *de novo* as provided in the report of commissioners. Said assessment when confirmed shall be final and conclusive, and no appeal shall lie therefrom. A warrant shall be issued for the collection thereof, and said assessment shall be enforced and collected as other assessments made under this chapter.

SEC. 17. When in any case any portion of the cost and expense of making any improvement authorized by this chapter, shall by virtue of any valid law or ordinance or by virtue of any valid contract, be chargeable upon any railway company, the amount so chargeable may be assessed upon such railway company and the balance only upon the real estate benefited thereby; and the city may collect the amount so assessed upon said railway company by distress and sale of personal property in the manner provided by the general laws of this State in case of tax levied upon personal property or by suit brought for that purpose; *Provided*, That any real estate belonging to said railway company and deemed benefited by the said improvement, shall be assessed as in other cases.



SEC. 18. When said assessment or award is confirmed by the council and no appeal is taken as herein provided, and in case of an appeal after judgment thereon, if the assessment or award is sustained as originally made or modified by the court and a certified copy of such judgment is filed with the clerk of said city, a warrant under the seal of said city shall issue to the treasurer of said city for the payment of said award or the collection of such assessment from the property assessed, signed by the mayor and city clerk; said warrant shall contain the name of the owner of the land upon which the assessment or award is made, if known, and a description of the property so assessed or condemned, together with the amount due to or from said owner.

SEC. 19. All warrants issued for the collection of special assessments shall be delivered by the city clerk to the treasurer of said city, taking his receipt therefor.

SEC. 20. Upon the receipt of any warrant for the collection of any special assessment, the city treasurer shall forthwith give notice by publication in the official paper of the city, for one (1) week, that such warrant is in his hands for collection, describing its nature and requesting all persons interested to make immediate payment at his office and that in default thereof the same will be collected at the expense of the persons liable for the payment of such assessments.

SEC. 21. All assessments levied under the provisions of this chapter shall be a permanent lien on the real estate on which the same may be imposed, from the date of the warrant issued for the collection thereof. It shall be the duty of the treasurer of said city, upon receipt of said warrant, to forthwith deposit a copy thereof, certified by him, with the register of deeds of the county of Dakota, whose duty it shall be to file the same in his office, for which filing said register of deeds shall be entitled to receive from said city the sum of twenty-five (25) cents; and it shall be the duty of the city treasurer whenever any assessment on any parcel of land has been fully satisfied, to enter satisfaction, without fee, over his own signature, opposite the description of said parcel of land on said copy so filed, and for this purpose the said city treasurer shall have free access thereto without payment of any fee to said register of deeds.

SEC. 22. If the assessment charged in any special assessment warrant, whether made by reason of any appropriation or condemnation of land or for any other improvements whatsoever, under the provisions of this chapter, shall not be paid within twenty (20) days after the first publication of notice by the city treasurer, that he has received such warrant for collection, the assessment then remaining unpaid shall be collected with interest at the rate of twenty-four (24) per cent. per annum until the same shall be paid.

SEC. 23. It shall be the duty of the city treasurer, immediately after the expiration of the twenty (20) days mentioned in the preceding section, to report to the district court of Dakota county, at any general or special term thereof, all assessment warrants for the collection of any assessments under the provisions of this chap-

ter, which have been delivered to him and remain unpaid, and then and there ask for judgment against the several lots and parcels of land described in such warrants for the amounts of assessments, interest and costs, respectively due thereon. The city treasurer shall, previously, give fourteen (14) days notice by two (2) successive weekly publications in the official paper of said city, of his intended application for judgment, which notice shall briefly specify the respective warrants upon which such application is to be made and a description of the property against which judgment is described, and require all persons interested to attend to at said term; said period of giving notice shall begin from the first publication of said notice; said treasurer shall also give fourteen (14) days personal notice to the same effect to all property holders interested or their agents, resident in the city of Hastings, if known to him and found, but the failure to give such personal notice shall in nowise affect the validity of the judgment applied for or of any of the proceedings. The advertisement so published shall be deemed and taken to be sufficient and legal notice of the aforesaid and intended application by the city treasurer to such court for judgment and shall be held a sufficient demand and refusal to pay the said assessment.

SEC. 24. The city treasurer shall obtain a copy of the advertisement or advertisements referred to in the preceding section, together with an affidavit of the due publication thereof from the printer of the newspaper in which the same was published, and shall file the same with the clerk of such court at the said term with said reports.

