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Revised charter of the city of Elmira.



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CITY CLERK'S OFFICE,
ELMIRA, N.Y.

July 15 1899.

Dear Sir :--

Enclosed you will find the amendments to the Charter of the city of Elmira, passed by the last Legislature, pages 5, 6, 7, 8 and 9, are the amendments in regard to the number of wards, and are arranged to take the place of the corresponding pages of the Charter.

Page 26 is the amendment in regard to enforcing the ordinances and will take the place of page 26 in the Charter.

ment in regard to
Page 26 is the amendment enforcing the ordinances
and will take the place of Charter.

ment in regard to
Page 87 is the amendment, the jurisdiction of the City
Court, and will take the place of the Charter.

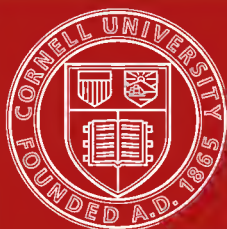
Very respectfully,

V

yours,



City Clerk.



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OFFICE OF THE CITY CLERK.

Elmira, N. Y., January 2, 1899.

I hereby certify that the following volume containing the city charter and legislative acts relating specially to the City of Elmira, is printed by authority of the common council of said city, duly given at a meeting thereof held July 5, 1898.

M. H. MURPHY,
City Clerk.

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REVISED CHARTER

OF THE

City of Elmira,

WITH THE

SEVERAL ACTS

Applicable to the City and Officers thereof.

ELMIRA, N. Y.,
GAZETTE COMPANY, BOOK AND JOB PRINTERS,
1898.

G
JW

ELMIRA CITY CHARTER.

AN ACT

TO REVISE THE CHARTER OF THE

CITY OF ELMIRA,

PASSED MAY 9TH, 1894.

AND KNOWN AS "CHAPTER 615" OF THE LAWS OF 1894 AS AMENDED BY SUBSEQUENT ACTS OF THE LEGISLATURE, AND IN FORCE ON JULY FIRST, 1898.

Title I.

Boundaries, Civil Divisions and Incorporation of the city.

Section 1. All that part of the county of Chemung included within the following boundaries shall continue to be and constitute the city of Elmira; Beginning at a point in the north line of the "David Conklin farm," so called, two hundred feet westerly from the northeast corner of said farm in the center of Hoffman street; thence northerly on a line parallel with the center line of said Hoffman street, southerly from Carr's Corners, extended northerly until said line shall intersect a line drawn easterly and westerly parallel to and thirty

Boundary of city.

rods southerly from the center line of McCann's boulevard ; then easterly along said line, which is parallel to and thirty rods southerly from the center line of McCann's boulevard, to the center of Grand Central avenue, leading from the city of Elmira to the village of Horseheads, and two hundred feet easterly therefrom ; thence southerly, parallel to the center line of said Grand Central avenue one thousand feet ; thence easterly in a straight line to the north line of " Diven's ditch " so called, as it leaves the abandoned Chemung canal ; thence easterly along the north line of said " Diven's ditch " to Newtown creek ; thence southerly along said Newtown creek to the north line of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety ; thence easterly along said north boundary to the northeast corner of the said city as it existed April sixteenth, eighteen hundred and ninety ; thence southerly along the east line of city of Elmira as it existed April sixteenth, eighteen hundred and ninety to the south east corner of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety, near what is known as Arnot's Mill ; thence southeasterly in a straight line to the point of intersection of the south line of Water street with the westerly line the highway known as Baden-Baden road ; thence along the said westerly line of the Baden-Baden road until said westerly line intersects the south line of Miller street extended easterly ; thence westerly on said south line of Miller street extended easterly to a point two hundred feet east of the easterly line of Maple avenue : thence southerly on a line parallel with said easterly line of Maple avenue and two hundred feet easterly therefrom until the same intersects with a line running easterly and westerly and parallel with the south

line of said Miller street, and distant therefrom southerly two thousand feet; thence westerly along said line parallel with the south line of said Miller street and southerly therefrom two thousand feet until the same intersects with the west line of the fifth ward of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety, extended southerly; thence northerly on said extended west line of said fifth ward and along said west line to the south bank of the Chemung river; thence westerly along the bank of the said river until the same intersects the west line of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety; thence westerly on the west line of said city of Elmira as heretofore established to the north west corner of said city as it existed April sixteenth, eighteen hundred and ninety; thence easterly along the north line of said city as heretofore established to the place of beginning, said boundaries being identical with those designated by chapter one hundred and thirty-one of the laws of eighteen hundred and ninety.

Sec. 2. The said city shall be divided into twelve wards respectively, as follows:

FIRST WARD.

All that part of said city lying north of the center line of the Chemung river, west of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the center line of Church street, shall be the first ward. Number of wards.

SECOND WARD.

All that part of said city lying north of the center line of the Chemung river, east of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the center line of Church street, shall be the second ward.

THIRD WARD.

All that part of said city lying north of the center line of Church street, west of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the center line of Clinton street, and the center line thereof continued, shall be the third ward.

FOURTH WARD.

All that part of said city lying north of the center line of Church street, east of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the center line of Fifth street and the center line thereof continued, shall be the fourth ward.

FIFTH WARD.

All that part of said city lying north of the center line of Clinton street and the center line thereof continued west of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the center line of Washington avenue, and the center line thereof continued, shall be the fifth ward.

SIXTH WARD.

All that part of said city lying north of the center line of Fifth street and the center line thereof continued, east of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and south of the following designated lines, to-wit: the center line of Carpenter street and the center line of its extension easterly, the center line of Oak street from its intersection with the center line of Carpenter street to its intersection with the center line of Maxwell place, the center line of Maxwell place, and its extension westerly to its intersection with the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, shall be the sixth ward.

SEVENTH WARD.

All that part of said city lying north of the center line of Washington avenue and the center line thereof continued, and west of the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, shall be the seventh ward.

EIGHTH WARD.

All that part of said city lying north of the following designated lines, to-wit: the center line of Carpenter street

and the center line of its extension easterly, the center line of Oak street from its intersection with the center line of Carpenter street to its intersection with the center line of Maxwell place; the center line of Maxwell place and its extension westerly to the center line of the main tracks of the railroad of the New York, Lake Erie and Western Railroad Company, and lying east of the center line of the main tracks of the New York, Lake Erie and Western Railroad Company, shall be the eighth ward.

NINTH WARD.

All that part of said city lying south of the center line of the Chemung river, east of the center line of South Main street, and north of the center line of Pennsylvania avenue from its intersection with the center line of South Main street to its intersection with the center line of West La France street, the center line of West La France street, the center line of East La France street, the center line of Falck street from its intersection with the center line of East La France street to its intersection with the center line of Horner street, Horner street and its extension easterly to the center line of the Chemung river, shall be the ninth ward.

TENTH WARD.

All that part of said city lying south of the center line of the Chemung river, west of the center line of South Main street and north of the center line of Franklin street and of the center line of Pennsylvania avenue from its intersection with the center line of Franklin street to its intersection with the center line of South Main street, shall be the tenth ward.

ELEVENTH WARD.

All that part of said city lying south of the following designated lines, to-wit: The center line of Pennsylvania avenue from its intersection with the center line of South Main street, to its intersection with the center line of West La France street; the center line of West La France street, the center line of East La France street, the center line of Falck street from its intersection with the center line of East La France street to its intersection with the center line of Horner street, the center line of Horner street and its extension easterly to the center line of the Chemung river, and lying east of the center line of South Main street, shall be the eleventh ward.

TWELFTH WARD.

All that part of said city lying south of the center line of Franklin street and the center line of Pennsylvania avenue from its intersection with the center line of Franklin street to its intersection with the center line of South Main street, and West of the center line of South Main street, shall be the twelfth ward.

Corporate
rights and
powers.

Sec. 3. The citizens of this state, from time to time inhabitants within the aforesaid limits, shall be a corporation under the name and style of "the city of Elmira," and in that name may sue and be sued, complain and defend in any court, make and use a common seal, and alter it at pleasure; and may receive by gift, grant, devise, bequest or purchase, and hold and convey such real or personal estate as the purposes of the corporation may require. All the real estate and personal property now owned or possessed by or held in the name of or in trust for the mayor and common council of the city of Elmira, are hereby vested in the city of Elmira, with power to hold or convey the same as the purposes of said corporation may require.

Personal and
real estate.

Vested in the
city.

TITLE II

City and Ward Officers; their Election and Appointment.

Elective city
and ward
officers.

Appointive
officers.

Sec. 4. The officers of said city shall consist of one mayor, one recorder, one city judge, four constables, to be elected by the city at large; two aldermen and one supervisor to be elected in each ward; one city clerk, one chamberlain, one city attorney, one overseer of the poor, one city sealer and three assessors, who shall be appointed by the mayor and common council; three cemetery commissioners, two fire commissioners, four police commissioners, four park commissioners, two commissioners of public works, one superintendent of public works, one engineer and surveyor and such other officers as are hereinafter or by the general laws of the State authorized and provided, and who shall be appointed as hereinafter or by said general laws provided.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 5. An election for city officers shall be held annually on the first Tuesday of March in each year, at such places as shall be designated by the common council. A notice of such election shall be published at least six consecutive days next prior thereto in at least two of the principal daily newspapers printed in said city. There shall be chosen thereat by the electors of the city, voting in their respective wards and districts, whenever the term of an incumbent is about to expire, one mayor, who shall hold his office for two years; one recorder, who shall hold his office for four years; one city judge, who shall hold his office for four years; four constables, who shall hold their office for one year; and also by the electors of each ward for such ward, one alderman who shall hold his office for two years and on the first Tuesday of March, nineteen hundred, and each alternate year thereafter, one supervisor who shall hold his office for two years. For the purpose of providing for the election of the additional aldermen required by this act, it is further provided that each alderman in office at the time this act takes effect shall be an alderman until the expiration of the term of office for which he was elected of the new ward in which he shall then reside. At the annual election on the first Tuesday in March, nineteen hundred, there shall be chosen by the electors in each ward in which there shall be no alderman at the time, one alderman for the term of two years and one alderman for the term of one year; and in each ward in which there shall be one alderman at the time, one alderman for two years, and in each ward in which there shall be two aldermen at the time, there shall not be at said election any election for aldermen. At each succeeding annual election after the annual election to be held on the first Tuesday in March, nineteen hundred, there shall be elected in each ward, one alderman for the term of two years, excepting in such wards as shall have, at the time of said next succeeding annual election no alderman, in which case there shall be an election of one alderman for the term of one year, and of one alderman for the term of two years and at the second annual election after the first Tuesday in March, nineteen hundred, and at each annual election thereafter, there shall be elected in each ward, one alderman for the term of two years.

Annual city election, places for holding.

Notice of.

Terms of city and ward officers.

(Thus amended by Laws of 1895, Chap. 371, and Laws of 1899, Chap. 556.)

Sec. 6. The term of office of the city attorney and city sealer shall be one year. The term of office of the city clerk shall be during the administration

by ordaining penalties to be incurred for each and every violation of the same, not exceeding one hundred dollars for any one offense, to be recovered with costs in a civil action in any court having cognizance thereof, or to remit the same or any part thereof, but nothing herein contained shall be deemed to prohibit or forbid the sale without suit of animals

Animals dis-
trained, sale of distrained or impounded according to the provisions of this act, for penalties incurred, or in the costs of keeping and proceedings therein, nor the forfeiture or destruction of property determined or adjudged

Nuisances, etc. to be a nuisance, nor the sale of property for assessment or other purpose, as provided in this act. Every ordinance or by-law imposing any penalty or forfeiture for a violation, and all by-laws and ordinances of the common council may be read in evidence in all courts, and in all proceedings before any officer, body or board in which it shall be necessary to refer thereto, either from a copy certified by the clerk with the corporate seal affixed, or from the volume of ordinances printed by authority of the common council; and such volume, containing the printed certificates of the city clerk that the same was printed by authority of the common council of said city, shall be presumptive evidence that said volume was printed by such authority. And all

Ordinance or
by-laws, read-
ing of in evi-
dence. persons violating any of said ordinances, or by-laws, or any of the provisions thereof, shall be punishable by a fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment as the said common council may by ordinance prescribe.

Violation of or-
dinance, etc., a
misdemeanor.

(Thus amended by laws of 1899, Chap. 204.)

Ordinances,
necessary pow-
ers to carry
same into ef-
fect.

SEC. 29. The common council shall have power to make, continue, modify and repeal such ordinances, regulations and by-laws as may be necessary to carry into full effect any and all the powers conferred upon it by this act. Every ordinance or by-law imposing any penalty or forfeiture for

d. Where the action is brought against an executor or administrator as such. Against executor.

SEC. 104. Summary proceedings and bastardy proceedings may be commenced by petition addressed either to said judge or to said court, and in said proceeding and in all actions, the jurisdiction of the said judge shall be exercised by and in the name of the said court only, and all processes from said court shall be made returnable thereto by its proper title. In the solemnization of marriages, and in all other matters not otherwise by this act provided for, said city judge shall have the same powers as justices of the peace in towns now have, and in instances in which a justice of a town is authorized to do any act or exercise any jurisdiction in association with another justice or justices, the said city judge may do such act or exercise such jurisdiction without associating with him any justice or justices. Summary and bastardy proceedings: how commenced. Powers of judge in solemnization of marriages, etc.

SEC. 105. Said court shall have the same jurisdiction over the persons of defendants as is now possessed by justices' courts of towns pursuant to the provisions of section twenty-eight hundred and sixty-nine of the code of civil procedure, and for the purpose of conferring jurisdiction of the person the said city of Elmira shall be deemed a town and said court a justice's court thereof. Said court is hereby given the power in any action or proceeding of which it has jurisdiction to send its processes and other mandates into any town of the county of Chemung for service or execution and to enforce obedience thereto with like power and authority as the county court. Persons of defendants.

(Thus amended by Laws of 1895, Chap. 371, and laws of 1899, Chap. 388.)

SEC. 106. A judgment of said court shall be in all respects the same as a judgment rendered by a justice of the peace of towns except as herein provided and all provisions of the code of civil procedure in relation to filing transcripts of such judgment: Judgment: how rendered.

line of said Miller street, and distant therefrom southerly two thousand feet; thence westerly along said line parallel with the south line of said Miller street and southerly therefrom two thousand feet until the same intersects with the west line of the fifth ward of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety, extended southerly; thence northerly on said extended west line of said fifth ward and along said west line to the south bank of the Chemung river; thence westerly along the bank of the said river until the same intersects the west line of the city of Elmira as it existed April sixteenth, eighteen hundred and ninety; thence westerly on the west line of said city of Elmira as heretofore established to the north west corner of said city as it existed April sixteenth, eighteen hundred and ninety; thence easterly along the north line of said city as heretofore established to the place of beginning, said boundaries being identical with those designated by chapter one hundred and thirty-one of the laws of eighteen hundred and ninety.

Sec. 2. The said city shall be divided into nine wards, respectively as follows:

FIRST WARD.

All that part of the said city lying north of the center of the Chemung river, west of the center of State street extended to the Chemung river, and south of the center of Church street, shall be the first ward.

Number of
wards.

SECOND WARD

All that part of said city lying north of the center of Church street, and west of the center of State street, and of the center of the abandoned Chemung canal, and east of the center line of College avenue, shall be the second ward.

THIRD WARD

All that part of said city lying east of the center of State street, and north of the center of Church street, and south of the center of Fifth street, and the line thereof continued, shall be the third ward.

FOURTH WARD

All that part of said city lying south of the center of Church street, east of the center of State street and the center line thereof continued southerly to the Chemung river, and north of the center of the Chemung river, shall be the fourth ward.

FIFTH WARD.

All that part of said city lying south of the Chemung river and north and west of the following designated lines, to wit: The center line of Mount Zoar street from the westerly boundary line of said city to the center of South Main street; the center line of South Main street from its intersection with the center line of Mount Zoar street to the center line of Pennsylvania avenue; the center line of Pennsylvania avenue from its intersection with the center line of South Main street to its intersection with the center line of

South Second street ; the center line of South Second street from its intersection with the center line of Pennsylvania avenue to its intersection with the center line of the railroad of the New York, Lake Erie and Western railroad company ; the center line of the railroad of the New York Lake Erie and Western railroad company from its intersection with the center line of South Second street to its intersection with the center line of Pennsylvania avenue ; the center of Pennsylvania avenue from its intersection with the center line of the railroad of the New York, Lake Erie and Western railroad company to its intersection with the center line of Sly street ; the center line of Sly street from its intersection with the center line of Pennsylvania avenue to its intersection with the Chemung river, shall be the fifth ward.

SIXTH WARD.

All that part of said city north of the center of Church street and west of the center of College avenue, shall be the sixth ward.

SEVENTH WARD.

