

CHAPTER LXXXIV.

[H. B. No. 262.]

CITIES OF FIRST CLASS TO EXERCISE RIGHT OF EMINENT DOMAIN.

AN ACT to enable cities of the first class to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor, and providing for special assessments in certain cases upon property benefited, and declaring an emergency.

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

SECTION 1. Every city of the first class within the State of Washington is hereby authorized and empowered to condemn land and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares and public markets, city and town halls, jails and other public buildings and for the opening, widening, extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose, or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pest houses, drains and sewers, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of fresh water; and to condemn land and other property and damage the same for any other public use within the authority of such city after just compensation having been first made or paid into court for the owner in the manner prescribed by this act.

Condemnation of private property.

Compensation to be made.

SEC. 2. When the corporate authorities of any such city shall desire to condemn land or other property, or damage

Condemnation to be provided for by ordinance.

the same, for any purpose authorized by this act, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed in this act: *Provided*, That no special assessment shall be levied under authority of this act except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, drives or boulevards or for the purpose of draining swamps, marshes or ponds, or for filling the same: *And it is further provided*, That when a street, avenue, highway or boulevard is established or widened to a width greater than 150 feet the excess over and above the 150 feet shall be paid out of the general fund of such city without any deduction for benefits for such excess.

Manner of procedure when improvements are to be paid for by assessments on adjoining property.

SEC. 3. Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this act or any other improvement that such city is authorized to make, the making of which will require that private property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation, to be made for the private property to be taken or damaged for the improvement or purpose specified in such ordinance, "be ascertained by a jury or by the court in case a jury be waived."

Petition to court praying for compensation.

SEC. 4. Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property, which will be taken or damaged, and the names of the owners and occupants thereof and of persons

What said petition shall contain.

having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor, and where any known owners or other persons so interested are non-residents of the state, stating the fact of such non-residence.

SEC. 5. Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon absent defendants in other civil actions. Notices so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served.

Summons to be served.

SEC. 6. In case the land, real estate, premises or other property sought to be appropriated or damaged in state, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions.

Summons to be served on county auditor, when.

SEC. 7. Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid to all of such owners and occupants aforesaid; but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest.

Jury to ascertain compensation.

SEC. 8. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is

Same.

mentioned or described in such petition: *Provided*, Such person shall first be admitted as a party defendant to said suit by such court and shall file the statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation.

Jury to view
the premises.

SEC. 9. The court may, upon the motion of such city or of any person claiming such compensation, direct that said jury (under the charge of an officer of the court) shall view the premises which it is claimed by any party to said proceeding will be taken or damaged by said improvement, and in any case where there is no satisfactory evidence given to the jury as to the ownership of or as to the extent of the interest of any defendant in the property to be taken or damaged, the jury may return their verdict as to the compensation or damage to be paid for the property or part of property to be taken or damaged for the entire interests therein.

Manner of
finding dam-
ages of any
building.

SEC. 10. If there be any building standing, in whole or in part, upon any land to be taken, the jury in their verdict shall add to their finding of damage to the land the damages also to the building or part of building necessary to be taken, if it be the property of the owner of the land; when owned by any other person the damages to the building shall be found separately. The value of such building to the owner to remove, or of the part thereof necessary to be taken, shall also be found by the jury. At any time before the entry of judgment on the verdict such owner may file with the clerk of the court in writing his election to take such building, or part of building, at the value so found in case of removal, and in such case the amount of such value shall be deducted from the damages found for the land and building, where they belong to the same owner, and from the damages found for the building where they belong to different owners, and the owner shall have such time for the removal of such building after the entry of judgment as the court shall allow. If the owner shall fail to give notice of his election as aforesaid within the time prescribed, then no deduction shall be made from the damages found as aforesaid, and such building shall become the property of the city in like manner as the land upon

which the same stands. If the lands and buildings belong to different persons, or if the land be subject to lease, the damages done to such persons, respectively, may be separately found by the jury on the request of any party.