SEC. 25. The clerk of said court, upon the filing of such reports of the city treasurer, shall receive and preserve the same, and shall annex thereto or file therewith, all judgments, orders and other proceedings of such court in relation thereto. Each of said reports shall constitute a separate proceeding or suit, and shall be docketed by the clerk of said court in a suitable record book to be kept by him for that purpose, substantially in the following form, to-wit:

CITY OF HASTINGS vs. CERTAIN LOTS OF LAND—SUIT FOR ASSESSMENT ON WARRANTS FOR ———

or in such other manner as will sufficiently indicate the nature of the improvement for which [the] assessment is made, in which said record book the judgment when rendered shall also be docketed. *Provided however;* That the court may by rule or otherwise direct how and in what form such proceedings and judgments may be entered or docketed, and what further record, if any, shall be made thereof, and what papers shall be filed and how kept and preserved.

SEC. 26. It shall be the duty of the court upon the filing of said reports, to proceed immediately to the hearing of the same, and they shall have priority over all other causes pending in said court. The said court shall pronounce judgment against the several lots and parcels of land described in said reports for which no objec-

tions shall be filed, for the amount of the assessment, interest, damages and costs due severally thereon. The owner of any property described in said reports, or any person beneficially interested therein, may appear at the said court at the time designated in the city treasurer's notice, and file objections, in writing, to the recovery of judgment against such property. No objections shall be interposed or sustained in relation to any of the proceedings prior to confirmation of the assessment, except to the jurisdiction of the city council or the said commissioners, and no objections as to any other of the proceedings shall be sustained on any mere formal irregularity or defect, and the city treasurer may amend by leave of the court, in its discretion, in any matter in furtherance of justice. The court shall hear and determine all objections in a summary manner, without pleadings, and shall dispose of the same with as little delay as possible, consistently with the demands of public justice, but should justice require that for any cause, the suit, as to one or more owners should be delayed, judgment shall then be rendered as to the other property and lands, and process shall issue for the sale thereof, the same as in all other cases.

SEC. 27. In all cases where judgment shall be rendered by default against the property described in said reports, the court shall thereupon direct the clerk of said court to make out and enter an order for the sale of the same, which said order shall be substantially in the following form :

“Whereas, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands and other property, for the assessments, damages, interest and costs due and unpaid thereon. Therefore, It is considered by the court, that judgment be and is hereby entered against the aforesaid lots and parcels of land in favor of the city of Hastings, for the sum annexed to each lot or parcel of land, being the amount of assessment, interest, damages and costs due severally thereon, and it is ordered by the court that the several lots and parcels of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of assessments, interest, damages and costs annexed to them severally, be sold as the law directs.”

In all cases where a defence shall be interposed and judgment shall be rendered against the property, a similar order adapted to the circumstances of the case, shall be made and entered on record. Thirty-five cents costs shall be laid to each lot or parcel of property against which judgment is rendered, for fees of the clerk of said court, and the further sum of twenty-five cents to each lot or parcel for advertising the notice of sale. *Provided*, That in all cases where a defence is interposed and not sustained, the court may direct by special order or by rule, such additional costs to be included in the judgment, as may be deemed proper. *Provided, further*, That in cases where no defence is interposed, the said sum of thirty-five cents shall be in full of all fees of the clerk, includ-

ing the entry of satisfaction, and when any proceeding is dismissed, the clerk shall only be entitled to charge the city twenty-five cents per lot.

SEC. 28. It shall be the duty of the clerk of said court within twenty (20) days after such order is granted as aforesaid, to make out under the seal of said court a copy of so much of said city treasurer's report in such case as gives a description of the land, against which judgment shall have been rendered, and the amount of such judgment, together with the order of the court thereon, which shall constitute the process on which all lands, lots, sublots, pieces and parcels of land shall be sold for the amount of any assessment, interest, damages and costs so levied, assessed or charged upon them, and the said city treasurer is hereby expressly authorized and empowered to make sale of such lands, lots, pieces or parcels of land or other property, upon ten (10) days notice to be published in at least two (2) successive weekly issues of the official paper of said city, which period of said ten (10) days shall commence with the first publication.

SEC. 29. The said advertisement so to be published in each case of a judgment upon any collection warrant and report as aforesaid, shall contain a list of the delinquent lots and parcels of lands to be sold, the names of owners if known, the amount of judgment rendered thereon respectively, and the warrants upon which the same was rendered, the court which pronounced the judgment, and a notice that the same will be exposed to public sale at a time and place to be named in said advertisement by said treasurer. The omission of the name of any owner, or any mistake respecting the same, shall not invalidate the sale if the property be otherwise described with sufficient certainty. The proceedings may be stopped at any time upon the payment of said judgment to the city treasurer.