All that part of said city lying east of the center line of the abandoned Chemung canal, and north of the center of Fifth street, shall be the seventh ward.

EIGHTH WARD.

All that part of said city lying south of the southerly boundary line of the fifth ward, and west of the center line of the railroad of the New York, Lake Erie and Western railroad company, shall be the eighth ward.

NINTH WARD.

All that part of said city lying south of the Chemung river and east of the center line of the railroad of the New York, Lake Erie and Western railroad company, and of the center line of that portion of Pennsylvania avenue between the railroad of the New York, Lake Erie and Western railroad company and Sly street, and the center line of Sly street to the Chemung river, shall be the ninth ward.

Corporate rights and powers.

Sec. 3. The citizens of this state, from time to time inhabitants within the aforesaid limits, shall be a corporation under the name and style of "the city of Elmira," and in that name may sue and be sued, complain and defend in any court, make and use a common seal, and alter it at pleasure; and may receive by gift, grant, devise, bequest or purchase, and hold and convey such real or personal estate as the purposes of the corporation may require. All the real estate and personal property now owned or possessed by or held in the name of or in trust for the mayor and common council of the city of Elmira, are hereby vested in the city of Elmira, with power to hold or convey the same as the purposes of said corporation may require.

Personal and real estate.

Vested in the city.

Title II

City and Ward Officers; their Election and Appointment.

Elective city and ward officers.

Sec. 4. The officers of said city shall consist of one mayor, one recorder, one city judge, four constables, to be elected by the city at large; two aldermen and one supervisor to be elected in each

ward ; one city clerk, one chamberlain, one city attorney, one overseer of the poor, one city sealer and three assessors, who shall be appointed by the mayor and common council ; three cemetery commissioners, two fire commissioners, four police commissioners, four park commissioners, two commissioners of public works, one superintendent of public works, one engineer and surveyor and such other officers as are hereinafter or by the general laws of the State authorized and provided, and who shall be appointed as hereinafter or by said general laws provided.

Appointive officers.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 5. An election for city officers shall be held annually on the first Tuesday of March in each year, at such places as shall be designated by the common council. A notice of such election shall be published at least six consecutive days next prior thereto in at least two of the principal daily newspapers printed in said city. There shall be chosen thereat by the electors of the city voting in their respective wards and districts, whenever the term of an incumbent is about to expire, one mayor, who shall hold his office for two years : one recorder, who shall hold his office for four years ; one city judge, who shall hold his office for four years ; four constables, who shall hold their office for one year ; and also by the electors of each ward for such ward, one alderman and one supervisor, who shall hold their respective offices for two years.

Annual city election, places for holding.

Notice of.

Terms of city and ward officers.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 6. The term of office of the city attorney and city sealer shall be one year. The term of office of the city clerk shall be during the administration

Appointive officers, term of office of.

of the mayor nominating him, unless he be sooner removed by the common council upon the recommendation and request of the mayor. The term of the city chamberlain and of each of the assessors shall be three years. The term of office of the city attorney, city sealer, city clerk and the assessor first appointed under this act, shall begin on the first Wednesday next after the first annual election under this act. The term of office of the city chamberlain, first appointed under this act, shall begin on the first Wednesday next after the annual election last prior to the expiration of the term of the now incumbent. At the meeting of the common Council on the first Tuesday next after the first annual election held under this act, or at some subsequent meeting, and as soon thereafter as may be and at the meeting of the common council on the first Tuesday next after the annual election of each year thereafter, or at some subsequent meeting, and as soon thereafter as may be, the common council shall appoint one city attorney, one city sealer, and one assessor. At the meeting of the common council on the first Tuesday next after the first annual election held under this act, or at some subsequent meeting, and as soon thereafter as may be, and at the meeting of the common council on the first Tuesday next after each annual election at which a mayor is elected, or at some subsequent meeting, and as soon thereafter as may be, the common council shall appoint one city clerk, to be nominated by the mayor. At the meeting of the common council on the first Tuesday next after the annual election last prior to the expiration of the term of the present city chamberlain, or at some subsequent meeting, and as soon thereafter as may be, and at the meeting of the common council on the first Tuesday next after the annual election of each and every third year

Appointment
of city attorney,
sealer and
assessor.

Appointment
of city clerk.

Appointment
of city chamberlain.

thereafter, or at some subsequent meeting, and as soon as may be, the common council shall appoint one city chamberlain.

Sec. 7. The common council shall have authority to subdivide the several wards into election districts in accordance with the general election laws; and said districts, when so designated by said council, shall constitute election districts for all state general and other elections to be held in said city, unless herein otherwise provided; and all provisions of law applicable to election districts and to the inspectors and other officers of election thereof and therein shall apply to said election districts, inspectors and other election officers.

Election districts.

Inspectors of election.

(Thus amended by Laws 1895, Chap. 371.)

Sec. 8. Every inhabitant residing in said city who shall at the time and place of offering his vote be qualified to vote for a member of assembly, shall be entitled to vote for all officers to be elected by virtue of this act in the ward and district where he shall be qualified

Qualification of voters.

Sec. 9. The city clerk shall give notice in writing of every election to be held under this act, to the inspectors of election of the several election districts, at least one week before the day of election. The polls of the elections in the several election districts at the said city elections shall be open at eight o'clock in the morning of the day of election, and shall be kept open without intermission or adjournment until five o'clock in the afternoon, when they shall be finally closed, and the inspectors shall forthwith, without adjourning,

Elections, city clerk to give notice of to inspectors.

Polls, when opened and closed.

Canvassing of votes and certificate of results.

canvass the votes received by them and certify and declare the results, stating the number of votes given for each person for each office, and shall file such statement and certificate on the same or next day with the city clerk, who shall forthwith notify the several aldermen-elect of their election.

Aldermen elect to be notified.

Meeting of common council on Monday next following election of city officers.

Sec. 10. On the Monday next following the election for city officers in each year, the common council of the preceeding year shall convene at ten o'clock in the forenoon at their usual place of meeting and the statement of votes filed with the city clerk by the inspectors of election shall be produced by the clerk. The common council shall then forthwith determine, declare and certify who were elected at said election to the various offices hereinbefore named, which certificate shall be filed with the city clerk. The mayor and such of the aldermen as shall have been elected at said election, shall thereupon take the oath of office prescribed by the constitution and the common council of the preceeding year shall thereupon dissolve and the common council composed of the mayor and the aldermen then elected and those whose terms of office shall not have expired shall then be organized. All city officers elected under this act shall enter upon their respective offices on the Monday next following their election, except the city judge whose term of office shall commence on the first day of April, and the recorder, whose term of office shall commence on the first day of January next ensuing their election, and each of such officers shall take the oath of office within ten days after notice of his election, and file the same as provided in the next succeeding section, or be deemed to have declined their offices respec-

Certificate of election to be made and filed.

Official oath of mayor and aldermen.

Organization of common council.

Term of office, commencement of.

Oath of office.

tively in like manner as the other officers as in said section provided.

Sec. 11. The city clerk immediately upon the filing with him of the certificate declaring the result of the election, shall notify in writing every person so certified to have been elected of his election. Every person elected to any office under this act, before entering on the same, shall take the oath of office prescribed by the constitution of this state before the mayor or some other officer authorized to take affidavits to be read in courts of justice, and file the same with the city clerk, except the mayor, recorder and clerk, whose oaths shall be filed with the clerk of Chemung county. Every person so elected, except the city judge and recorder first elected; and such recorder and city judge as may be elected to fill a vacancy, who shall refuse and neglect to take and file the said oath of office for ten days after personal notice in writing of his election from the clerk, shall forfeit twenty-five dollars for the use of the city, and be deemed to have declined the office.

City clerk to notify persons elected.

Oath of office before whom taken and when filed.

Time for taking.

Penalty for refusing.

Sec. 12. If any vacancy shall happen in the office of alderman, it shall be the duty of the common council to appoint a special election to fill such vacancy. Notice of such election shall be given, and such election shall be held in the manner prescribed in this act, and the election law. The person chosen at such special election to fill such vacancy shall hold such office for the residue of the term of office of the person in whose place or stead he shall be elected. If any vacancy shall happen in the office of city judge, a city judge shall be elected at the next city election thereafter, at which a city officer might lawfully be elected, and

Special election to fill vacancy in office of aldermen.

Term of office.

Vacancy in office of city judge, how filled.

he shall after duly qualifying enter upon his office on the first day of April next following his election, and hold the same for the full term of four years. The office of city judge in the meantime and until the person so elected shall enter upon the same shall be filled by the acting city judge appointed by the mayor and common council as hereinafter provided. If any vacancy shall happen in the office of recorder, a recorder shall be elected at the next city election thereafter at which a city officer might lawfully be elected, and he shall after duly qualifying enter upon his office on the first day of April next following his election, and hold the same for the full term of four years. The office of recorder in the meantime and until the person so elected shall enter upon the same, shall be filled by the acting recorder appointed by the mayor and common council as hereinafter provided.

Vacancy in office of recorder, how filled.

(Thus amended by Laws of 1895, Chap. 371.)

Other vacancies, how and for what time filled.

Sec. 13. If a vacancy shall happen in any other elective office, the common council shall fill the same by appointment until the next annual election, when the residue of the term of office, if there shall be any unexpired, of the officer whose term shall have become vacant, shall be filled by some person to be elected to such office for the residue of such act, according to the provisions of this act.

Qualifications for office.

Sec. 14. No property qualification shall be required to hold an office under this act, but every person elected or appointed to any office hereby created or authorized, excepting the office of stenographer and clerk of the city court, shall be an elector and a resident of the city, and no person shall be elected

an alderman or a supervisor of any ward unless he shall also be, at the time of such election, a resident of such ward ; and if such officer shall remove out of such ward during his term of office he shall be deemed thereby to have vacated his office, and the removal from the city of any officer elected or appointed under this act shall render the office held by him vacant from the time of such removal.

Office, how vacated.

Sec. 15 The recorder, city judge, clerk of the city court, superintendent of the public works and such other officers as may be required thereto by the common council shall severally, before they enter upon their duties as such officers, execute and file with the clerk a bond to the city of Elmira in such sum as the council shall direct, and with such sureties as the mayor shall approve conditioned that they will faithfully discharge the duties of their respective offices, and pay over all moneys received by them respectively.

Recorder, city judge, etc., bond of.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 16. Every person elected or appointed to the office of constable in said city, shall, before he enters on the duties of his office, execute with two sureties to be approved by the mayor, an undertaking or bond, which shall be acknowledged in the same manner as deeds are required to be acknowledged by law, and filed with the clerk of said city, in and by which the said constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as said constable may have become liable to pay by reason of, or on account of any execution, warrant or other process which shall have been delivered to him for collec-

Constable, bond of, how executed.

To be filed with city clerk.

Actions upon,
when to be
prosecuted.

tion or execution. All actions upon such undertakings which may be forfeited shall be prosecuted within two years after the expiration of the year for which such constable shall have been elected or appointed. A copy of such instrument certified by the clerk of said city, under the seal thereof shall be presumptive evidence in all courts of the execution thereof by said constable and his sureties.

Certified copy,
evidence in all
courts of the
execution
thereof.

Officers failing
to execute
bond, office
may be de-
clared vacant.

Sec. 17. If any officer who shall be required by any of the provisions of this act, or by any ordinance of the common council, to execute any bond or other instrument, before or after entering upon his office, shall fail to execute the same in the manner prescribed by this act, or by any such ordinance, within ten days after he shall have been duly notified to do so, the common council may declare his office vacant, and proceed to cause the same to be filled in the manner provided by this act in cases of vacancies in office.

Who ineligible
to office.

Mayor, alder-
man or city
clerk not to be
interested in
contract.

Sec. 18. No member of the common council shall be appointed to any office by the common council nor shall any alderman or the mayor or city clerk be in any manner, directly or indirectly, interested in any contract to which the city shall be a party; and any such contract in which any such officer shall be or become interested shall thereby and thereupon become void.

Delivery of
property, etc.,
to successor in
office; penalty
for omitting.

Sec. 19. If any person having been in office in said city, shall not, within ten days after notification and request, deliver to his successor in office all property, papers and effects of every description in his possession or under his control, belonging to said city, or appertaining to the office so held he shall

forfeit and pay to the use of said city, one hundred dollars, besides all damages caused by his neglect or refusal so to deliver.

Title III.

Powers and duties of the common council.

Sec. 20. The mayor and aldermen of the city shall constitute the common council. The common council shall meet at the city hall, or at such other place as the mayor shall designate, annually on the first Tuesday next after the annual election in each year and at such other times as hereinafter provided. At all meetings of the common council the mayor, when present, shall preside, and, when he is not present, any one of the aldermen may be called to the chair.

Common council, how constituted.

Annual and other meetings of.

Mayor to preside.

Sec. 21. A majority of the common council, including the mayor as a member thereof, shall be a quorum for the transaction of business, but a smaller number may adjourn from time to time and compel the attendance of absent members. In the proceedings thereof, each member present shall have a vote, except the mayor, who shall have only a casting vote when the votes of the other members are tied; provided, however, that no tax or assessment shall be made or ordered, or any appointment to office be made, except by a concurring vote of a majority of all the members of the common council in office, including the mayor, who shall be entitled to vote thereon as a member of the council.

Quorum.

Mayor has casting vote only.

Except for assessment of tax or appointment to office he may vote.

Stated and special meetings. Sec. 22. The common council shall hold stated meetings at least twice in each month, and the mayor, or any three aldermen may call special meetings by notice, in writing, served personally upon the other members of the council or left at their usual place of abode.

Powers of common council. Sec. 23. The common council shall determine the rules of its own proceedings, and be the judges of the election and qualification of its own members, and have power to compel the attendance of absent members from time to time, by the entry of a resolution any order in the minutes, directing the chief of police, or any police officer of the city, to arrest such absent member and take him before the common council, at the meeting at which such member was absent, or the next or some subsequent meeting of the council, to answer for his neglect ; to prescribe the duties of all the officers and persons elected or appointed by them to any office or place whatever, subject to the provisions of this act ; and to remove all officers and persons appointed or elected by them for any neglect of duty or misconduct ; and to revoke or cause to be revoked, any license or permission given under this act.

May compel attendance of its members.

To prescribe duties of officers.

Power to remove for neglect of duty, etc.

Power to summon witnesses to testify. Sec. 24. The common council or any committee thereof, or any board or body of commissioners, created or authorized by the provisions of this act shall have power to issue a summons to any person to appear and testify before them in respect to any matter pending before or referred to them. Such summons may be served at any place within the county of Chemung, in the same manner as subpoenas for witnesses in criminal cases. Any person who shall refuse to attend in obedience to any such summons may be arrested by order or attachment,

Attachment to compel attendance.

which may be issued by the mayor or recorder upon due proof of the service of such summons and of such refusal and committed to the county jail or other place of detention until he appear and will testify as required. Such witness so refusing to attend may also be fined and imprisoned for disobedience of such summons by the mayor or recorder in the same manner and to the same extent as witnesses refusing to attend in obedience to a subpoena duly issued by a justice of the peace. Whenever any person summoned as a witness as hereinbefore provided shall refuse to be sworn or affirmed, or to answer any pertinent and proper question, the mayor or person presiding at the hearing may forthwith commit such person to the county jail or other proper place of detention for a period not exceeding twenty days, or until he will be sworn or affirmed or answer such question. Such commitment shall be made by warrant directed to the sheriff of the county or other officer having such place of detention in charge, and shall recite the cause of such commitment, and the officer shall keep such person in close confinement as directed thereby.

Punishment for refusal to attend, or to be sworn and testify.

May commit to county jail.

Form of commitment.

(Thus amended by Laws of 1895, Chap. 371.)

25. All accounts against the city, and all accounts for services rendered or moneys expended by any officer within said city, which would be charges and accounts against a town if they were rendered and expended by the officers thereof, shall be presented to the common council, and the same shall be referred to a standing committee of said common council, to be composed of one member from each ward, to be called "auditing and finance committee." It shall be the duty of said

Committee on adjusting accounts; reference of claims to, and how composed.

committee to inquire or examine into said accounts, and it may send for persons and papers, and may examine the claimant on oath in respect thereto. The said committee shall report the matters referred to it by the common council; either favorably or adversely, with its reasons if required, and the said common council shall then hear, examine and determine the same as a board of town auditors, and for that purpose shall possess the powers and be subject to the duties of town auditors.

Report of committee and proceedings thereon.

Sec. 26. The common council shall have the management and control of the finances, and of all the property, real and personal, belonging to said corporation, and shall have power within the said city to make, establish, publish and modify, amend and repeal ordinances, rules, regulations and by-laws for the following purposes :

Control of finances and other property.

Ordinances, rules, regulations and by-laws.

a. To prevent vice and immorality, to preserve peace and good order, to prevent and quell riots and disorderly assemblages.