SEC. 11. Upon the return of the verdict the proceedings Verdict. of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as hereinbefore provided.

SEC. 12. The court shall have power at any time, upon Change of ownership. proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require.

SEC. 13. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest No delay on account of doubt as to real owners. which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners or claimants, but in such case the court may impanel a jury to ascertain the entire compensation or damage that should be paid for the property or part of property, and the entire interests of all the parties therein, and may require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so

ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation.

Guardian ad litem to be appointed for infants, insane, etc.

SEC. 14. When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted person is interested in any property that is to be taken or damaged, the court shall appoint a guardian *ad litem* for such infant or insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property or the compensation which shall be awarded therefor.

Manner of determining compensation for land or property.

SEC. 15. When the ordinance providing for any such improvement provides that compensation therefor shall be paid, in whole or in part, by special assessment upon property benefited, the compensation found by the jury for any land or property taken shall be irrespective of any benefit from the improvement proposed. When such ordinance does not provide for any assessment, in whole or in part, upon property benefited, the compensation found for land or property taken, and in all cases the damages found in respect to land or property not taken, shall be ascertained over and above any local and special benefit arising from such proposed improvement, except as provided in section 2 of this act as to streets, avenues and boulevards established or widened to a width greater than 150 feet, in which class of cases no benefits shall be deducted as to such excess.

SEC. 16. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all taxable costs, as hereinafter provided. It shall be final and conclusive as to the damages caused by such improvement unless such

Appeal.

judgment or judgments shall be appealed from; and no appeal from the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court of the state by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court and final judgment by default may be rendered in the superior court as in other cases.

SEC. 17. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid.

City to have right of possession or damage on payment of compensation.

SEC. 18. When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damages and costs, or such part thereof as shall not be assessed upon property benefited, shall be paid from the general fund of such city, and if sufficient funds therefor are not already provided, such city shall levy and collect a sufficient sum therefor as part of the general taxes of such city, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases of internal improvements.

When damages or costs may be paid from general fund.

Special taxation of contiguous property.

SEC. 19. When such ordinance under which said improvement shall be ordered shall provide that such improvement shall be paid for in whole or in part by special assessment or special taxation of contiguous property benefited thereby, the damage and costs awarded, or such part thereof as is to be paid from special taxation or special assessment, shall be levied, assessed and collected in the manners hereinafter provided.

Manner of levying, assessing and collecting special tax for damages, etc.

SEC. 20. Such city may file in the same proceeding a supplementary petition praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may or shall have been awarded for the property taken or damaged, with the costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall have power at any time after such supplementary petition shall have been filed, to appoint three commissioners to make such assessment and also to ascertain and include therein, as near as may be, the costs incurred to the time of such appointment and the probable further costs of the proceedings, including therein the estimated costs of making and collecting such assessment, and shall direct such costs to be included by such commissioners in making said compensation.

Three commissioners to be appointed.

SEC. 21. Upon the filing of such petition the court shall appoint three competent persons as commissioners, who shall take and subscribe an oath substantially as follows, to wit:

“STATE OF WASHINGTON, COUNTY OF, ss.

Oath of commissioners.

“We, the undersigned commissioners appointed by the superior court of county, State of Washington, to assess the cost of (here state in general terms the improvement), do solemnly swear (or affirm, as the case may be) that we will a true and impartial assessment make of the cost of said improvement upon the city of and the property benefited by such improvement, to the best of our ability and according to law.”

Duty of commissioners.

SEC. 22. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land

that will be specially benefited thereby, and to estimate what proportion of the total cost of such improvements will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city and such property, so that each shall bear its relative equitable proportion; and having found said amounts to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: *Provided*, That no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited, nor shall any lot, block, tract or parcel of land which shall have been found by the jury or court to be damaged be assessed for any benefits: *And provided further*, That it shall not be necessary for said commissioners to examine the locality excepting where the ordinance provides for the establishment, opening, widening or improvement of streets, avenues, alleys or highways. Such part of the compensation, damages and costs as is not finally assessed against property benefited shall be paid from any general funds of the city or town applicable thereto.