SEC. 30. In all proceedings and advertisements for the collection of such assessments, and the sale of lands thereof, letters and figures may be used to denote lots, sublots, lands and blocks, sections, townships, ranges and parts thereof, the year and the amounts.

SEC. 31. Certificates of sale shall be made and subscribed by the city treasurers, which shall be delivered to the purchaser, which certificates shall contain the name of the purchaser, a description of the premises sold, the amount of the assessment with the amount of the judgment for which the same was sold, and the time when the right to redeem will expire.

The city treasurer shall continue the sale from day to day, except Sundays, until all the lots or parcels of land contained in his precept, on which judgment remains unpaid, shall be sold or offered for sale, and in case of any defect or mistake in the judgment or order, or the copy delivered to the clerk, or in the advertisement or certificates of sale or other proceedings taken after such judgment, the court may amend such judgment and order a re-sale if necessary, or amend the certificate of sale, or direct an advertisement, or in any other manner remedy such defect or mistake.

SEC. 32. The person purchasing any lot or parcel of land, shall forthwith pay to the city treasurer the amount of the judgment due thereon, and on failing so to do, the said property shall again be offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment shall have been made. If no bids shall be made for any lot or parcel of land, the same shall be struck off to the city, and thereupon the city shall receive in the corporate name a certificate of the sale thereof, and shall be vested with the same rights as other purchasers at such sales; *Provided*, That if any lot or parcel of land so struck off to said city shall be again sold for like assessment while the said city holds its title as purchaser aforesaid, the same shall not be sold to any purchasers except said city for less than the amount actually remaining unpaid in the preceding assessment, as well as such subsequent assessments, with interest aforesaid at the rate of twenty-four (24) per cent. per annum.

SEC. 33. The city treasurer shall make return of his precept to the court from which the same was issued. A record of all sales made by the city treasurer shall be kept in the office of the city clerk, which shall be open to public inspection at all reasonable times, and said record or copies thereof, certified by said clerk, shall be deemed sufficient evidence to prove the sale of any land or property for assessments, or any other fact authorized to be recorded therein.

SEC. 34. The right of redemption in all cases of sales for assessments shall exist to the owner, his heirs or assigns or creditors, to the same extent and in the same manner as redemptions from execution sales in civil actions, except that such redemption shall be made to the city treasurer of said city, and upon payment to him of the amount of such sales, with interest at twenty-four (24) per cent. per annum upon the amount of such sale from the time of such sale until the time of redemption, and thereupon said treasurer shall execute to such redemptioner a certificate of redemption substantially in the same form as certificates of redemption from sales of real estate on execution, which shall be acknowledged and recorded as by law provided on execution sales without prepayment of taxes.

SEC. 35. The certificate of sale shall be recorded with the register of deeds of said county, within twenty (20) days after sale; *Provided*, That upon the expiration of the redemption the said certificate shall be, operate as, and convey, the title to said premises to the purchaser, his heirs or assigns in fee, and be *prima facie* evidence thereof, without any further act or deed; *Provided*, That no irregularity in any of said prior proceedings that does not affect the substantial rights of parties in interest, shall in any way or manner affect the title under said certificate or otherwise, and no sale shall be set aside or held invalid upon any other grounds or reasons than would defeat a sale under an execution of real estate.

SEC. 36. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original

purchaser. And in all controversies and suits involving the title to the lot or land claimed and held under and by virtue of such certificate of sale, the person or persons claiming title adverse to the title conveyed by such certificate, shall be required to prove, in order to defeat the said title, either that the land or lot was not subject to the assessment at the date of sale, that assessments had been paid; that the land or lot had never been assessed, or that the same had been redeemed according to the provisions of this chapter; but no person shall be permitted to question the title acquired by said deed without first showing that he, she or they, or the person under whom he, she or they claim title, had title to the land or lot at the time of the sale; or that the title was obtained from the United States or this State after the sale. All certificates of sale referred to in this chapter, shall be admitted to record without prepayment of taxes, or the county auditor's certificate that the taxes have been paid.

SEC. 37. Whenever it shall appear to the satisfaction of the treasurer, before the expiration of the period of redemption from any sale for assessments, that such property was not subject to assessment, or that the assessment had been paid previous to the sale, he shall, with the approval of the common council of said city, make an entry opposite to such property in his record of sales that the same was sold in error, and such entry shall be *prima facie* evidence of the fact therein stated; *Provided*, That where the sale shall have been made to any purchaser other than the city, the common council of said city, before approving of such entry, shall first cause notice to be given by mail, or in such manner as said council may direct, to the purchaser, his heirs or assigns, or legal representatives of the said proceedings; *And provided further*, That in case such entry is approved, the purchase money shall be refunded to the parties entitled thereto.