To prevent vice, etc.

b. To restrain and suppress disorderly and gaming houses, all instruments and devices used for gaming, and to prohibit all gaming and fraudulent devices within the said city.

To suppress disorderly and gaming houses.

c. To prohibit all exhibitions of any natural or artificial curiosities, caravans, circuses, theatrical and other shows or exhibitions or performances for money, within the bounds of the city or, if the common council shall deem it advisable, to license the same upon such terms as the common council may direct.

To prohibit exhibitions.

d. To repress and restrain disorderly houses, or houses of ill fame, billiard tables, bowling alleys, pistol galleries, and houses and places where intoxicating liquor is sold to be drank, and to prohibit the sale of intoxicating liquors without license. or contrary to law.

To suppress disorderly houses, etc.

e. To direct the location of all houses for storing gunpowder and other combustibile and explosive substances, and to regulate the keeping, selling and conveyance thereof, and the use of candles and lights in barns, stables and outbuildings.

Houses for storing gunpowder.

f. To prevent horse racing and immoderate driving in the streets of said city ; to prohibit or control the flying of kites, and every other game, practice or amusement in the public streets or elsewhere, having a tendency to frighten teams and horses, or to injure or annoy persons passing in or along the highways or streets of the city or to endanger property.

Racing and immoderate driving.

g. To prohibit, regulate and determine the time and places for bathing in the canals, river, and in the streams or ponds within said city.

Bathing.

h. To restrain or punish vagrants, mendicants, street beggars and common prostitutes.

Vagrants, etc.

i. To establish and regulate public pounds, and to appoint all necessary pound-masters and to prescribe their duties.

Public pounds.

j. To restrain the running at large of cattle, horses, swine, sheep, goats, and geese, and to authorize the distraining, impounding and sale of the same for the penalty incurred, and the costs of keeping and proceedings.

Animals running at large.

Ringing of bells, blowing of horns, firing of guns, etc.

k. To prevent or regulate the ringing or tolling of bells, blowing of horns, or crying of goods or wares, firing of guns, powder or other explosive compounds, and the making of any improper noise which may tend to disturb the peace of the city ; and the sale and use of fire-crackers, rockets, squibs or other explosive compounds.

Taxing and confining dogs.

l. To make regulations for taxing and confining dogs, and for destroying such as may be found running at large, contrary to any ordinance, and to regulate or restrain their running at large.

Reservoirs, hydrants, etc.

m. To regulate and keep in repair the reservoirs, hydrants and water pipes belonging to the city, and the public wells in said city, and to regulate the taking and using of water from the same ; to regulate and keep in repair the public buildings of said city, and to regulate the sales of fish, meat and vegetables within said city ; to regulate or prohibit the making or keeping of markets for the sale of meat or fish, except at such places as the common council shall designate, and to regulate or prohibit the erection, keeping or using of slaughter-houses within said city.

Slaughter houses, markets, etc.

Hawking, peddling and auctioni

n. To regulate and restrain hawking and peddling in the streets, and to regulate, tax and license pawnbrokers and auctioneers, and the sale of goods at auction, and the vending and sale of goods in the city by non-residents thereof.

Cabmen, hacks etc., licensing of.

o. To license and regulate cabmen, the drivers of hackney carriages, stages, omnibuses or other conveyances for the transportation of passengers within the city ; to fix their rates of compensation, and to require them to have licenses and numbers.

p. To regulate runners, stage drivers and others in soliciting passengers and others to travel or ride in any stage, omnibus, or upon any railroad, or to go to any hotel or otherwise.

Runners and stage drivers.

q. To regulate, restrain or prevent the unnecessary obstruction of streets by locomotives and other cars, and to regulate the speed of locomotives and other cars in said city ; and by a two-thirds vote of all the members of the common council to require railroad companies to erect gates at the streets in said city, where said railroad shall cross said streets, and to compel the employment by them of competent men to attend the same : and to make regulations for the management thereof, and in case such gates shall not be ordered, then to compel the employment of competent flagmen at such crossings as the council may direct by a two-thirds vote of all the members of the common council.

Obstruction of streets by locomotive engines etc.

r. To fix the amount, and decide upon the sufficiency of the sureties in the official bond of the city chamberlain and other officers from whom they may require surety ; and to require additional security from any such officer when they may deem it necessary, and to suspend him until it is given.

Sureties in official bonds.

s. To regulate the planting of shade and ornamental trees along the streets and sidewalks of said city, and to prevent the injury or destruction of such trees ; and to prevent the injury or defacement of fences, posts and buildings in said city ; and to protect the parks and public grounds of said city.

Shade trees, planting, defacing of.

- Burial of the dead. t. To regulate the burial of the dead, and to protect the public cemeteries.
- Removal of encroachments on streets. u. To cause building and other structures encroaching on or extending over the streets or water courses to be removed at the expense of the owners or occupants thereof, to make such expense of removal a lien on the lot, and to issue warrants against any such owner or occupant to collect the necessary expenses of such removal, as assessments and taxes are collected.
- Building material, deposit of. v. To permit building material to be deposited on the streets in front of any lot, to such extent and for such time as they may prescribe.
- Naming streets w. To give names to streets and numbers to the lots and tenements, and to change the same.
- May employ attorney. x. To employ an attorney and counsel when the business of the council requires one, and to pay him a reasonable compensation.
- Implied power. y. To do all such acts and make all such ordinances as shall be necessary to carry into effect any general power, or discharge any duty conferred or imposed by this act, although such acts or ordinances may not be specially enumerated herein.
- Lighting of streets, etc. z. To authorize and regulate the lighting of the streets, highways, lanes and public buildings of said city, and the protection and safety of the public lamps, lamp-posts, service pipes and fixtures ; to assess and collect from the real and personal estate within the city the amount required for the expenses thereof.

Sec. 27. The common council shall also have power, by resolution :

a. To require any building, fence, sign or other erection, which is or may be erected or built or placed within the line of any street or highway in the city, or over any sidewalk thereof, to be removed therefrom by the owner or occupant ; and in case of his neglect to so remove the same, to cause its removal at the expense of such owner or occupant.

Building, etc., within line of street, removal of.

b. To compel the owners or occupants of any wall or building within the city, which may be in a ruinous or unsafe condition, to render the same safe, or to take down or remove the same, and to prohibit such erections.

Walls of buildings in unsafe condition.

c. To require the immediate enforcement of any or all of the ordinances and regulations which may from time to time, be adopted by the council.

Ordinances, enforcement of.

d. To require any officer of the city to furnish reports, information or estimates, whenever deemed proper by the council.

Reports of officers, may be required.

e. To designate one or more newspapers in the city in which shall be published proceedings, notices, resolutions, ordinances, or acts of the common council.

Newspapers, designation of.

f. To enter into contracts for services or supplies and order the payment for the same, and to provide generally for the welfare of the city.

Contracts, may enter into.

Sec. 28. The common council shall have power to enforce observance of all provisions of this act

Penalties, ordaining of.

by ordaining penalties to be incurred for each and every violation of the same, not exceeding one hundred dollars for any one offense, to be recovered with costs in a civil action in any court having cognizance thereof, or to remit the same or any part thereof, but nothing herein contained shall be deemed to prohibit or forbid the sale without suit of animals distrained or impounded according to the provisions of this act, for penalties incurred, or in the costs of keeping and proceedings therein, nor the forfeiture or destruction of property determined or adjudged to be a nuisance, nor the sale of property for assessment or other purposes, as provided in this act. Every ordinance or by-law imposing any penalty or forfeiture for a violation, and all by-laws and ordinances of the common council may be read in evidence in all courts, and in all proceedings before any officer, body or board in which it shall be necessary to refer thereto, either from a copy certified by the clerk with the corporate seal affixed, or from the volume of ordinances printed by authority of the common council; and such volume, containing the printed certificates of the city clerk that the same was printed by authority of the common council of said city, shall be presumptive evidence that said volume was printed by such authority. And all persons violating any of said ordinances, or by-laws, or any of the provisions thereof, shall be deemed guilty of a misdemeanor.

Animals dis-
trained, sale of

Nuisances, etc.

Ordinance or
by-laws, read-
ing of in evi-
dence.

Violation of or-
dinance, etc., a
misdemeanor.

Ordinances,
necessary pow-
ers to carry
same into ef-
fect.

Sec. 29. The common council shall have power to make, continue, modify and repeal such ordinances, regulations and by-laws as may be necessary to carry into full effect any and all the powers conferred upon it by this act. Every ordinance or by-law imposing any penalty or forfeiture for

violation of its provisions, shall after the passage thereof, take effect at such times as the common council shall direct, and shall be published at least twice in each week for two successive weeks in the official paper printed and published in said city, and an affidavit thereof made by the printer or publisher, or foreman in the office of the printer of such newspaper, shall be filed in the office of the city clerk, and shall be presumptive evidence in all courts and places of the legal publication and promulgation of such ordinance or by-law.

When to take effect.

Publication of.

Evidence of publication, what is.

Title IV.

Of the Powers and Duties of the City Officers.

Sec. 30. The mayor of the city of Elmira shall be the chief executive magistrate thereof, and shall when present, preside at all meetings of the common council. It shall be his duty to take care that within said city the laws of the state and ordinances and by-laws passed by the common council be faithfully executed, and to arrest or cause the arrest of all persons violating the same, and to exercise a constant supervision over the conduct of all subordinate officers, to receive and examine all complaints against them for misconduct or neglect of duty, and to report the facts to the common council; to recommend to the common council, from time to time, such measures as he shall deem necessary or expedient for them to adopt, to cause to be carried out all orders, resolutions and ordinances resolved upon by them, and in general to maintain the peace and good order of said city; to approve or disapprove all bills, orders, resolutions or ordinances which shall have passed the common

Mayor his duties.

Receiving and reporting complaints.

Recommendations.

Approval or disapproval of bills, etc.

council for the expenditure of money ; and if he approves, he shall endorse his approval thereon in writing and sign such approval ; and if he disapproves he shall return such transcript to the common council or the clerk thereof with his objections in writing, which shall be filed with the clerk, and the common council shall at its next meeting there-
 after proceed to reconsider such ordinances, resolutions, orders, or acts, thus disapproved ; and if the same shall be passed by two-thirds of all the members of the common council then in office, the same shall have full force and effect, notwithstanding the objection of the mayor. If any such transcript shall not be returned by the mayor to the common council or clerk within five days after passage thereof (Sundays excepted) such ordinance, resolution, order, or act shall have full force and effect in like manner as if duly approved by the mayor, unless the term of office of the mayor shall expire within five days, in which case such ordinance, resolution, order or act shall have no force. He shall have power summarily to hear, try, and determine any complaint against any appointed officer of said city for misconduct or neglect of duty, and to suspend said officer until the next meeting of the common council. He shall also have power summarily to revoke any license of any hackman, cartman, or for the exhibition of any show. He shall sign all appointments made by the common council, and all orders passed by the common council for the payment of moneys by the city chamberlain. The mayor shall have power to employ an attorney to aid him in the discharge of his duties, whenever, in his opinion, the interests of the city require it, who shall be paid a reasonable compensation. He is also empowered to enter any house or

Veto measures, how passed, notwithstanding.

Ordinance, etc., if not returned to stand approved, etc.

Complaints against officers, trial of.

To revoke licenses.

Appointments and orders, mayor to sign.

building which he has cause to suspect to be a gambling-house, or to be inhabited by persons of ill-fame, or to which persons of dissolute, idle or disorderly character resort, and disperse the same, or arrest such persons and hold them until they can be dealt with before some proper magistrate according to law. He shall have power to administer oaths and take affidavits and to take the proof and acknowledgement of deeds within said city, and receive therefor the same fees that are allowed justices of the peace for the same services. In case the mayor shall be unable to perform the duties of his office, in consequence of continued absence from the city, or if there shall be a vacancy in the office the common council shall appoint, by ballot, one of their number to preside at their meetings, and the presiding officer thus chosen shall be vested with all the powers and perform all the duties of the mayor of the city, until the mayor shall resume his office, or the vacancy shall be supplied according to law, but it shall not be lawful for the presiding officer thus chosen, when acting as mayor, to nominate or appoint any person to office unless the sickness, disability, or absence of the mayor shall have continued at least thirty days. The mayor of the city of Elmira shall possess all the power and authority conferred upon mayors of cities by any general statute of the state; he shall have power to apprehend and arrest any person who shall, within his view in said city, be guilty of any criminal act, or of any violation of the laws or statutes of this state; he may also upon complaint being made to him under oath, issue a warrant to the chief of police or any police officer of the city of Elmira, to arrest any person charged with crime or misdemeanor, or with any violation of any of the laws or statutes of said

Administer
oaths.

Provision in
case of absence
etc.

General
powers.

Powers to ar-
rest.

To issue war-
rant.

state, within said city, and bring said person for examination or trial either before him, the said mayor, or before the recorder or acting recorder. Any such warrant may be executed by any officer to whom it is directed at any place within the state. If such process shall be made returnable before the recorder, such officer, upon the same being returned to him, or the prisoner arrested by virtue thereof, being brought before him, shall take and acquire jurisdiction of the subject matter, and proceed with the case to the same extent and in the same manner in all respects as if such process had been originally issued by him. When ever any person shall be arrested by the mayor of said city for any offense committed within his view, or by process originally returnable before him, he may, by an order in writing, transfer the case to the recorder, who shall thereupon take and acquire jurisdiction and proceed with such case in the same manner and to the same extent as if such person had been arrested on such process originally issued by him, or the said mayor may in any such case proceed to examine such person and commit him for trial to answer the charge against him or discharge him according to law. If the offense charged is by law triable in a court of special sessions of the peace, the said mayor may proceed to hold a mayor's court of special sessions to try such person or persons, and all provisions of law applicable to courts of special session shall extend and apply to such mayor's court. All process for the summoning of jurors or witnesses in such court may be served or executed by the chief of police or any constable or police officer of said city. The mayor shall receive the sum of fifteen hundred dollars and each alderman one hundred dollars per year for his services.

Warrant, where executed.

If warrant returnable before recorder, proceedings thereon.

Transfer of cases to the recorder.

Offenses triable in court of special sessions; mayor may try.

Summoning of jurors or witnesses by chief of police.

Mayor and aldermen, salary of.

Sec. 31. It shall be the duty of the mayor on or before the first regular meeting of the common council held in April in each year to present to said common council a statement in writing containing an estimate of the amounts or sums of money necessary to be raised for defraying the expenses of the city for the current year. Such statement shall contain :

Mayor to make estimates of city expenses, etc.

a. An estimate of the sum necessary for defraying the salaries and pay of officers other than officers and employes in the fire, police and park departments, and other contingent expenses of the city not otherwise provided for, to be designated "general fund."

General and contingent expenses.

b. A sum necessary to defray the expenses of the police department, including the salaries of the officers of said department, to be designated "police fund."

Police department.

c. A sum necessary for lighting the streets, lanes and public buildings of the city and the cost and expenses of maintaining and keeping in repair the lamps, lamp-posts, and all necessary fixtures connected therewith, to be designated "lamp fund."

Lighting streets, etc.

d. A sum necessary for building, grading, repairing, cleaning and keeping in good order the unpaved streets, for cleaning paved streets, for cleaning, repairing and building crosswalks, for putting

Highway purposes.

down superficial macadam and cleaning and repairing the same, to be designated "street fund."

Bridges and water courses. e. A sum necessary to defray the expenses of building, rebuilding and repairing bridges, culverts sluiceways, and for cleaning out creeks and water courses, to be designated "bridge and water-course fund."

Sewers. f. A sum necessary to defray the expenses of constructing; repairing and keeping in order the sewers, to be designated "sewer fund."

Parks. g. A sum necessary for maintaining and improving the public parks and the property belonging therein, to be designated "park fund."

Fire department. h. A sum necessary for supplying and keeping in good condition and repair fire engines, engine-houses, fire alarm telegraph, teams and other things deemed necessary for the extinguishment of fires and for paying the salaries and wages of the officers and employes of the fire department, and to procure a supply of water for the extinguishment of fires, to be designated "fire department fund."

Supply of water.

Limitation of expenses.

Provided, that for all the purposes in this section above stated, the said estimate and the sum voted therefor in pursuance of section fifty-one of this act, shall not exceed one hundred and seventy-five thousand dollars.

Bonds and interest.

i. A sufficient sum to pay interest on all bonds issued by said city, or for which it may be liable, and also all the principal and installments of principal of said bonds falling due within the then cur-

rent year, and for all other liabilities of said city, for the payment of which provision shall not be otherwise made.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 32. It shall be the duty of every alderman in said city to attend the regular and special meetings of the common council; to act upon committees when thereunto appointed by the mayor or common council; to arrest or cause to be arrested all persons violating the laws of the state, of the ordinances, by-laws or police regulations of the city; to report to the mayor all subordinate officers who are guilty of any official misconduct or neglect of duty, and to aid in maintaining peace and good order, and to perform or assist in performing all such duties as are by this act enjoined upon the aldermen of said city separately, or upon the common council thereof. Every alderman of such city shall possess such powers as are conferred by any general law upon aldermen of cities. Any three aldermen of said city may call special meetings of the common council in the same manner as the mayor, in writing, signed by them and filed with the city clerk and duly served upon each member of the common council.