SEC. 23. Such commissioners shall also make, or cause to be made, an assessment roll, in which shall appear the names of the owners so far as known, description of each lot, block, tract or parcel of land and the amount assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit and certify such assessment roll to the court by which they were appointed within sixty days after their appointment, or within such extension of said period as shall be allowed by the court.

Commissioners to make out an assessment roll.

SEC. 24. After the return of such assessment roll the court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after the return of such roll. It shall be the duty of such commissioners to give notice of such assessment and of the day fixed by the court for the hearing thereof in the following manner:

Notice of assessment and day fixed for hearing.

1. They shall send by mail to each owner of premises assessed, whose name and place of residence is known to them, a notice substantially in the following form:

“Mr., your (here give a short description of the premises) is assessed \$..... for public improvement. Hearing on the assessment roll will be had before the superior court of county, (here give date).

.....,
.....,
.....,

Commissioners.”

Publication of notice.

2. They shall cause at least ten days' notice to be given by posting notice in at least three public places in such city, one of which shall be in the neighborhood of such proposed improvement, and when a daily newspaper is published in such city, by publishing the same at least five successive days in such daily newspaper, or if no daily newspaper is published in such city and a weekly newspaper is published therein, then at least twice, being once in each week for two successive weeks, in such weekly newspaper, or if no daily or weekly newspaper is published in such city, then in a newspaper published in the county in which such city is situated, which notice may be substantially as follows:

Special assessment notice.

“SPECIAL ASSESSMENT NOTICE. — Notice is hereby given to all persons interested that the city council (or other legislative authority) of having ordered that (here insert the description and nature of improvements substantially as in the ordinance) have applied to the superior court of county for assessment of the cost of said improvements according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had before said court on the day of , A. D. 18 All persons desiring may then and there appear and make their defense.

.....,
.....,
.....,

Commissioners.”

SEC. 25. On or before the final hearings, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose premises have been assessed and whose names and place of residence are known to them, the notice hereinbefore required to be sent by mail to owners of premises assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by this act to be posted, setting forth when and in what manner the same were posted. Such affidavit shall be received as *prima facie* evidence of a compliance with this act in regard to giving such notices. They shall also file a certificate of publication of such notice in like manner as is required in other cases of publication of notices of summonses.

Affidavit of
commis-
sioners.

SEC. 26. If ten days shall not have elapsed between the first publication or the putting up of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter until final judgment on the assessments, and if the notice given shall prove invalid or insufficient the court shall order new notice to be given.

Court retains
jurisdiction.

SEC. 27. Any person interested in any real estate to be affected by such assessment may appear and file objections to such report, and the court may make such rule or order in regard to the time of filing such objections as the court shall deem proper. As to all lots, blocks, tracts and parcels of land, to the assessment of which objections are not filed within the time ordered by the court, default may be entered and the assessment confirmed by the court.

Objections
may be filed.

SEC. 28. On the hearing, the report of such commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, and if it shall appear that the premises of the objector are assessed more or less than they will be benefited, or more or less than their proportionate share of the cost of the improvement, the jury shall so find, and also find the amount in which said premises ought to be assessed, and the judgment shall be entered accordingly.

Evidence.

Court may modify or confirm assessment made by the commissioners.

SEC. 29. The court before [which] any such proceedings may be pending shall have authority, at any time before final judgment, to modify, alter, change, annul or confirm any assessment returned as aforesaid, or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

SEC. 30. The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made.

Clerk of court to certify to the city treasurer.

SEC. 31. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered. Such judgment and copy of assessment roll shall describe the lots, blocks, tracts or parcels of land assessed and the respective amounts assessed on each lot, block, tract or parcel of land, and shall be sufficient warrant to the city treasurer to collect the assessments therein specified.