SEC. 38. Any change made in the incumbent of the office of the city treasurer during the pending of any such proceedings, shall not operate to affect or delay the same; but the successor or successors in office of such city treasurer shall be authorized to do all acts necessary to complete such proceedings, the same as if his predecessor had continued in office.

SEC. 39. Any city treasurer or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this chapter, or who shall consent to or connive at any evasion of its provisions whereby any proceedings required by this chapter shall be prevented or hindered, shall for every such neglect or refusal, be liable to said city individually, and upon his official bond for double the amount of loss or damage caused by such neglect or refusal, to be recovered in any action of debt in any court having jurisdiction of the amount thereof.

SEC. 40. No error in the proceedings of the city council, commissioners, or of any of the officers of said city, in referring, reporting upon, ordering or otherwise acting concerning any local improvement provided for in this chapter, or in making any assessment or award thereof, or in levying or collecting such assessment

not affecting the substantial justice of the assessment itself, shall vitiate or in any way affect such assessment. The reports of the city treasurer and assessment warrants held by him, referred to in this chapter, shall be *prima facie* evidence that the proceedings up to the date of such reports and warrants, were valid and regular, and the certificates of sale issued as provided for in this chapter shall be *prima facie* evidence of the validity and regularity of all proceedings up to the date of such certificates.

SEC. 41. Whenever said city council shall finally confirm the assessment or award of said commissioners, either as reported by them or as amended by said council, or on appeal said assessments be recorded or award increased, and the expense or incidental costs of said improvement and assessment or award thereby exceed the sum assessed upon the various parcels of property benefitted by such improvement, then it shall be discretionary with the said council to pay such excess out of the general fund of said city, or to direct a new assessment for the apportionment of such excess; in the latter event, the same proceedings shall be had as herein provided for in the first assessment.

SEC. 42. Nothing herein contained shall prevent the city council from making any local improvement authorized at the expense of the general fund of said city of Hastings, without taking proceedings to assess the same upon specific parcels of property.

SEC. 43. Whenever the city council shall finally confirm any assessment for improvements, whether made on return of commissioners or without the appointment of commissioners, they shall proceed to contract for the same, with the accepted bidder, if they have previously advertised for bids, or if not, then with the lowest responsible bidder, who will undertake to do the work, reserving in all their contracts for improvements the right in case of improper construction to suspend the work at any time, and re-let the same, or to order the entire re-construction of the work if improperly done, and regulating the time and manner of payment; and no appeal shall stay the execution of such contract, except that private property cannot be taken for public use in case of an appeal by the owner, until such appeal has been determined in favor of said condemnation, nor in any event until compensation has first been paid or provided for as otherwise herein provided. An appeal from an assessment of benefits or injuries resulting from any local improvements to property not actually taken and condemned, shall in no manner affect the making of such improvements, but if on such appeal or by any proceeding, such assessment if it be for benefits is reversed or declared invalid, the same proceedings may be had *de novo*, to reassess such property for its share of benefits resulting from such improvements, or if such property is allowed a greater amount of damages in the district court than was awarded by the commissioners; the excess of damages so allowed shall be paid out of the general fund of said city, unless the council shall proceed to re-assess such additional allowance on the property benefitted by such improvement, by new proceedings for that purpose as herein provided.

SEC. 44. The compensation to be allowed to the treasurer of the city and commissioners for services provided for in this chapter, shall be fixed and determined by the city council and included in the award, assessment, judgment, sale and redemption from sale hereinbefore provided for, and constitute a charge and lien upon the property affected by such award, assessment, judgment and sale.

SEC. 45. All judgments rendered under this chapter upon said assessments shall bear interest at the rate of twenty-four (24) per cent. per annum from the date thereof until paid.

SEC. 46. The city treasurer of said city, may at any time before the time of redemption has expired, assign any certificate of sale of property aforesaid, bid in by the city as aforesaid, to any person by endorsement thereon, after payment by such person, into the city treasury of the amount at which the same was so bid in, with interest thereon at the rate of twenty-four (24) per cent. per annum and costs; and such assignee shall have the same right and title thereunder as if he had purchased the same originally at the sale, and when the right of redemption shall have expired, shall be entitled to a deed as in other cases.