Aldermen to attend meetings.

To act upon committees.

To arrest persons violating laws, etc.

Power to maintain the peace.

May call special meetings.

Sec. 33. The supervisors provided for by this act shall have the same powers and duties as supervisors in any town in the county of Chemung, except as otherwise provided by this act; and the said supervisors shall be members of the board of supervisors of the county of Chemung, and shall be entitled to the same compensation and be paid in the same manner.

Supervisors, powers and duties of.

Compensation of.

Supervisors a
board of audi-
tors.

Accounts audi-
ted, how paid.

Sec. 34. The supervisors of the city of Elmira, or a majority of them, shall constitute a board of auditors, whose duty it shall be to audit all accounts chargeable to said city, which are by law required to be placed in the county tax levy. The accounts, when audited as above, shall be paid by the chamberlain of the city of Elmira out of the money appropriated by the board of supervisors of the county for that purpose, and the vouchers shall remain in the office of said chamberlain.

Overseer of the
poor, appoint-
ment of.

Official bond of

Sec. 35. At the first regular meeting of the common council after organization subsequent to the annual election next after the expiration of the term of office of the present overseer of the poor in and for said city, or as soon thereafter as may be, and each and every two years thereafter, it shall be the duty of the mayor to nominate and submit to the common council the name of an elector of the city of Elmira for the office of overseer of the poor of said city. If such nomination be confirmed by the vote of a majority of the common council, including the mayor, the person so nominated and confirmed shall be declared appointed to said office of overseer of the poor. He shall hold his office for two years, or until his successor is appointed. Every person appointed overseer of the poor shall, within ten days after being duly notified, give security for the faithful performance of the duties of his office, in such manner and to such amount as the common council may direct, and the accounting for all moneys which may pass through his hands, or his office shall be deemed vacant and shall be filled in the manner hereinbefore provided. He shall, subject to the provisions of this act, have the same power, perform the same duties, and be subject to the

same restrictions and liabilities as overseer of the poor in any town of Chemung county. He shall keep his office in some central and convenient part of the city, to be approved by the common council, and shall, at the first regular meeting of the common council in each month, report to it in detail all expenses, appropriations and allowances made by him as such officer during the preceding month, which report shall specify the name of each person relieved, with the quantity and price of each article furnished, and from whom obtained.

To keep an office.

Monthly report.

(Thus amended by Laws of 1895, Chap. 371)

Sec. 36. The overseer of the poor for the city of Elmira shall, by virtue of his office, possess all the powers and authority of overseers of the poor of the several towns of this state in relation to the support and relief of indigent persons, the binding out of children, the safe keeping and care of lunatics, the care of habitual drunkards, the binding and contracting for the service of disorderly persons, the support of bastards, and proceedings to charge fathers and mothers of such bastards, and all such other powers as are conferred on overseers of the poor in the respective towns of this state, and shall be subject to the same duties, obligations and liabilities.

Relief to the indigent; binding out of children; care of lunatics, etc.

Sec. 37. All charges and accounts against said city for services rendered, acts done or means furnished under and by virtue of the two preceding sections, shall be audited by the supervisors of said city, in the same manner and at the time similar accounts are audited in the several towns of Chemung county, by the respective town boards, and all accounts properly chargeable against the county of Chemung shall be audited by the board

Charges against city by overseer of the poor; how audited.

County charges; what are.

of supervisors of said county, in the same manner as the accounts of towns and town officers are by them audited and allowed.

Salary of overseer; how determined.

Sec. 38. Said overseer of the poor shall receive such annual compensation or salary as the common council of the city shall determine.

City sealer; his powers and duties.

Sec. 39. The city sealer, when directed by the mayor, shall, as such city sealer, inspect and examine such weights, measures, scale-beams, measures of extension and weighing apparatus and shall at such times possess the like powers and be subject to the like obligations as the sealers of the several towns of this state.

City clerk, duties of.

Sec. 40. The city clerk shall keep all papers, books and records belonging to said city, appertaining to the duties of his office; he shall act as clerk of the common council, of the mayor, and of the finance committee, and shall attend all the meetings of the common council and of said committee; he shall countersign all orders drawn on the city chamberlain, and all licenses granted by the mayor and common council, and keep a correct record thereof; he shall keep an exact account of

Account of moneys drawn.

all moneys drawn on the city chamberlain in a book or books to be provided for that purpose by the city, and upon what funds such moneys shall have been drawn, a correct account of the several moneys of the different funds required to be raised by the common council for the current year and report to said common council at the first regular meeting held in each month, a correct statement of the amount of money drawn from each fund, and the amount remaining therein; he shall also report to the city chamberlain on the first of each month

His report to common council.

a detailed account or statement of all orders drawn on said chamberlain the previous month, giving number, name, and to whom payable, upon what fund drawn, for what purpose, and the amount. His office is hereby declared a town clerk's office for the purpose of depositing and filing therein all books and papers required by law to be filed in the town clerk's office, and he shall possess all the powers, and discharge all the duties of a town clerk, except so far as the same is inconsistent with other provisions of this act. He shall have the same power to administer oaths, and take affidavits and acknowledgements within said city that justices of the peace have, for the purposes of the city, or for any officer or agent acting for the city, without any fee or charge therefor. The clerk shall receive an annual salary of such amount as may be fixed by the common council, payable monthly; and he shall not receive from the city, nor from any person or persons, any fee or reward for any service as clerk, except as hereinbefore provided, and except that when certified copies of papers or records are required by any person or party except the city, he shall be entitled to ten cents a folio therefor, if required to make or write the copies himself; but any other person shall have the right to take copies of any records or papers of the corporation for evidence. He shall have an office, to be provided by the city, at the city hall, or such other place as may be designated by the common council, which he shall keep open for the transaction of business of the city, between the hours of nine o'clock and twelve o'clock in the forenoon, and two o'clock and five o'clock in the afternoon of each day, except Sundays and public holidays.

His office declared a town clerk office.

Power to administer oaths, etc.

His salary.

His office to be provided by the city.

Sec. 41. The city attorney shall have the management and charge of all the law business of the

City attorney; duties of.

corporation in which the city is interested, including every municipal department thereof, unless the common council shall otherwise direct. He shall keep a record of all suits and proceedings which, as the city attorney, he shall have in charge. In case of his sickness or absence, he shall have power to authorize any attorney to appear for and on behalf of the city in any suit or proceeding. He shall, when required by the mayor or common council, prepare all legal papers for the city, and shall be the legal adviser of the common council and of the several departments of the corporation. He shall see that all proceedings in relation to improvements, and the opening, widening, contracting or discontinuing of streets, are regularly conducted, and he shall perform such other duties as are required of him by this act and such as the common council may prescribe. It shall be his duty to attend in behalf of the people at any court of special sessions of the peace held by the recorder of said city whenever requested to do so by said recorder or the mayor of said city. He shall be paid a salary for his services, to be fixed annually by the common council, and, in addition thereto, may receive for himself the taxable costs in any action brought or defended by him for said city, and in which the said city shall prevail, during his term of office, provided the same shall be collected of the party adverse to said city in such action. But no such action shall be commenced by him without the consent of the common council or the mayor.

To keep records of suits.

May authorize any other attorney to appear for the city.

To prepare all legal papers.

Has charge of all street improvements.

Duty to attend Court of Sessions.

His salary; how fixed.

Taxable costs; to receive.

City assessors; duties of. Sec. 42. The assessors appointed in the city of Elmira shall perform all the duties herein specified in relation to the assessment of property with-

in said city, as well as for the purpose of levying the taxes imposed by the board of supervisors of Chemung county and by the common council of said city. Each assessor shall receive for compensation for all services rendered under this act, or by virtue of any statute, an annual salary of three hundred dollars, except one of such assessors, to be selected by the board of assessors, shall receive in addition to the salary above provided, the sum of five hundred dollars annually. Such last mentioned assessor shall attend at an office to be designated by the common council on each day of the year except Sundays, legal holidays, and days when he shall be engaged with the board of assessors, to hear and note, for the use and action of the board of assessors, all complaints and requests in regard to corrections in the assessment roll. The said assessors shall possess all the powers and authority of town assessors, and shall make the assessment roll of said city in the same manner as such town assessors, under and in pursuance of the second article of the second title of the thirteenth chapter of the revised statutes, except as herein provided. Between the first days of May and August in each year they shall proceed to ascertain by diligent inquiry the names of all the taxable inhabitants in the city, and also all the taxable property, real and personal, within the same. The notices required by the nineteenth and twentieth sections of said article shall be given as provided therein, except that the said assessments may be seen and examined by any person interested therein for ten days next preceding the third Tuesday of August in each year, excepting Sundays, instead of the time in said section prescribed, and the same shall be published in all the daily papers printed in said city, and shall des-

Compensation
of.

Assessment
roll; how made.

Notices.

Assessment roll; when to be completed.

ignite a public office as the place where the assessors will review their assessments, and where said roll may be seen and examined. The assessment shall be completed, and with all other papers required by said article to be filed, shall be delivered to the clerk of said city on or before the Thursday succeeding the third Tuesday of August in each year.

(Thus amended by Laws of 1895, Chap. 371.)

Correction of assessment roll

Sec. 43. The common council is vested hereby with the exclusive power to correct the assessment roll of said city in respect to taxes imposed by virtue of this act in the same manner as a board of supervisors may by law correct the town rolls of their county, and shall have and possess all the powers in relation to the correction or otherwise of such city assessment rolls that boards of supervisors have or may have by statute in the case of town assessment rolls and town or county taxes.

Clerical errors; correction of.

The city clerk shall correct all clerical errors in the description or valuation of property in said roll under the direction of the common council and make an exact and correct copy of the assessment roll so made and corrected as aforesaid, and certify the same to be correct, and deliver the same to one of the supervisors of the said city on or before the first day of November in each year, which shall be presented and delivered by him to the board of supervisors of Chemung county, as and for the town roll of said city. Nothing in this section contained shall be construed to prevent

Delivery of copy to supervisors.

Assessment roll: powers of board of supervisors as to.

the said board of supervisors from exercising in respect to the assessment roll of said city so delivered to them, or the taxes imposed by them thereby, the same powers as are vested in boards of su-

pervisors in respect to town assessment rolls and town and county taxes, or any correction thereof.

a. Whenever it shall appear to the assessors of said city that any land or property of any kind liable to taxation therein has been omitted, stricken, erased or taken from the assessment roll of said city of the next preceding year by reason of mistake or accident, it shall be the duty of the said assessors to assess and enter the said land or property in the assessment roll of the current year at its value the said preceding year, as such value may be determined by them in a separate column from the valuation of the current year.

Property omitted from the assessment roll of preceding year; how assessed.

b. The common council, upon the petition of one or more of said assessors, stating that such land or property was omitted or taken from any assessment roll of said year by reason of mistake or accident, shall enter and insert the same in the assessment roll of the current year, and shall proceed to levy a tax upon the same at the rate per centum of the tax imposed on such property in said city in said preceding year, and shall, upon a like petition stating that any such land or property has been omitted, stricken, erased or taken from the assessment roll of the current year by reason of mistake or accident, enter and insert the same in the said assessment roll, and correct the same accordingly at its proper value as may be determined by them, and tax the same at the rate per centum of the said current year. The common council may perform the like acts upon any proper proof authorizing the same in the absence of such petition. The whole tax levied upon such land or property or omitted or taken from the tax levy of the preceding year as aforesaid, shall be

Property omitted from roll of preceding year by mistake; entry of in roll.

Deductions of the aggregate sum to be levied; when to be made.

Statement from bank or other corporation; common council to demand.

Penalty for neglect or refusal.

Department of finance; chamberlain to be head of.

To perform the duties of the treasurer and collector.

deducted from the aggregate of taxation to be levied upon said city for the current year before such tax is levied, and the same shall be collected in the same manner as the other taxes imposed in said city for the current year are collected. The common council of said city, or the mayor thereof, for the purposes aforesaid, and the said assessors, for the purpose of the assessment of property, shall have the power and it shall be their duty to ask and demand of and from any bank or other corporation in said city in which the shares of stock thereof are liable to taxation, a true statement in writing, signed by one of the officers thereof, stating the amount of the capital stock thereof, the number of shares held by each person, naming them, and the amount and the value thereof respectively. The said bank or other corporation shall, within three days thereafter, furnish and deliver to the said common council or mayor and assessors the statement aforesaid, and in case of their neglect or refusal so to do within the time aforesaid, shall each so refusing by neglecting be liable to a penalty therefor of fifty dollars, and the further penalty of twenty-five dollars for each and every day so neglecting or refusing.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 44. The chamberlain of the city of Elmira shall continue to be the head of the finance department, and shall be appointed at the time and in the manner hereinbefore provided. He shall be the collector of all taxes and assessments in said city, and shall be the treasurer thereof to receive and keep all moneys belonging thereto, to be paid therefrom only in accordance with law. He shall be subject to the liabilities and obligations pre-

scribed by law for town collectors and county treasurers, so far as consistent with and subject to the provisions of this act. It shall be his duty to receive all state, county and city taxes and assessments taxed or assessed upon real or personal property in the city of Elmira, upon all assessments and warrants which shall, from time to time, be delivered to him according to law. All moneys received or paid out for the city shall pass through the hands of the chamberlain, and the common council of the said city of Elmira shall appoint no other person than the chamberlain to receive or disburse the same. The chamberlain shall retain in his office all assessment rolls delivered to him. He shall be ex-officio a notary public for the county of Chemung.

Duty of chamberlain to receive all taxes.

Assessment rolls to be retained by him.

Sec. 45. The chamberlain shall receive an annual salary not exceeding two thousand dollars, which shall include clerk hire, to be paid quarterly, and it shall not be increased or diminished during his continuance in office; he shall not receive for his own benefit or use any other compensation in fees, allowances, percentages or perquisites of any name or kind whatsoever; all fees or percentages received by him on the collection of taxes, as hereinafter provided, together with all interest received for balance of city deposits shall be paid into the city treasury for the use of the city of Elmira, and credited to the general fund account. The office of the chamberlain shall be kept in such place in said city and open at such hours as shall, from time to time, by ordinance or resolution of the common council be assigned for that purpose.

Chamberlain's salary and clerk hire.

Fees and interest to be paid into city treasury.

His office; where to be kept.

Sec. 46. The fiscal year of the city shall commence on the first Tuesday in February, and it

Fiscal year: commencement of.

Annual fiscal report; its contents.

shall be the duty of the chamberlain to present to the common council on the third Monday in February in each year, a printed report for the preceding fiscal year, showing in detail the debt of the city, when payable, and the provisions for paying the principal and interest, its receipts and expenditures, the actual cost of maintaining the city government and keeping its property in repair, and also an estimate of the expenditures for the ensuing fiscal year and the means from which such expenditures are to be paid, and also such other information and suggestions in relation to the affairs of the city as he may deem proper. Said report shall be approved by the finance committee of the common council for the preceding fiscal year.

(Thus amended by Laws of 1895, Chap. 371.)

Daily deposits to be made.

Sec. 47. It shall be the duty of the city chamberlain to deposit to the credit of the city of Elmira, once in each day, all the moneys in his hand, except one hundred dollars or less, in such bank or banks or banking houses as shall be designated by a majority of the common council at its first regular meeting after its meeting for organization, during the month of March, after the annual election in each year, such designation to be made from such bank or banks or banking-houses as will pay the highest rate of interest for the ensuing year, on all monthly balances standing to the credit of the city, interest to be credited to the city on the first of each month. Propositions for such deposits to be made in writing, in a sealed envelope, addressed to the mayor or common council, and shall be opened at the first regular meeting of the common council after its organization each year. The bank or bankers so designated shall

Proposals for deposits; how made.

Security for deposits.

give a bond to the city of Elmira, with two or more sureties, and in such form and sufficiency and for such time as shall be approved by the county judge of Chemung county as security for such deposits and interest; and when so deposited it shall be drawn only upon the check or warrant of the city chamberlain, in person, or, in case of his inability on account of sickness or otherwise, then by any other person appointed in writing by said chamberlain, or on an order of the common council signed by the mayor and clerk thereof; such check or warrant shall specify for what purpose the amount therein named is to be paid.

Moneys; how drawn.