Publication of notice.

SEC. 32. The treasurer receiving such certified copy of the assessment roll shall immediately give notice thereof by publishing such notice at least once in the official newspaper or newspapers of such city or town, if such newspaper or newspapers there be; and if there be no such

newspaper, then by posting four copies thereof in public places along the line of the proposed improvement; such notice may be, substantially, in the following form:

“SPECIAL ASSESSMENT NOTICE.—Public notice is hereby Special assess-
ment notice. given that the superior court of county, State of Washington, has rendered judgment for a special assessment upon property benefited by the following improvement (here insert the character and location of the improvement in general terms) as will more fully appear from the certified copy of the judgment on file in my office, and that the undersigned is authorized to collect such assessments. All persons interested are hereby notified to call and pay the amounts assessed at my office (here insert location of office) within thirty days from the date hereof.

“Dated this day of, A. D. 18.....

.....
“*City (or town) treasurer of*.”

SEC. 33. It shall be the duty of the city treasurer into City treasurer. whose hands such judgment for assessments shall come, to inform the persons whose names appear on the assessment roll of such assessment by written or printed notice deposited in the mail, postage prepaid, and addressed to such persons so far as the residences of such persons are known to him, requesting payment of the same. Any such treasurer omitting so to do shall be liable to a penalty of five Penalty. dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. It shall be the duty of such treasurer to write the word “paid” opposite each tract or lot on which the assessment is paid, together with the name and postoffice address of the person making the payment and date of payment.

SEC. 34. Within fifteen days from the expiration of the Time for the
return of
assessment
roll. time limited for the payment of any such assessments the treasurer must return the improvement assessment roll to the comptroller, if there be such officer of the city, otherwise to the city clerk, distinguishing thereon the assessments paid and those unpaid. The comptroller or clerk, as the case may be, shall, upon receipt of said roll, credit the treasurer with the amount of the assessments collected thereon, and thereupon issue and annex thereto a warrant directing

Sale of property to satisfy delinquent assessments.

the treasurer to sell all the lots or parcels of land described in said roll upon which assessments are levied, whether in the name of a designated owner or in the name of an unknown owner, to satisfy all delinquent and unpaid assessments upon said roll, with costs and charges. On the day of the commencement of the sale of said real property in pursuance of such warrant, a penalty of ten per cent. on the principal amount of every unpaid assessment on said improvement assessment roll shall accrue to such assessment, and must then and thereafter be collected therewith, together with the interest to accrue as herein provided.

Same.

SEC. 35. Such warrant issued for the purpose of making sale of said real property on which assessments are delinquent and unpaid, shall be deemed and taken as an execution against said real property for the amount of said assessments with penalty and costs, and the treasurer or his deputy shall, within sixty days from the receipt thereof by him, commence the sale of said real property and continue such sale from day to day thereafter, except on Sundays and legal holidays, until all the lots and parcels of land described in said assessment roll on which any such assessment is delinquent and unpaid are sold. Such sale shall take place at the front door of the building in which the city council, or other legislative body, holds its sessions. The treasurer shall give notice of such sales by publishing a notice thereof once in each week for three consecutive weeks in the official newspaper or newspapers of the city, or if there be no such newspaper, then by publishing the same for said period in some newspaper published in the same county in which the city is situated, or if no such newspaper be published in such county, then in some newspaper published in the state of general circulation in such county. Such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of the assessment, penalty and costs to date of sale, including cost of advertising due upon each of such lots or parcels of land, together with the names of the owners thereof, or the words "unknown owners" as the same may appear upon said improvement assessment roll, and shall specify the time and place of sale and that the

several lots and parcels of land therein described will be sold to satisfy the assessment, penalty and costs due upon each. All of such sales shall be made between the hours of ten o'clock A. M. and four o'clock P. M. Each lot or parcel of land shall be sold separately and in the order in which the same appears on the improvement assessment roll, commencing at the head thereof. If there be no bidder for any lot or parcel of land of a sum sufficient to pay the delinquent assessment thereon, with penalty and costs, the treasurer shall strike the same off to the city for the whole amount which he is required to collect by such sale.