SEC. 47. In all cases where application has been or shall be made for judgment under section twenty-three (23) of this [chapter] action, and judgment is refused by the court as to any of the lots or parcels of land assessed, by reason of any defect or irregularity in the proceedings affecting the validity of the final order of the city council of said city, confirming said assessment and ordering the improvement for which the assessment is made, and in all cases where any court shall hereafter set aside or declare void, any such assessment as to any of the lots or parcels of land assessed, by reason of any defect or irregularity affecting the validity of such final order of said council, if it shall appear to said city council that any of the said lots or parcels of land have been or will be benefited by such improvement, the said council shall direct a new assessment to be made by said commissioners upon any such lot or parcel of land for its proportionate part of such cost and expense of such improvement, not exceeding the benefits accruing to such lot or parcel of land from such improvement; and such new assessment shall be made by said commissioners as may be in accordance with the provisions of this chapter, and when the same shall have been made and confirmed by said council, the same shall be enforced and collected in the same manner as other special assessments are enforced and collected under the provisions of this chapter. In case the amount of such assessment shall be less than the amount of the first assessment upon the lots and parcels of land re-assessed, the deficit shall be paid out of the local improvement fund, except that in case of sewers it shall be paid out of the proper sewerage fund.

SEC. 48. If in any case the first assessment prove insufficient, the city council shall direct a second in the same manner, and so on until sufficient moneys shall have been realized to pay for such



public improvement. If too large a sum shall at any time be raised, the excess shall be refunded, ratably to those by whom it was paid.

SEC. 49. In all cases where the treasurer shall be unable to enforce the collection of any special assessment, by reason of irregularity or omission in any proceeding subsequent to the confirmation of such assessment, the said city council shall be authorized and empowered to cause a new warrant to issue to the treasurer for the collection of any assessment, which by reason of such irregularity or omission, remains unpaid or not collected. The treasurer shall proceed under such new warrants, to enforce and collect the assessments therein specified, in the same manner, as near as may be, as is prescribed by the provisions of this chapter for the enforcement and collection of special assessments, after the same shall have been confirmed as in this chapter provided, and as often as any failures shall occur by reason of such irregularities or omissions, a new warrant may issue, and new proceedings be had in like manner, until such special assessment shall be fully collected, as to each and every tract and parcel of land charged thereby.

SEC. 50. Property owners may be allowed to construct streets and other public improvements upon or through their own property, at their own expense, in such cases and upon such terms and under such regulations as the common council may prescribe, from time to time, by ordinance.

SEC. 51. It shall be deemed personal notice, in all cases under the provisions of this chapter, where personal notice is required, when the notice is served by delivering a copy, or by reading the same to the person to be notified, or by leaving a copy at his or her last usual place of abode, or at his or her place of business, with some person of suitable age and discretion, or by leaving a copy of such notice in a conspicuous place at his or her place of business in the day time, if such person is absent therefrom.

SEC. 52. When any notice is required to be published in any newspaper under this chapter, an affidavit of the publisher or printer of such newspaper, or of the foreman or clerk of such publisher or printer, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the time when and the paper in which such notice was published, shall be evidence in all cases and in every court or judicial proceeding of the facts contained in such affidavit.

SEC. 53. It shall be the duty of the city council or commissioners in estimating the benefits to any particular lot, piece or parcel of land, to take into consideration the nature of the owner's interest therein, the form and position of their several parcels of land, the qualified rights of the owner in reference to its enjoyment, and any other circumstances which render the proposed improvements more or less beneficial to him or them.

SEC. 54. If in the opinion of the city council any work under any contract does not proceed each month so as to ensure its completion within the time named in the contract, the said city council shall have power to furnish and use men and materials to com-

plete the work, and charge the expense thereof to the contractor, and the same shall be deducted from any moneys due him or to become due such contractor, or may be collected from him in a suit by said city.

SEC. 55. The register of deeds shall not record any deed from a private person or private corporation, unless there be endorsed on such deed a certificate of the city treasurer that all assessments for local improvements filed for record in his office have been paid, and any violation of this provision by the register of deeds shall be a misdemeanor, and be punishable by a fine not exceeding double the amount of the unpaid assessments. It shall be the duty of the city treasurer upon the application of any person interested in such deed where the assessment has been paid and not otherwise, to make such certificate free of charge, but the said city treasurer shall not certify that said assessment has been paid in, in any case where the property has been purchased by the said city at the sale provided for in this act, and the time for redemption has not expired, and the city still holds the certificate of sale.

Approved March 11, 1878.