Sec. 48. The chamberlain shall, at the commencement of his term of office, and at the expiration of each year thereafter during said term, give a bond to the corporation, in such sum as they may designate, with at least two sufficient securities, to be approved by the common council of the city of Elmira, conditioned for the faithful performance of the duties of his office as prescribed by the laws of the state, or the ordinances or resolutions of the common council, and also conditioned to pay into the city treasury all such sums of money as shall come into his hands, or his deputy appointed by him, for taxes or otherwise, including the percentage for collecting and interest on deposits, which bond shall be renewed, with other or additional names as security, as often as the common council shall direct, such renewal bond to be approved as aforesaid; and in the event of his omitting to give bonds as required by this act, for ten days after his election as chamberlain, or after the time for giving a new bond, or after the common council shall require such bond or bonds to be renewed, with other or additional names as security, and

Bond of chamberlain.

Renewal of bond.

Omitting to give or renew bond vacates office.

after he shall have been served with notice of such requirements, the office of chamberlain of the city of Elmira may thereupon be declared vacant by the common council. The clerk of the common council shall, within six days after the approval of such bonds, file the same, with a certificate of approbation by the common council indorsed thereon, in the office of the clerk in the county of Chemung, who shall make an entry thereof in a book to be provided for that purpose, in the same manner in which judgments are entered of record; and every such bond shall be a lien upon all the real estate held by the chamberlain within the county at the time of the filing thereof, and shall continue to be such lien until its conditions, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied. Whenever a new bond, duly approved by the common council shall be given by said chamberlain, then any former bond given by him shall be canceled in manner following. The common council shall direct the mayor to execute and acknowledge a satisfaction of such former bond, and when such satisfaction is filed with the clerk of Chemung county, he shall cancel such bond of record in the same manner as town collector's bonds are now satisfied of record.

Bond to be filed in county clerk's office; certificate of clerk thereon.

Bond to be a lien.

When and how satisfied of record.

Books; chamberlain to keep

Sec. 49. The said chamberlain shall keep a set of books, containing all the transactions of his office, and all moneys received and disbursed; he shall enter in suitable books, to be kept by him for that purpose, the sums received by him for taxes, and the names of the parties respectively on whose account the same were paid; the amount added to the taxes, and the time when the same were paid; and it shall be the duty of the cham-

What entries shall be made therein.

berlain to report to the common council at its first meeting in each month the amount received by him for taxes and from all other sources, together with the amount paid out by him during the preceding month, and a statement showing the balance to each account; it shall be the duty of the chamberlain, from time to time, to enter into a column upon the assessment rolls in his possession, opposite the names of the persons mentioned therein, and who shall pay their tax as aforesaid to the said chamberlain, the fact of such payment. He shall also keep an accurate account of all orders drawn on the city treasury in a book to be provided for that purpose, which shall be open to the inspection of any elector of the city, at all reasonable hours.

Monthly reports.

Payment of tax; entry of.

Orders on city treasury; account of to be kept.

Sec. 50. It shall be the duty of the chamberlain to examine and adjust and settle all accounts in which the corporation is concerned, either as debtor or creditor, in cases where provision for the settlement thereof shall have been made by law or ordinance, and the settlement of which is not specially committed to some other authority, and in so doing to examine any person or persons he may think proper under oath, to be administered by him, of or concerning any such account; and where no such provision or an insufficient provision shall have been made to examine the claims, he may, if he thinks proper, examine any person or persons under oath, to be by him administered, in relation to such claim, and to report the facts, with his opinion thereon in writing, to the common council, and it shall not be lawful for the common council to direct the payment of any part of such claim until such report from the chamberlain shall have been made. Nothing in this section contained

Examination and settlement of accounts.

Examination of witnesses.

May report facts to common council.

Certain powers reserved to common council. shall be so construed as to deprive the common council of the power to increase or diminish the amount so audited, adjusted or settled by the chamberlain.

Title V.

Of the assessment and collection of taxes.

Mayor's estimate of expenses; correction and completion of by common council.

Adoption of estimate.

Publication of estimate.

Common council limited in expenditures to amount of estimate.

Sec. 51. Upon the receipt by the common council of the estimate made by the mayor of said city of the amount of the several sums necessary to be raised for defraying the expenses of said city for the current year, as hereinbefore provided, which estimate shall be immediately thereafter published in all the daily newspapers of said city, they shall, at the next stated meeting, or at the next subsequent meeting proceed to consider such estimate and make such corrections and alterations therein as they shall consider necessary and proper, and when such corrections and alterations are completed they shall, by a vote of two-thirds of the aldermen in office, declare that the several sums so estimated and agreed upon by them shall be raised for defraying the necessary expenses of the city for the then current year, and such estimate and resolution shall be immediately thereafter published in all the daily newspapers of said city. The common council after having fixed and determined the several sums necessary to be raised for the expenditures of said city for the current year, are hereby expressly limited to the several amounts of such expenditures and for the purposes in said estimate specified, and are hereby prohibited from increasing or appropriating the

same for any other purpose, except as is provided in section seventy-one of this act.

Sec. 52. All sums so directed to be raised by the common council shall be assessed on all real and personal estate in the said city, according to the valuation of the same in the last preceding assessment roll, which shall have been returned by the assessors of said city and filed in the office of the clerk of the city. But before said tax shall be levied, the said preceding roll shall be delivered to the assessors of said city, who shall give notice by publishing the same in all the daily newspapers published in said city for ten days, that the same is left with them, and that they will meet at the city hall, or at some other central convenient place in said city, for fifteen days, exclusive of Sundays, commencing on the first Monday in April then next, and that they will attend from nine to twelve o'clock in the forenoon, and from two until five in the afternoon of each day, when said roll can be seen and examined by any person interested therein, and that the said assessors will review and correct the same. On application of any person considering himself aggrieved, it shall be the duty of said assessors to hear and determine all complaints; and to make all needful corrections in relation to such assessments appearing on said roll, that may be brought before them. But no change shall be made at said time in the valuation of any property assessed and appearing on said roll except on account of the total or partial destruction or loss of such property. When said roll shall be completed the same shall be certified and sworn to by said assessors or a majority thereof, and delivered to the clerk of said city on or before the first day of May next, who shall report the same

Sums to be raised; how assessed.

Preceding roll to be delivered to city assessors; notice of delivery and review.

Assessors to hear and determine complaints.

What changes may be made.

Roll when completed to be sworn to and delivered to city clerk.

to the common council at its next meeting. Section forty-three of this act, as far as the same is applicable, shall apply to and be deemed a part hereof.

City and special taxes, time and manner of assessment of.

Sec. 53. The common council shall on or before the first stated meeting in the month of June in each year, assess the city taxes estimated as hereinbefore provided, and all special taxes not otherwise provided for that may have been voted under the provisions of this act after the first day of November of the previous year, and the first day of May of the same year. During the month of November in each year they shall assess, levy and raise all such special taxes not otherwise provided for, voted, as aforesaid, after the first day of May, and before the first day of November of the same year, in the like manner as hereinbefore and herein provided. All city taxes and special taxes assessed, as aforesaid, during the month of June, in any year, shall be inserted in the assessment roll of said city corrected, as aforesaid, and all special taxes assessed during the month of November, in any year shall be inserted in a separate assessment roll, and be collected with and at the same time, and in the same manner, and subject to the same fees for the collection thereof as the county taxes in said city are collected. But said special taxes may be assessed, levied and raised as is provided in section seventy-one of this act and subject thereto. The city clerk, under the direction of the common council, shall extend and apportion said tax on said assessment rolls and forthwith file the same and make a full duplicate or copy thereof, with the tax so extended and apportioned, and shall certify the same to be a corrected dupli-

Fees for collection.

City clerk to extend tax on roll.

cate of the city tax-roll ; such rolls shall then be delivered by the said city clerk to the chamberlain of said city, with a warrant annexed, under the hand of the mayor and the seal of the city commanding the said chamberlain to collect, from the several persons named in the said assessment roll, the several sums levied as taxed in the columns of such rolls, according to the provisions of this act. At the time of the delivery to him of any such rolls, and warrants, the chamberlain shall endorse on the assessment rolls, and file with the clerk a receipt acknowledging the reception by him of the duplicate of such tax rolls and warrant. The said rolls, with the warrant annexed, shall be delivered to the city chamberlain on or before the fifteenth day of June in each year.

Rolls with warrant annexed to be delivered to chamberlain

Receipt to be given therefor.

Sec. 54. The city chamberlain shall immediately after receiving such rolls and warrant, give notice in all the daily newspapers published in said city, for ten days, that said roll has been received by him, and that all persons named therein are required to pay their taxes to him, at his office, on or before the fifteenth day of October, then next, and stating the amounts to be added if payment shall be delayed ; and the said chamberlain shall upon receipt of said roll proceed to collect and receive said city taxes from the several persons named on the said assessment rolls. For all sums paid during the months of June and July he shall not charge against or receive from the person assessed, any percentage or fee, but for all sums paid after the thirty-first day of July, and before the fifteenth day of August, he shall charge and receive for the benefit of said city, from the person or persons assessed, one per cent; for all sums paid after the fifteenth day of August and before

Receipt of rolls by chamberlain.

Notice to be published.

Contents of notice.

Percentage for collection.

Interest; when to be added.

the first day of September, two per cent; for all sums paid after the thirty-first day of August and before the sixteenth day of September, three per cent; for all sums paid after the fifteenth day of September and before the first day of October, four per cent; for all sums paid after the thirtieth day of September and before the sixteenth day of October, five per cent; for all sums paid after the fifteenth day of October five per cent, shall be added and also interest from the said fifteenth day of October at the rate of six per cent per annum. The said common council shall have power to settle with said chamberlain for all taxes or assessments collected by him by virtue of this act, for the purposes of the city. And it shall be the duty of said chamberlain to appear before them from time to time for that purpose, whenever required by them or the mayor of said city. But no such settlement or any settlement had by the council or by any city officer with any chamberlain of any tax or assessment shall be final or conclusive, and no bond or other security given by the chamberlain shall be invalidated by or canceled on such settlement, but shall remain in full force for one year thereafter, and be held for such period by the city.

Common council; power of to settle with chamberlain for all taxes collected.

Bond not cancelled by settlement.

Levy and sale of goods for unpaid taxes.

Sec. 55. It shall be the duty of said chamberlain, upon all taxes remaining unpaid on the sixteenth day of October next succeeding the conclusion of said assessment and in case of his inability for any cause to attend to the duties thereof in person, he is authorized to appoint one or more competent persons, who shall possess all the powers of said chamberlain to levy the amount of said tax, and an additional amount of five per cent, and also interest at the rate of six per cent per annum from

When to be made; fees and interest to be added.

the said fifteenth day of October, and the fees allowed for levy and sale on execution issued on justice's judgments, by distress and sale of the goods and chattels of the person assessed, or any goods and chattels in his possession, wheresoever the same shall be found within said city, in the same manner as a town collector. On or before the first Monday of December of each year the said chamberlain shall transmit to the common council a true and correct account of all unpaid taxes in said roll, verified by his affidavit.

Unpaid taxes; account of to be made to common council.

Sec. 56. Every tax or assessment for whatever purpose imposed or charged upon any real estate within the city by virtue of any provision of this act, shall be a lien upon the real estate so charged from the time of the filing of the roll or warrant containing the same with the city chamberlain for two years after such filing; and if such tax or assessment shall be returned as unpaid by any officer authorized to collect the same, the common council may employ and direct the city chamberlain or other proper officer to advertise and sell such real estate in the manner hereinafter provided. The officer conducting such sale, for the full performance of his duty therein, shall be entitled to demand and have such fees as the common council may fix, not exceeding one dollar for each parcel of land so ordained to be sold, in case the sale thereof shall be stopped by payment after advertisement, and not exceeding two dollars for each parcel that shall be actually sold.

Every tax and assessment on real estate lien thereon.

Such real estate may be sold.

Officers fees therefor.

Sec. 57. Before any such sale an order shall be made by the common council, which shall be entered at large in the records of the city, designating and directing the city chamberlain or other

Order of sale to be made and entered.

officer of the city to sell and particularly describing the premises to be sold, and the owner or agent thereof, so far as the same is known to the common council and the assessment for which the sale is to be made, a copy of which order shall be delivered to the officer so designated, who shall forthwith advertise the sale of said premises in the manner and for the time required in the case of sales of real estate on execution, and the sale shall be conducted in the same manner, except as herein provided. The proceedings may be stopped at any time before the sale by any person, by paying the said officer his fee and the amount of tax or assessment, with the interest allowed thereon, by this act, and the expense of advertising. All sales in such cases shall be made for the shortest period for which any person will take the premises and pay the assessment, interest, percentage and expenses. Three certificates of sale of each parcel of land so sold shall be made by said officer, one of which shall be delivered to the purchaser, one filed in the city clerk's office, and the other filed and recorded in the Chemung county clerk's office; such certificate shall contain a description of the property and the term for which it was sold; and state the particular tax or assessment, and the amount of the assessment, interest, percentage and expenses for which the sale was made, and the time at which the right to redeem will expire.

Notice and manner of sale.

Proceedings may be stopped by payment.

Certificates of sales and filing of.

Certificates; contents of.

Written declaration; when to be given, and contents thereof.

Sec. 58. If any real estate so sold shall not be redeemed in fifteen months after the sale as hereinafter provided, the common council shall give to the purchaser, his legal representatives or assigns, a declaration in writing, under the corporate seal, signed by the mayor and attested by the clerk, containing a description of the premises, the fact

of assessment, advertisement and sale, the dates of the sale, and the period for which the premises were sold, which declaration may be recorded as a lease of real estate, and shall be presumptive evidence in all courts and places that such tax and assessment was legally imposed; and that the proceedings to authorize such sale were correct; and such grantee may obtain possession thereof in the manner prescribed by law in relation to the persons holding over demised premises, after the expiration of their terms without the consent of their landlords, and shall have, hold and enjoy the said premises during the term for which the same was granted, to be computed from the expiration of fifteen months after the day of sale thereof, free and clear from all claims and demands of any other owner or occupant of the same, but subject, however, to the lien of all taxes and assessments that may have been charged or levied thereon at the time of such sale, or any time thereafter; and at the expiration of such term, such grantee, his heirs or assigns, may remove any buildings or fixtures that may have been erected on said premises during the said term. The city clerk shall keep a register of the declaration of sale, granted pursuant to this section. Such certificates shall be assignable by the purchaser or his legal representatives and such assignment shall be acknowledged or proven in the manner required by law to entitle deeds of real estate to be recorded. The common council shall not give a declaration of sale to anyone claiming to be the assignee of any such certificate unless all the assignments necessary to prove his claim thereto be produced and found to be regular, and be filed with the city clerk; nor shall they give any such declaration in any case without the production

Declaration presumptive evidence of certain facts.

Possession may be obtained by summary proceedings.

Removal of fixtures at end of term.

Register of declarations.

Certificates assignable.

Declaration of sale; when to be given to assignees.

and filing with the city clerk of the original certificate of sale, unless the loss or destruction of such certificate, or of such assignment, be satisfactorily established by the oath of one or more persons before the common council or a committee thereof.

Title; extent of
on tax sale.

Sec. 59. Every lease or conveyance of real estate in said city, upon a sale for any tax, charge or assessment, made by the city chamberlain or any other officer or person designated in pursuance of this act, shall convey the title to such estate as the same may create in such lands, and the right to the possession of the same from the time when such tax, charge or assessment became a lien, pursuant to the provisions of either of the said acts, in preference to any deed or conveyance of the said premises or any general or specific lien thereon subsequent to such date.

When lands to
be struck off to
city.

Sec. 60. If at any such sale no bid shall be made for any parcel of land, the same shall be struck off to the city for the term of fifty years, and if such sale be made for the non-payment of any tax for highway purposes the money due on such tax at the time of the sale shall be paid to that fund by the city, and thereupon the city shall receive, in the corporate name, one of the certificates of the sale thereof, and shall be vested with the same rights as any purchaser.

Redemption
time for and
manner of.

Sec. 61. Any owner or claimant of any parcel of real estate so sold, or of any specific part or undivided interest in or share of such parcel may, at any time before the expiration of fifteen months from the day of such sale, redeem the same by paying to the purchaser, his representatives or assigns, or to the city chamberlain, for his or their

benefit the amount paid by him, with the addition of ten per cent per annum on such amount, and the expense of any publication, and all other expenses incurred by him or them and allowed by this act; and on such payment being made, the title acquired by such sale shall cease and determine. Any person having a judgment or decree, which shall be a lien on the premises at the time of such sale, or at any time within the said fifteen months thereafter, may defeat the sale thereof at any time within the said fifteen months after said sale, in the same manner and with the same effect as the owner or claimant of such premises may do, and shall thenceforward have further lien on said premises for the amount paid by him to defeat the sale thereof, with interest, which may be added to his judgment or decree, and enjoyed and enforced by him in the same manner as though it formed a part thereof. The receipt of the city chamberlain, acknowledged or proven in due form of law to entitle conveyances of real estate to be recorded, shall be evidence of such payment.