Sale to the highest bidder, surplus to be returned to owner by warrant.

SEC. 36. All lots and parcels of land sold for delinquent improvement assessments shall be sold to the highest bidder, and whenever any such lot is sold for more than the sum sufficient to satisfy the delinquent assessment, with penalty and costs, the surplus shall be kept by the treasurer in a separate fund, and thereafter the owner, or his legal representative, shall on application to the city council, or other legislative body, be entitled to a warrant therefor.

After receiving the amount of the assessment, penalty, cost and charges, the treasurer shall make out a certificate, dated on the day of sale, stating (when known) the name of the owner as given on the assessment roll, a description of the land sold, the amount paid therefor, the name of the purchaser, that it was sold for the assessment, giving the name of the street or other brief designation of the improvement for which the assessment was made, and specifying that the purchaser will be entitled to a deed in two years from the day of sale unless redemption thereof be made. Such certificate shall be signed by the treasurer, and shall be delivered to the purchaser and shall be by such purchaser recorded in the office of the county auditor of the county in which the lands are situated within three months from the date thereof. If not recorded within said time, the lien thereof shall be postponed to claims of subsequent purchasers and encumbrancers for value and in good faith who become such while the same is unrecorded.

Certificate of sale.

Deed.

SEC. 37. If any bidder to whom any lot or parcel of land is stricken off does not pay the assessment, penalty and costs before ten o'clock A. M. of the day following the

Re-sale.

day of such sale, such lot or parcel of land must then be resold, or if the assessment sale is closed, be deemed to have been sold to the city or town, and the certificate of purchase shall be issued to the city therefor.

SEC. 38. The city comptroller, if there be such officer, and if not then the city or town clerk, shall be the custodian of all certificates of purchase for lots or parcels of land sold to the city, and shall at any time within two years from the date of such certificate, and before redemption of the lot or parcel of land therein described, sell and transfer any such certificate to any person who will pay to him the amount for which the lot or parcel of land therein described was stricken off to the city, with interest subsequently accrued thereon, and the treasurer may, if so authorized by the council, sell and transfer any such certificate in like manner after the expiration of such two years from the date of the certificate.

SEC. 39. Within ten days after the completion of the sale of all lots and parcels of land described in such improvement assessment roll, and authorized to be sold as aforesaid, the treasurer must make return to the comptroller, or other officer by whom the warrant was issued, of said assessment roll, with a statement of his doings thereon, showing all lots and parcels of land sold by him, to whom sold and the sum paid therefor.

Lien for
amount paid.

SEC. 40. The purchaser at such sale acquires a lien on the lot or parcel of land sold for the amount paid by him at such sale as well as for all taxes and special assessments and all interest, penalties, costs and charges thereon, whether levied previously or subsequently to such sale, and whether for state, county, city or town purposes, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest at the rate of twenty per cent. per annum on the original amount paid and such subsequent payments from the date of the respective payments.

Redemption.

SEC. 41. Every lot and parcel of land sold for an improvement assessment shall be subject to redemption by the former owner, or his grantee, mortgagee, heir or other representative within two years from the date of the sale upon payment to the treasurer for the purchaser of the

amount for which the same was sold, with interest at the rate of twenty per cent. per annum together with all taxes and special assessments and interest, penalties and charges thereon paid by the purchaser on such lot or parcel of land since such sale, with like interest thereon. Unless written notice of taxes and assessments subsequently paid, and the amount thereof shall be lodged with the treasurer, redemption may be made without including the same. On any such redemption being made the treasurer shall give to the redemptioner a certificate of redemption therefor, and pay over the amount received from such redemption to the purchaser or his assigns. Should no redemption be made within the period of two years the treasurer shall, on demand of the purchaser or his assigns, and the surrender of the certificate, execute to him a deed for the lot or parcel of land therein described: *Provided*, That no such deed shall be executed until the holder of such certificate shall have notified the owner of said lots or parcels of land that he holds said certificate and that he will demand a deed therefor; and if, notwithstanding said notice, no redemption be made within sixty days from the date of the service or first publication of said notice, said holder shall be entitled to said deed. Said notice may be given by personal service upon said persons or by publication in a weekly newspaper, published in said city, once in each week for three successive weeks, if no newspaper be published in said city then publication shall be made as provided in section 34 [24] of this act. Such notice and return thereto, with the affidavit of the person claiming said deed stating that said service was made, shall be filed with the treasurer. Such deed shall be executed only for the lot or parcel of land named in the certificate, and after payment of all subsequent taxes and special assessments thereon. The deed shall be executed in the name of the city by which the improvement is made; shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law. Such deed shall be signed and acknowledged by the city treasurer as such. The deed shall be *prima facie* evidence that the property was as-

sessed as required by law; that the assessment was not paid; that the property was sold as required by law; that it was not redeemed; that notice had been given, and that the person executing the deed was the proper officer; and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment, inclusive, up to the execution of the deed.

Separate fund. SEC. 42. All moneys received or collected by the treasurer upon assessments for any purpose authorized by this act shall be kept as a separate fund, and in no wise used for any other purpose whatever, except for the redemption of warrants drawn against such fund.

Payment before sale. SEC. 43. Whenever before sale of any lot or parcel of land the amount of any assessment thereon, with penalty and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any lot or parcel of land for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such lot or parcel of land.

Penalty. SEC. 44. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any lot or parcel of land and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of twenty per centum additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of [the] amount, and the city shall in no case be liable to the holder of such certificate.

New assessment. SEC. 45. If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city

council or other legislative body, and the superior court, shall perform the like duties and have like power in relation to any subsequent assessment as are hereby given in relation to the first assessment.

SEC. 46. All the assessments levied by any city under this act shall, from the date of the assessment, be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such assessments are paid. If any proceedings taken for the enforcement thereof shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and, in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage.

Assessment
to be a lien.

SEC. 47. If any street, avenue or alley, or the right to use and control the same for purposes of public travel, shall belong to any city, and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this act, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such case it shall not be necessary to procure the appointment of commissioners or take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the cost of such improvements upon property locally benefited thereby: *Provided, however,* That this section shall apply only to the original grading of such street, avenue or alley.

Damages for
grading
streets.

SEC. 48. At any time within two months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if any appeal be taken, then within two months after the final determination of the appeal in the supreme court, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance.

Funds for improvements may be advanced by city or town.

SEC. 49. If any city or town shall desire to take possession of any property or do any damage or proceed with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this act, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements.

Jury may be waived.

SEC. 50. In any proceedings under this act wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property for a use alleged to be public under authority of this act, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this act, such jury may be the same jury summoned for the trial of ordinary civil ac-

Question as to use being really public determined before question of compensation.

tions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this act in the superior court, and in relation to the taking of appeals and prosecution thereof shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this act shall have precedence of all cases in court except criminal cases.

Practice and procedure same as in other civil actions.

Precedence.

SEC. 51. Whenever the word "person" is used in this act the same shall be construed to include any company, corporation or association the state or [any] county therein.

Definition of "person."

SEC. 52. If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this act, or for any other purpose within the authority of such city, without having made just compensation therefor, such city may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this act, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any other action for the taking or damaging of such property.

Compensation may be made for prior or subsequent damage.

SEC. 53. Whereas, there is now no statute in force giving to cities the right of eminent domain, and by reason thereof public improvements are greatly retarded and much inconvenience results to the public, an emergency is hereby declared to exist for the immediate effect of this law, and therefore this act shall take effect on its passage and approval by the governor.

Emergency.

Approved March 9, 1893.