Lien or by judgment, redemption of.

Receipt of chamberlain to be evidence of payment.

Sec. 62. No sale of real estate hereafter made for non-payment of any tax or assessment shall destroy, or in any manner affect, the lien of any mortgage thereon duly recorded or registered at the time of such sale, except as hereinafter provided. It shall be the duty of the purchaser at such sale to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with interest at the rate allowed by law thereon, within six months after the giving of such notice. If such payment shall be made, the sale shall be of no further effect, and the mortgagee shall have a lien on the premises for the amount paid, with the interest which may there-

Mortgage lien; how affected by sale.

Notice to mortgagee.

Payment by mortgagee, effect of.

Non-payment;
effect of.

after accrue thereon at the rate of six per cent per annum, in like manner as if the same had been included in his mortgage. In case the mortgagee shall fail to make such payment within the time so limited, he shall not be entitled to the benefit of the sixty-first section of this title.

Notice re-
quired by last
section. How
given. Notarial
certificate pre-
sumptive evi-
dence.

Sec. 63. The notice required by section sixty-two of this title may be given personally or in the manner required by law in respect to notices of non-acceptance or non-payment of notes or bills of exchange; and a notarial certificate thereof shall be presumptive evidence of the fact of such notice. Such certificate may be recorded in the office of the clerk of Chemung county, in the same manner and with the same effect as is by law prescribed in respect to deeds or other evidences to title of real estate.

Terms "mort-
gagee" and
"purchaser"
defined.

Sec. 64. The term "mortgagee" as used in this act, shall be construed to include assignee, whose assignment shall be duly recorded and personal representatives; and the term "purchaser" shall be construed to include assignee, and real or personal representatives, as the case may be.

County clerk to
search and cer-
tify the title;
when to

Sec. 65. The clerk of Chemung county, when thereunto requested by the owner of any certificate or declaration of sale, issued under this act, shall search and certify the title of, and incumbrances upon the real estate therein described, and shall be entitled to receive therefor the fees authorized by law for searches in like cases.

Common coun-
cil in making
appropriations
restricted as to.

Sec. 66. The common council are hereby restrict-
ed, except as herein otherwise provided, in making

appropriations for and on account of the expenses of the city to the sums that are or may be authorized to be raised therefor by this act or by any future acts of the legislature. Whenever any assessment or tax shall have been levied and confirmed by the said common council, they may borrow upon the credit of the city a sum not exceeding two-thirds of said tax or assessment, to be repaid from the same within a term of time not exceeding ten months, and for that purpose the common council may order and direct that a promissory note or notes, bond or bonds, of the city may be made and issued for the sum so borrowed, signed by the mayor and countersigned by the clerk, and under the seal of the city.

May borrow money; how and when.

Sec. 67. All property exempt from taxation by chapter thirteen, part first, title first, of the revised statutes, and all property belonging to the city, shall be exempt from taxation for any purpose.

What property exempt from taxation.

Sec. 68. Whenever any corporation or person shall refuse or neglect to pay any tax or assessment, duly assessed according to any of the provisions of this act, against any such person or corporation the same may be collected by action in the name of the city against such person or corporation, but such action shall not operate to release any lien upon property for such tax, until the judgment rendered in such act shall have been fully settled.

Collection of tax by action.

Lien not released.

Sec. 69. Whenever any real estate in said city shall be owned by two or more persons, jointly or as tenants in common, a notice served on one of such persons shall be sufficient notice to all for any purpose requiring a notice under this act.

Notice to joint tenants or tenants in common.

Special taxes heretofore voted; how levied and collected.

Sec. 70. All taxes or appropriations made or voted by the electors of the city of Elmira for any special purpose, before this act shall take effect, and not levied, raised and collected, shall be levied, raised and collected in the same manner that special taxes are directed to be raised hereby, as if the the same had been voted as pecial taxes at an election held pursuant thereto.

Money for extraordinary purposes.

Sec. 71. Whenever the common council shall be of the opinion that the interests of said city require the expenditure of money for any extraordinary or special purposes, which, in their opinion, can not be paid from the sums authorized to be raised by this act, after appropriating the same, and defraying the ordinary expenses, or that the ordinary current and contingent expenses of any year can not be defrayed without raising an additional sum as a contingent fund, they may make an estimate of the sum necessary to be raised for said purpose, and each of them, if there be more than one such subject, and shall state the amount and the objects for which it is required, together with the reason for their opinion, and cause such statement and estimate to be published in all the newspapers printed in said city, and shall give notice therein, that on a day and at a place therein specified, a special election will be held, at which the question whether the said sum or sums shall be raised or not, will be submitted to the qualified voters for their determination. Such statement and notice shall be published once in each week for three weeks next preceding the said day of election. The common council shall designate in said notice some central and convenient place in said city for holding the polls of said election, and they shall appoint three inspect-

Estimate of sum necessary and publication thereof.

Special election to decide whether such sum shall be raised.

Place for holding such election.

Inspectors to be appointed.

ors as a board of inspectors for the poll of said election, and may fill all vacancies in said board; and said inspectors shall take the oath required by law to be taken by inspectors of charter elections in said city, and in the same manner, and they shall have the same powers and perform the like duties as the last mentioned inspectors. Every male resident of said city of the age of twenty-one years or over, whose name shall be in the assessment roll made by the assessors of said city next preceding said special election, and upon whose property, or upon whom, as the owner or possessor of property a tax shall be assessed or imposed in and by said roll, and no other person or persons whatever, shall be entitled to vote at said special election. The said assessment roll made by the assessors, or a list of the names of such residents or a copy thereof, certified by the clerk and by the mayor or presiding officer of the said council shall be evidence of the names and assessments aforesaid. The inspectors of said election, thus appointed on the day and at the place thus specified, and from nine o'clock in the forenoon until sunset, without closing the polls, and in the same manner provided by law for holding charter elections, in said city as far as may be, shall proceed to receive the ballots of the persons qualified to vote at the said special election, on which ballot shall be written or printed, or partly printed and partly written, in the inside thereof, the object for such special tax, and in the margin and opposite to such object or statement shall be placed the words "for" or "against," and if there shall be more than one object for a special tax proposed at such election, then those several objects shall be specified on one piece of paper, and in the margin and opposite each one of those several objects or statements

Voters, qualifications of, at such election.

Manner of holding such election.

Ballot; form of.

shall be placed the words "for" or "against" and deposit the same in a box similar to the boxes required to be used at the said charter elections. If any person offering to vote at such election shall be challenged in relation to his right to vote thereat, by any other person entitled to vote at said election, one of the inspectors shall tender to him the following oath: "You do swear (or affirm) that you are a resident of the city of Elmira, and are of the age of twenty-one years, and that you have not voted at this election." If he shall take such oath, and shall be named and assessed upon said roll as aforesaid his vote shall be received; if he shall decline to take said oath, his vote shall be refused. All the provisions of law for punishing false swearing and fraudulent voting at the said charter election, so far as the same can be applied, and for preserving order at the polls, shall be applicable to the said special election, and the proceeding thereat. The said inspectors shall canvass the votes received at said special election, immediately after closing the polls, without adjournment, and then make a certificate, under their hands, or the hands of two of them, stating the whole number of ballots received, in the case of every tax voted upon at such election, the whole number for each special tax, and the whole number against each special tax, and return the same by the hands of one of them to the common council or to the mayor or clerk forthwith thereafter. The said certificate, if received by the mayor or clerk shall be delivered by him to the common council at their next meeting, and the said council shall cause the result of said election, as appearing by said certificate, to be entered in their minutes; and if it shall appear that the whole number of votes received at such election,

Persons challenged; oath to be administered to.

Fraudulent voting and false swearing; punishment for

Canvass of votes; certificate and return thereof to common council.

Action of common council thereon.

with the word "for" in the margin and opposite any several objects voted for, exceed the whole number of votes with the word "against" in the margin and opposite to such several objects, it shall be the duty of the common council to cause the said sum or sums of money to be assessed, levied and raised, in addition to the said sums authorized to be raised by any of the provisions of this act, either as hereinbefore provided, or in and by successive equal installments, thereafter, commencing with the next city assessment roll, and with the same power and authority as is conferred in reference to other city taxes, provided, always, that the total amount proposed to be raised and to be voted for in any one year, at a special election or elections, shall not exceed forty thousand dollars, and that not more than one such election shall be held in any year unless an additional amount is recommended, or such elections directed by a vote of three-fourths of all the members of the common council. After any such special tax or taxes shall have been authorized, as herein provided, the common council may proceed to authorize the expenditure of the amount thereof, for the object or the objects specified in their published statement and sanctioned by such election. The common council may borrow, if they shall deem it necessary to do so, the amount so voted in anticipation of the collection of said tax for a time not exceeding ten years, payable in equal annual installments, if the loan shall be for more than one year, which installment shall be levied and collected in the same manner as the general tax of the city, and the amount so borrowed shall be expended for the purposes for which the special tax is raised, and shall be repaid as soon as the same shall become due from the proceeds of the

Sum voted;
when and how
to be raised.

Amount
limited.

Special tax; ex-
penditure of.

Amount voted
may be bor-
rowed.

Sums raised by special tax to be kept separate from other money.

tax. The sum and sums of money raised by any special tax shall be paid to and kept by the chamberlain of the city, distinct from other money, and entered in a separate account, and shall be appropriated by the common council exclusively to the object or objects mentioned in their public statement.

Borrowing money; restrictions upon.

Sec. 72. The common council shall not borrow, and is hereby expressly prohibited from borrowing any money on account of the city, except as hereinbefore provided, and except for the purpose of anticipating as far as may be necessary, the receipt of the general annual tax; and all sums borrowed for that purpose shall be paid within the fiscal year in which the same are borrowed, and from the tax assessed for that year. The said council shall not create any pecuniary obligation whatever on the part of the city, except as herein otherwise provided, which shall not be payable within the year for which the council creating said obligation was elected, and which cannot be discharged from the income of the same year, but this prohibition shall not affect the provisions of this act hereinbefore contained in regard to obligations for or respecting the expenditures of any sum raised by special tax. The civil year in said city shall be deemed to commence on Tuesday next after the annual city election.

Pecuniary obligations against the city; council not to create.

Civil year; deemed to commence when.

(Thus amended by Laws of 1895, Chap. 371.)

County taxes; warrant to city chamberlain for collection of.

Sec. 73. After the board of supervisors of Chemung county shall have corrected the assessment roll of said city and inserted therein the county taxes levied and assessed by them, they shall annex to such roll a warrant, under the hands of the chairman and clerk of said board, commanding

the said city chamberlain to collect from the several persons and corporations named in said roll the sums mentioned opposite their respective names, and authorizing the said chamberlain, in case any person or corporation named in said roll shall refuse or neglect to pay his taxes on or before the first day of March next ensuing, to levy the same by distress and sale of the goods and chattels of such person or corporation, and they shall on or before the first day of January deliver the said roll to the chamberlain of said city.

Sec. 74. Immediately after receiving such roll and warrant the said chamberlain shall give notice, by publishing the same for ten days in all of the daily papers published in said city, that he has received such roll, and that all persons named therein are required to pay their taxes to him at his office on or before the first day of March then next, and stating the amount to be added if payment shall be delayed. For all sums paid previous to the fifteenth day of January, he shall not charge or receive any percentage from the person assessed, but for all sums paid after the fifteenth day of January and before the first day of February then next, he shall charge and collect for the use of the city against the person assessed one per cent. For all sums paid after the first day of February and before the sixteenth day of February, two per cent; for all sums paid after the fifteenth day of February and before the first day of March, then next, three per cent; for all sums paid after the first day of March, then next, five per cent; and also interest at the rate of six per cent per annum from the said first day of March.

Notice to be published by chamberlain; contents of.

Percentage to be added.

Interest; when to be added.

Collection; when to be enforced by levy and sale of goods, etc.

Sec. 75. It shall be the duty of the said city chamberlain, upon all taxes remaining unpaid on the second day of March next succeeding the completion of the said assessment roll, or in case of his inability for any cause to attend to the duties thereof in person, he is authorized to appoint one or more competent persons, who shall possess all the powers of said chamberlain to levy the amount of said tax, with five per cent thereon, and also interest at the rate of six per cent per annum from the first day of March, and the fees allowed for levy and sale on execution issued on justices' judgment, by distress and sale of the goods and chattels of the person assessed or of any goods or chattels in his possession, wheresoever the same shall be found within said city. The said city chamberlain shall pay all moneys collected or received by him on any such assessment roll, and belonging to the said county, to the county treasurer on the first day of each month, and make return of all unpaid taxes in the same manner as town collectors are required by law, except that he shall not be required to make return of unpaid taxes until the first day of May then next.

Payment to county treasurer and return of unpaid taxes.

Title VI.

Of Highways, Streets and Bridges, and the Tax for the improvement thereof, and of Nuisances and the Abatement thereof.

Common council to be commissioners of highways; their powers.

Sec. 76. The common council shall be commissioners of highways in and for said city, and shall have all the powers and discharge all the duties of commissioners of highways in the towns in this

state, except as otherwise provided in this act. They shall have power, and it shall be their duty :

a. To lay out, open, alter, widen, straighten, contract and discontinue streets, lanes, public squares, alleys, highways, walks, bridges in said city, except as otherwise provided in this act.

To lay out streets, etc.

b. To pass ordinances requiring the same to be kept clean and in proper order, and free from encroachment, incumbrances or injury, and to empower the board of public works, by resolution or ordinance, to adopt and enforce rules and regulations for such purposes.

To pass ordinances to keep same clean, etc.

c. To require all persons to clean the snow, ice and dirt from off the sidewalks and out of the gutters in front of the premises owned or occupied in whole or in part by such persons, respectively, and to keep such walks in good condition and repair.

Snow and ice to be removed from sidewalks.

d. To prevent and summarily remove all obstructions and incumbrances in or upon the streets, sidewalks, highways, bridges and public grounds in said city.

To remove obstructions from.

Sec. 77. Whenever the owner or occupant of any lot of ground within said city shall have suffered or committed any nuisance thereon which the common council shall have removed at the expense of the city, such expense, together with all fees and expenses of the collection thereof, ascertained and entered in their minutes, as hereinafter provided, shall be a lien upon said lot from the time the said expenses shall be incurred, in the same manner as taxes duly imposed in said city.

Expense of removing nuisance to be a lien on lot.

Expense of abating nuisance; how ascertained.

Notice thereof to owner; how given.

When payment may be enforced by action or warrant

Sec. 78. Whenever any such expense shall have been incurred on or in front of any lot of land in said city, in removing or abating any nuisance, as in this act provided, the amount of said expenses shall be ascertained by the common council, and entered in their minutes kept by the clerk, and notice thereof shall then be given to such owner by delivering a statement of the amount of said expenses to him, or by leaving the same at his residence with some person of suitable age and discretion, directed to him, or such notice may be given by depositing the same in the postoffice of said city, properly directed to him, at Elmira, or wherever his residence may be, and paying the postage thereon. If such owner shall not be known to the said common council, and cannot be ascertained by inquiring on the premises, such notice may be given to the occupant of the premises, or by publishing the same for a week in the official papers of the city. In case such owner shall not pay said expenses to the city chamberlain of the city within three days after service or publication of such notice, the same may be collected by action, or the common council may issue a warrant to the chamberlain, directing him to collect the same of the personal property of such owner if known, within said city, with five per cent fees on the sum collected; and said chamberlain, for such purposes, shall have all the power and authority of collectors of town, and to return said warrant within thirty days after its receipt by him, with his return thereon. If said chamberlain shall fail to so collect the same, and shall make return that he is unable to find any personal property belonging to the person against whom said warrant was issued, from which he could collect the sum required to be collected, or the whole thereof (if he

shall have collected part), with fees, or in case the owner of said premises shall not be known, or can not be ascertained by inquiry on the premises the said common council shall employ and direct the city attorney to advertise and sell said premises to satisfy the amount of said expenses so incurred, with seven per cent interest from the time they were so incurred, and all the expenses of collection. The city attorney shall proceed to advertise and sell said premises to collect and satisfy said costs, charges and expenses in the manner prescribed in this act for the sale or leasing of real estate for the collection of taxes; and all the provisions of this act respecting the sale of real estate for taxes shall apply to sales and proceeding under this section as far as the same are applicable thereto.

Sale of real estate; how conducted.

City attorney to advertise and sell.

Sec. 79. Whenever the common council shall intend to lay out, alter, widen, contract or discontinue any street, lane, alley or highway, and the lands of any person or corporation or any right or easement therein will be necessary for that purpose; and whenever the common council shall intend to acquire lands, rights or easements therein for any other corporate purpose mentioned in this act, they shall declare by resolution their intention to take and appropriate the said property for the proposed improvement, and thereafter they may purchase the land, or right or easement therein, deemed necessary of the owner or owners thereof, and make him or them such compensation as they shall judge reasonable, upon receiving from such owner or owners a conveyance thereof to the city.

Intention to lay out, alter or discontinue street.

Intention to acquire lands, etc., for other corporate purposes.

May purchase land, etc., deemed necessary.

Sec. 80. In case the common council are unable to agree with the owner or owners for the purchase of any real estate or lands, or right or easement therein required for the purpose aforesaid, or in case they do not consider the expense of the same should be borne by the city at large, the said common council shall have the right to acquire title to the same in the manner and by the special proceedings prescribed in this act; and for that purpose shall cause the same to be surveyed and monuments placed showing the lines thereof, and a map of said street, lane, alley, highway or other improvement desired shall be made and filed in the office of the city clerk, and of the county clerk of Chemung county, showing upon such maps the lots, tracts and parcels of land and right or easement therein, which are deemed necessary to be taken, and the commencement, course and termination of the street, lane, alley, highway, or park proposed to be laid out, widened, extended or altered, or of the sewer or other work or improvement proposed to be made in or through the land so to be taken. And for that purpose the common council and those acting by their directions shall have power to enter upon any grounds in said city. And the said common council may also direct the city attorney to take proceedings provided for in this act, for the acquirement of the lands, rights or easements specified in such survey and maps.

How title may be acquired.

Survey and map to be made.

May enter any grounds.

Consent of owners; when required.

Sec. 81. No street, lane, alley or highway shall be contracted or discontinued by the authority of the city without the consent in writing of two-thirds of all the persons owning land adjoining such street, lane, alley or highway proposed to be contracted or discontinued.

Sec. 82. The common council or city attorney by their direction shall, after the filing of the map as hereinbefore provided, cause to be published for ten days in a daily newspaper, published in said city, a notice briefly specifying and describing the lands or right or easement therein, desired or deemed necessary for such improvement, and where the map showing a more particular description thereof is filed and that an application will be made to the county court of Chemung county, either at a regularly appointed term or at chambers, or to a special term of the supreme court in the sixth judicial district, for the appointment of three commissioners, who shall be therein named, and who shall be residents of said city (and one of whom shall be an attorney and counsellor-at-law of the supreme court of this state) not residing on the street or adjoining the improvement to be made, and not interested in the lands, rights, easements or buildings sought to be taken or assessed, nor of kin to any owner or occupant thereof, to ascertain and determine the compensation which the owners, tenants or occupants of such lands and buildings as rights and easements therein desired or persons interested therein, will be entitled for the same, and to ascertain and determine what real estate will be benefited by such improvement and to apportion and assess the same upon the several parcels of real estate benefited, in proportion, as near as they can, to the benefits resulting to each. The common council shall also, at least ten days before the time named for such application, cause such notice to be served upon each of the owners of the premises, or rights of easements therein to be taken, personally, or by depositing a copy of the same in the post-office in the city of Elmira in a securely closed post-paid wrapper, and addressed to each of

Notice to be published.

What notice shall specify.

Application to be made for appointment of commissioners.

Notice of application to be given.

such owners at his last known place of residence, or by posting a copy of said notice in a conspicuous place upon the premises to be taken. At the time in such notice specified, or at the time to which the application may be adjourned, the said court, upon filing proof by affidavit of the publication and service of said notice, as above provided, shall appoint the three persons named in said notice commissioners, unless objections, in writing, stating the grounds therefor, to the appointment of said persons, or either of them, shall be filed with the court, and in that case the court may, in its discretion, appoint any or all of said persons, or appoint three other qualified residents of said city commissioners. The court to which application shall have been made, as hereinbefore specified, shall also have power at any time, to amend any defect or informality in any of the special proceedings authorized by this act, including the map and notice aforesaid, as may be necessary or proper; or to cause new parties to be served with notice and to direct the manner of service thereof as it deems proper, and also to appoint other commissioners in the place of any who shall die or refuse or neglect to serve or be incapable of serving, and such amendment may be made at any stage of the proceedings, and where the mode or manner of conducting all or any of the proceedings to the confirmation of the report and the assessment by the council are not expressly provided for in this act, the court before whom such proceedings may be pending shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this act; and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court; and the power of amendment shall be exer-

Objections to persons named, others may be appointed.

Court may amend any defect in proceedings.

May appoint other commissioners.

Practice.

cised as liberally as is directed to be exercised in and by such court in actions by sections seven hundred and twenty-three of the code of civil procedure. When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance or other transfer of real estate or right or easement of any person therein, or of the subject-matter of the appraisal, shall in any manner affect such proceedings or the easement made thereon, but the same may be carried on and perfected as if no such conveyance or transfer had been made.

Proceedings not affected by transfers of property.

Sec. 83. The said commissioners so appointed shall, before entering upon their duties, severally take and subscribe an oath to faithfully and impartially discharge their duties according to the best of their ability. They may summon or cause to be summoned any person in said city to appear and testify as a witness in such proceedings before them. Such summons may be subscribed by such commissioners or either of them and served in the same manner as subpoenas in criminal cases. Such witnesses shall not be entitled to fees, and for a refusal to appear and testify shall be liable to be attached and to be punished as for a contempt, by the court appointing such commissioners. They shall give public notice by a notice published daily for five days in one of the daily papers published in said city of the time when, and the place where, they will meet to enter upon their duties. The said commissioners, or a majority of them, may adjourn their meeting and continue their meeting by adjournment, from time to time, until they shall have finished their examinations and made and completed their report. The city attorney or his representatives shall attend and

Oath of commissioners.

Witness; attendance; how compelled.

Notice of meeting.

Adjournments.

City attorney to represent city.

represent the city upon such proceedings. At the time appointed, or at any other time or times, to which they may adjourn, the commissioners shall proceed to view the lands and premises proposed to be taken and hear the proofs and allegations of the parties, and after the testimony in such cases is closed, they shall appraise the damages which the owner or owners or persons interested, or occupants or tenants who may have a leasehold interest in the lands, premises or rights or easements therein, to be taken for such public improvement or purpose, if they can be ascertained, will severally sustain by being deprived thereof, and the compensation which they shall severally receive therefor. The compensation awarded to any occupant or tenant aforesaid shall be deducted from the damages awarded to the owner or person interested in the land or right or easement therein desired, to which the right of such occupant or tenant exists. In estimating the damages sustained or to be sustained by any owner, person interested, occupant or tenant, aforesaid, the commissioners shall take into consideration, the benefits, if any, which said improvement will be to the other land owned by him, or in which he is interested and deduct the same from his damages. And if such benefit shall exceed the damages, the same shall be so specified in their report.

Commissioners
to appraise
damages.

Damages, how
estimated.

Report of com-
missioners;
contents of,
and when
made.

Sec. 84. The said commissioners shall as soon as convenient, make their report under their hands, or a majority of them, to the common council of said city and file the same together with the evidence and their proceedings taken in the office of the city clerk; in which report they shall describe with all practicable certainty the several pieces

or parcels of land, and the premises or rights and easements therein to be taken for such improvement, and the names and residences of the owner or owners thereof, respectively, and the rights of such owner or owners as far as can be ascertained, and the amount of damages or compensation, if any, which should be paid to each of said owners and persons interested therein, and occupants and tenants. They shall also state in their said report what the whole expense will amount to, including the costs and disbursements of the proceedings, and whether any, and if any, what part thereof ought to be borne by the city at large, and whether any, and if any, what real estate would be benefited by the improvement requiring the appropriation of said lands, premises, rights and easements, specifying the same in parcels and describing the same with the names of the owners, if they can be ascertained, and the proportion and amount of benefit which each parcel would receive. The commissioners shall each be entitled to the sum of three dollars as their compensation for each day on which they are necessarily employed, in addition to all necessary expenses. They shall be entitled to the services of a clerk or stenographer in taking the minutes of their proceedings, and who shall receive therefor a reasonable compensation.

Compensation of commissioners.

May employ clerk.

Sec. 85. Upon the filing of such report, the common council shall cause to be published in one of the daily newspapers of the city, a notice that the same is on file with the clerk, and specifying therein, the names of the persons and corporations, if known, to whom damages have been awarded, and the amount awarded to each, also the names of the persons and corporations, if known, whose

Filing of report: notice of to be published

What notice shall specify.

property had been charged with benefits and the amount to be assessed against each. The common council shall specify in said notice a time not less than six days after the first publication of such notice when they will act upon said report. At the time assigned, or at such time as the hearing may be adjourned to, they shall hear the allegations of all persons interested, and may take proof in relation thereto, from time to time, and shall confirm the report or may set the same aside, and refer the matter to the same or new commissioners to be appointed by the court as before, who shall thereupon proceed as hereinbefore provided. But the common council may set aside said report and abandon said improvement at any stage of the proceedings before the final confirmation of the report.

Interested persons to be heard.

Council may confirm or set aside the report.

Assessment; when and how made.

Form of assessment.

To be entered in minutes, etc.

Sec. 86. If the report of the commissioners shall be confirmed, the common council shall make an assessment, assessing upon the several parcels of land described in said report, the sum or sums which, as stated in said report, said parcels are or will be benefited by such improvement, respectively. Said parcels of land so assessed shall be described in said assessments as they are described in the report. The assessment shall be made to resemble in form as near as practicable, the city tax assessment-roll, and shall be provided with a column in which payments can be entered by the chamberlain. The assessment so made shall be entered in the minutes of the common council, and a copy thereof certified by the clerk, under the seal of the city, shall be delivered to the chamberlain. The assessment so entered or the copy thereof, delivered to the chamberlain, shall be evidence in all courts and places of the assessments therein spec-

ified. And all sums so assessed shall be liens on the real estate on which they are so assessed from the time such assessments are made, the same as other assessments made pursuant to the provisions of this act.

Sums so assessed a lien.

Sec. 87. On receiving such copy of an assessment roll the chamberlain shall, without delay, cause notice to be published in the official newspaper of the city, once each week for three weeks, that such assessment has been made and that a copy thereof has been delivered to him and is in his office, stating the day when the same was delivered to him, and stating also that the sums therein assessed may be paid to him within thirty days after the first publication of said notice.

Chamberlain to publish notice that assessment has been, and that same may be paid to him.

Sec. 88. In case said assessments, or any of said assessments shall not be paid to the chamberlain within said thirty days, the common council may collect the same with interest at the rate of seven per cent after the expiration of said thirty days, together with the costs and expenses of collection, by action or by warrant, or sale of the real estate so assessed, in the same manner as other assessments and taxes are allowed to be collected by the provisions of this act, and all the provisions of this act for the collection of taxes shall apply to the collection and proceedings for the collection of such assessments, and the interest and expenses of collection which shall not have been paid to the chamberlain within said thirty days, as far as the same can be made applicable.

If assessments are not paid in thirty days how collection may be enforced.

Sec. 89. In case it shall appear by the report of the commissioners on which the assessment is based, that any portion of the expense of such im-

Portion of expense borne by the city; out of what funds to be paid.

provement should be borne by the city, the same shall be paid from the sum or fund raised for highway purposes for the current year, or from the sum raised for contingent and other expenses, as the common council shall deem best. If there shall not be sufficient money on hand not otherwise appropriated or needed to pay the same, said sum may be assessed, levied and raised by a special tax, as hereinbefore provided in this act.

May be raised by special tax.

Sec. 90. In case the sum raised for any public improvement by assessment (not by a general tax or by the city at large), shall exceed the cost of the same, such excess shall be refunded in proportion to the amount paid by each.

When sum raised exceeds cost of improvement, how refunded.

Sec. 91. If the report of the commissioners, as herein provided, is not appealed from in thirty days, as hereinafter provided, or whenever such report is finally confirmed, the common council may take the lands and premises and rights and easements specified in the report of such commissioners as necessary for such improvement on paying the amount of damages or compensation awarded to the owners or the occupants thereof in such report, less the amount of any assessment made against such owner or occupant for any part of the expenses of such improvements, when such assessment has been made or by depositing the same in some bank in the city of Elmira for his or her use, and subject to his or her order, less such assessment, if any, as aforesaid and thereupon the title to said lands, premises, rights and easements therein so taken shall become vested in said city free from any and all liens and incumbrances of every kind and nature. But no real estate shall be taken or appropriated for the opening, widening

When lands may be taken.

Land not to be taken till damages paid or tendered.

or altering of any street, lane, alley or highway in the city, or for any other corporate purpose mentioned in this act without the leave or consent of the owner or owners until the compensation reported by the commissioners to be proper be paid as above provided. Nor shall the said city become obligated to take any such lands, tenements, rights or easements, nor to pay or deposit such damages therefor, nor shall the owners, occupants or other persons having any liens thereupon, acquire any right to such damages, nor to be paid therefor until the final confirmation of the report of the commissioners as herein provided. Upon the final confirmation of the commissioners' report, the common council shall direct that a copy of the said report, exclusive of the evidence, be recorded at length in the office of the clerk of the county of Chemung.

City not obligated to take or pay for lands until report is confirmed.

Copy of report to be recorded in county clerk's office.

Sec. 92. Any person considering himself aggrieved by any part of such report or assessment may, within thirty days after such confirmation, serve upon the mayor of said city a notice of appeal to the supreme court from the report and determination of said commissioners, and shall accompany such notice with a bond executed by two or more sureties to be approved by the mayor of said city, or the county judge of Chemung county, in the penalty of five hundred dollars, and file the same with the city clerk, conditioned for the diligent prosecution of the said appeal and for the payment of all costs and charges which may be incurred by the said city in resisting the same and defending the said report in case the same shall be confirmed. A copy of such notice shall also be served within the same time upon the city clerk of said city.

Aggrieved persons may appeal to supreme court.

Must give bond

Notice of appeal suspends further proceedings.

Sec. 93. The giving of such notice and the giving of such bond shall suspend all further proceedings by the common council in relation to the taking of the lands and tenements which shall be the subject of such notice until decision therein as hereinafter provided.

City clerk to certify copy of report.

Sec. 94. The city clerk shall, forthwith, after service of such notice upon him, certify to said supreme court a copy of said report of said commissioners with the proceedings and evidence had before them, filed with him by said commissioners. The copy of such report proceedings and evidence shall be furnished the said clerk for his certificate by the appellant, and another copy so certified by said clerk be served by the appellant upon the city attorney within ten days after such appeal shall have been taken.

Copy to be served upon city attorney.

What court may hear appeal.

Sec. 95. At any special term of the supreme court held in the sixth judicial district the said appeal may be brought to hearing before said court upon eight days notice given to or by said appellant.

Action of court on appeal.

Sec. 96. The said court shall consider the said appeal and examine all questions of law or fact that may be involved therein and shall give the same a preference over other cases and shall confirm, modify or annul said report as the said court shall deem just. In case of annulling said report the court may direct a rehearing before the same or other commissioners to be appointed by it and in such case the same proceedings shall be had on such rehearing and for the examination, correction and review of any sub-

sequent report as herein provided. The said court may direct that any other party beside said appellant and said city be heard before the decision of such appeal, when it shall appear that such party has any interest to be affected by the determination of said court. The decision of the court, together with a copy of the report and proceedings certified to the court, shall be forthwith filed in the office of the clerk of Chemung county.

Other parties
may be heard.

Decision to be
filed.

Sec. 97. Either party affected by the order of said special term may appeal therefrom to the general term of said court within ten days after notice of such order, by serving the notice of appeal in the usual manner of serving notices of appeal in said court, and if a party, other than the city, by giving a bond, conditioned and approved as is provided in section ninety-two of this act. The said appeal shall be heard by the general term in the same manner as provided in the next preceding section and the decision of said general term shall be final and conclusive.

May appeal to
general term.

Sec. 98. In case the said report so made shall be confirmed on appeal the appellant and obligors in the bond given to the city, as hereinbefore provided, shall be liable to pay to the said city the same costs and disbursements as are allowed upon appeal in civil actions made upon a case and exceptions to be adjusted by the clerk of Chemung county. And in case the said report shall be annulled the appellant shall be entitled to the same costs besides his disbursements as are allowed the city. And in case the said report shall be corrected or modified the supreme court shall determine, under the circumstances of the case, whether the appellant shall be entitled to his

Costs, etc.;
now adjusted
and paid.

costs and disbursements; and if the same are awarded to such appellant they shall be the same as allowed the said city. The costs and disbursements of the appellant, on adjustment by said clerk, shall be paid by the common council of said city as part of the contingent expenses thereof.

Title VII.

City Court of Elmira.

- City judge.** Sec. 99. The city judge, created by this act, shall hold a court in the city of Elmira, of civil jurisdiction only, to be denominated the "city court of Elmira," which is hereby constituted in said city.
- Qualifications of.** Sec. 100. The city judge shall be an attorney and counsellor of the supreme court of the state of New York of not less than four years' standing.
- Stenographer.** Sec. 101. The city judge shall appoint a regular stenographer for said court, who may be removed by him whenever he shall deem it advisable, and may engage another stenographer from time to time to serve in the absence of the regular stenographer. The regular stenographer and each occasional stenographer, during the period of his employment as such, shall be an officer of the court, and shall, before entering upon the discharge of his duties, subscribe and take the oath of office prescribed by the constitution of this state, and file the same with the city clerk. It shall be the duty of such stenographer to take accurately in shorthand the testimony or other proceedings on
- Oath of office.**
- Duties of.**

the trial of cases in said court, unless excused by all the parties thereto with the consent of the court, and to furnish a typewritten copy of the testimony and other proceedings so taken by him in any case in which such testimony and proceedings shall have to be returned to the county court, which typewritten copy shall be a part of the return; and to take down and write out such other matters pertaining to the business of the said court as the city judge may designate. He shall also furnish to any person asking therefor a typewritten copy of any testimony or proceedings of which he shall have taken notes as above provided, at the rate of three cents per folio for each additional copy of the same matter.

To furnish copy of testimony; fees for.

Sec. 102. The city judge shall also appoint a clerk for the city court, who may be either the person appointed stenographer by him, pursuant to the next preceding section, or any other suitable person; and the city judge shall have power to remove said clerk whenever it shall in his judgment be advisable. He shall also engage another clerk, from time to time, to serve in the absence of the clerk. The regular clerk and each occasional clerk, during the period of his employment as such, shall be an officer of the court, and shall before entering upon the discharge of his duties subscribe and take the oath of office prescribed by the constitution of this State, and file the same with the city clerk. It shall be his duty to attend upon said court during the time it is by section one hundred and twenty-six of this act required to be kept open for business, and to keep the dockets and books of account thereof, and to make up the returns to the county court therefrom under the direction of the city judge. He shall have power

Clerk of court.

Oath of office.

Duties of.

Powers of. to take affidavits for use in said court, and to issue summons and precepts in summary proceedings, subpoenas and executions on judgments duly docketed and final orders in summary proceedings duly entered, and in the absence of the city judge and acting city judge to join issues and adjourn cases.

(Thus amended by Laws of 1895, Chap. 371.)

Jurisdiction of court. Sec. 103. Said court shall have jurisdiction of the following actions and proceedings :

Action to recover damages a. An action to recover damages upon or for breach of a contract, express or implied, other than a promise to marry, where the sum claimed does not exceed five hundred dollars.

Injury to person or property. b. An action to recover damages for a personal injury or an injury to property, where the sum claimed does not exceed five hundred dollars.

Action to recover fine or penalty. c. An action or proceeding to recover a fine or penalty not exceeding five hundred dollars, or to recover one or more fines or penalties for a violation of an ordinance of the city of Elmira, authorized by it, or of the provisions of the other titles of this act where the amount claimed does not exceed five hundred dollars.

Action upon a bond. d. An action upon a bond conditioned for the payment of money, where the sum claimed to be due does not exceed five hundred dollars; the judgment to be rendered for the sum actually due; where the sum secured by the bond is to be paid in installments, an action may be brought for each installment as it becomes due.

e. An action upon a surety bond taken in said court or by any justice of the peace. Upon a surety.

f. An action upon a judgment rendered in said court, or in a court of a justice of the peace, or in a district court of the city of New York, or in a justice's court of a city, being a court not of record. Action upon a judgment rendered.

g. An action to recover one or more chattels with or without damages, for the taking, withholding, or detention thereof, where the value of the chattel or of all the chattels, as stated in the affidavit made on the part of the plaintiff, does not exceed five hundred dollars. Action to recover chattels.

h. To render and enter judgment upon the confession of a defendant or defendants, as prescribed in title six, chapter nineteen of the code of civil procedure, where the sum confessed does not exceed one thousand dollars. To render and enter judgments.

i. In an action for damages, for fraud in the sale purchase or exchange of personal property, if the damages claimed do not exceed five hundred dollars. Damages for fraud.

j. In an action commenced by attachment pursuant to the provisions of article four of title two of chapter nineteen of the code of civil procedure, if the debt or damages claimed do not exceed five hundred dollars. Attachment.

k. In summary proceedings under title 2 of chapter 17 of the code of civil procedure, to recover possession of land and to remove tenants and others therefrom. Summary proceedings.

Enforcement
of liens.

l. In actions or proceedings under any statute for the enforcement of liens of mechanics and others, where the amount of the lien does not exceed the sum of five hundred dollars, the same proceedings to be had as are provided by law to be had in justice's court.

Bastardy pro-
ceedings.

m. In proceedings in cases of bastardy, brought by the overseer of the poor of the city of Elmira, or by the superintendent of the poor of the county of Chemung.

General juris-
diction.

n. In any other action or civil proceeding of such character that a justice of the peace of a town would have jurisdiction thereof wherein the sum sought to be recovered does not exceed five hundred dollars.

Can not take
cognizance of.

But such court cannot take cognizance of a civil action in either of the following cases :

Title to real
property.

a. Where the title to real property comes in question as prescribed in title three of chapter nineteen of the code of civil procedure. But when such question arises the pleadings and practice shall be the same as are now provided by law for justice's court in regard thereto.

Recovery of
damages.

b. When the action is to recover damages for false imprisonment, libel, slander, criminal conversation, seduction or malicious prosecution.

Limit of
account.

c. Where, in a matter of account, the sum total of the accounts of both parties, proved to the satisfaction of the court, exceeds one thousand dollars.

d. Where the action is brought against an executor or administrator as such.

Against executor.

Sec. 104. Summary proceedings and bastardy proceedings may be commenced by petition addressed either to said judge or to said court, and in said proceeding and in all actions, the jurisdiction of the said judge shall be exercised by and in the name of the said court only, and all processes from said court shall be made returnable thereto by its proper title. In the solemnization of marriages, and in all other matters not otherwise by this act provided for, said city judge shall have the same powers as justices of the peace in towns now have, and in instances in which a justice of a town is authorized to do any act or exercise any jurisdiction in association with another justice or justices, the said city judge may do such act or exercise such jurisdiction without associating with him any justice or justices.

Summary and bastardy proceedings; how commenced.

Powers of judge in solemnization of marriages, etc.

Sec. 105. Said court shall have the same jurisdiction over the persons of defendants as is now possessed by justices' courts of towns pursuant to the provisions of section twenty-eight hundred and sixty-nine of the code of civil procedure, and for the purpose of conferring jurisdiction of the person the said city of Elmira shall be deemed a town and said court a justice's court thereof.

Persons of defendants.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 106. A judgment of said court shall be in all respects the same as a judgment rendered by a justice of the peace of towns except as herein provided and all provisions of the code of civil procedure in relation to filing transcripts of such judgment.

Judgment; how rendered.

ments and docketing the same in the office of the clerk of Chemung county, or of any other county, and the effect of such judgment, when so docketed, shall in all respects be the same as if said judgment was recovered before a justice of the peace of a town. But such judgment shall be a lien and remain in force for the same length of time as a judgment originally recovered in the county court. In any case in which by law a justice of the peace is required to render judgment and enter the same in his docket within four days, the city court of Elmira, or the judge thereof, is required to render judgment and it must be entered in the docket of said court within ten days after the case shall have been submitted for final decision, anything to the contrary herein notwithstanding.

To be a lien.

When entered.

Failure of defendant to interpose counter claim.

Sec. 107. The prohibition contained in section twenty-nine hundred and forty-seven of the code of civil procedure relating to the failure of the defendant in an action in justices' court to interpose a counter-claim does not extend to an action in said city court to a case where the amount of the counter-claim is five hundred dollars more than the plaintiff recovers.

Effect of counter claim.

Sec. 108. In the case provided for in section twenty-nine hundred and forty-nine of the code of civil procedure for justices' courts, if the amounts of the counter-claim established exceeds the plaintiff's demand, the defendant must have judgment for the excess, or so much thereof as is due from the plaintiff, unless it is more than the sum of five hundred dollars, and if it be more than five hundred dollars, the city court must pursue the same course in reference to the same, as in the said sec-

tion provided for a case in which it is more than two hundred dollars.

Sec. 109. Sections five hundred and five and five hundred and six of the code of civil procedure shall apply to a counter claim in an action against a person sued in a representative capacity, or in favor of an executor or an administrator, except that the defendant cannot take judgment against the plaintiff upon a counter claim for a sum exceeding five hundred dollars and costs, and section twenty-nine hundred and forty-six of the code of civil procedure shall not apply to actions in said city court.

When code of civil procedure shall not apply to counter claim.

Sec. 110. Where, upon the trial of an action, the sum total of the accounts of both parties provided to the satisfaction of the city judge, exceeds one thousand dollars, judgment of discontinuance must be rendered against the plaintiff with costs, and section twenty-nine hundred and fifty of the code of civil procedure shall not be applicable to the said city court.

Discontinuance of action.

Sec. 111. The summons, the form thereof and the time within which the same shall be returnable, and all other process, the service of process, appearances, practice, pleadings, exhibiting account or demand, amendments, adjournments, trial by court or jury, obtaining jury, offers to compromise, offers of judgment and the effect thereof, judgments by confession or otherwise, and the rendering and docketing of the same, appeals, fees, costs and disbursements, shall in all matters, except as herein provided be governed by the provisions of the code of civil procedure for justices' courts except that section two thousand eight hundred and ninety-three of the code of civil procedure shall not apply to or govern pro-

Summons; form of, time returnable, etc; how governed.

Bastardy proceedings; how governed.

ceedings in the city court. Bastardy proceedings shall be governed in all matters of practice, including appeals, and in all the proceedings therein and relating thereto by the provisions of the code of criminal procedure, and the said judge and the said court shall have the same duties, powers and jurisdiction as justices of peace in towns and their courts; together with the further powers and jurisdiction by this act conferred; except as herein provided.

(Thus amended by Laws of 1896, chapter 693.)

Attorney's authority, how conferred.

Sec. 112. The attorney's authority may be conferred orally or in writing, but the justice shall not suffer a person who is not an attorney admitted to practice in the supreme courts of this state to appear as an attorney, unless his authority is admitted by the adverse party, or proved by the affidavit or oral testimony of himself and another, and the city judge may, in his discretion, at any time before final judgment, require from any such attorney admitted to practice in the supreme court proof of his authority to so appear.

Adjournments.

Sec. 113. The court must, upon the application of the plaintiff grant a second or subsequent adjournment of the trial of the action, upon proof, by his own oath or otherwise, to the satisfaction of the court, that he cannot safely proceed, for want of some material testimony or witness, and that he has used due diligence to obtain the testimony or witness. But the court may, as a condition of granting such adjournment, require that the plaintiff pay to the defendant the legal fees of defendant's witnesses duly subpoenaed for that day, and not exceeding two dollars, in addition thereto or such part of such additional sum as may be just.

Conditions of.

Sec. 114. The summons or summons and complaint may be served by any person qualified to serve such papers in on action in a court or record, and when service is made by any person other than a constable, proof of service shall be made as in a court of record.

By whom summons may be served.

Sec. 115. The complaint may be verified in the manner provided by the code of civil procedure for the verification of pleadings in courts of record, and in an action commenced by summons may, at the option of the plaintiff or his attorney, be served therewith. When the complaint is so verified, the subsequent pleadings excepting a demurrer, shall be likewise verified in all cases in which such pleading would require to be verified in a court of record, in default whereof they shall be disregarded. Where the complaint is so verified and a copy of the same is served with the summons, and the defendant fails to answer said complaint as hereinbefore provided, at the time of the return of said summons, he shall be deemed to have admitted the allegations of the complaint as true, and the court shall, upon filing the summons and complaint, with due proof of the service thereof, enter judgment for the said plaintiff and against the defendant, for the amount demanded in such complaint, with costs, without further proof. The city judge may, by general rule or otherwise, require any pleading made orally to be reduced to writing, and every pleading in writing shall be subscribed by the party making the same or his attorney, and shall be filed forthwith, or within such time as the said city judge may designate.

Verification of complaint and service of.

Verification of pleadings.

Pleadings: how made.

(Thus amended by Laws of 1898, Chap. 66.)

Sec. 116. The city judge may, from time to time, establish such rules of practice for said city court

Rules of practice.

Publication of. as he may deem necessary, not inconsistent with this act or with the code of civil procedure, which rules shall govern the practice in said court. The rules so established shall, before they become operative, be published for at least one week in one of the city papers published in the city of Elmira.

Appeals : how taken. Sec. 117. Appeals may be taken to the county court from judgments rendered in said city court the same as from judgments rendered by justices of the peace. Appeals may also be taken to the county court from an order of the city judge on an application to open a default made as in section one hundred and eighteen of this act provided, and the time within which such appeals may be taken and the practice thereon shall be the same as apply to appeals from a judgment of a justice of the peace, the affidavits read on such application constituting, for the purpose of such appeal, a part of the return of the city judge.

Opening defaults and setting aside judgments. Sec. 118. In actions in said court the city judge shall have power to open defaults and set aside judgments rendered and entered therein, and executions issued thereon, upon such terms as may be just, in a case where either party shall fail to appear on the return day of the process, or on any adjourned day, and the party in default satisfactorily excuses his default, but no greater terms shall be imposed than the payment of the costs included in the judgment, and the sum of three dollars for opposing the motion. The application therefor, shall be founded upon affidavits, and shall be made within twenty days from the entry of such judgment. Upon presentation of such application, the city judge shall issue an order returnable in not less than five days nor more than eight days requiring the party in whose favor judg-

Terms of.

Application for.

Action upon.

ment was rendered to show cause, if any, why said judgment should not be set aside. A copy of said order and of the papers upon which the same is granted, shall be served upon the party in whose favor judgment was rendered, or his attorney, if one shall have appeared in the action, not less than three days prior to the return day thereof. Pending such application and the determination thereof, the city judge may stay proceedings upon such judgment or any execution which shall have been issued. When a judgment shall be set aside, the action shall proceed as though no judgment had been rendered. The judgment, or an execution issued thereon by the city judge, and levy made thereunder, may, in the discretion of the city judge, be allowed to stand as a security for the satisfaction of any judgment the plaintiff may finally recover. Parties moving in the county court to open default or to obtain a new trial in said city court, in cases where a motion might have been made in said city court, as in this section provided, shall show that no such application was made in said city court.

Copy of order;
upon whom
served.

Effect of judg-
ment set aside.

Sec. 119. No person shall be incompetent as judge, witness or juror in any action or proceeding in said court in which the city of Elmira is an interested party, by reason of his being an inhabitant, freeholder or taxpayer in said city.

Judge, witness
or juror: com-
petency of.

Sec. 120. Constables and other persons who lawfully serve papers or execute mandates in actions or proceedings in said court, not within the jurisdiction of justices of the peace of towns, shall receive and be entitled to the same fees, as are allowed to sheriffs in like actions and proceedings in courts of record.

Constables,
etc; fees of.

Costs and fees;
how paid,
taxed and re-
covered.

Sec. 121. In all civil actions and proceedings brought in this court the same costs and fees shall be paid, taxed and recovered as in actions or proceedings before justices of the peace. In addition thereto, there shall be allowed to the prevailing party, as an indemnity, in case he has appeared by an attorney admitted to practice in courts of record of this state, and not otherwise, the following sums as costs :

- Upon default. a. Judgment for plaintiff upon default, to the plaintiff, three dollars.
- Otherwise than upon default. b. Judgment for plaintiff otherwise than upon a default to the plaintiff, three dollars, and an additional sum equal to ten per centum of the recovery, not to exceed twenty-five dollars.
- For recovery of chattels. c. If the plaintiff recovers judgment in any action in said court for the recovery of one or more chattels the foregoing sum allowed as additional costs therein shall be estimated upon the value of said chattels as assessed by the said court or jury.
- Upon non-suit. d. If judgment of non-suit is rendered for the defendant, to the defendant two dollars.
- Upon merits. e. If a judgment is rendered for the defendant upon the merits after the trial, to the defendant five dollars. And the court, in its discretion, may allow five dollars additional.
- Upon counter-claim. f. A defendant who recovers in said court a judgment upon a counter claim therein or obtains a judgment for the possession or recovery of chattels sued for therein is entitled, in addition to costs heretofore allowed said defendant, to recov-

er a sum equal to ten per centum upon said recovery, or upon the value of said chattels, not to exceed twenty dollars.

g. No costs or fees shall be allowed or recovered in an action brought upon a judgment of this court, unless such action be brought more than five years after the recovery of the judgment sued on.

When not allowed.

Sec. 22. In an action in which the complaint demands the recovery of property of the value of fifty dollars or more, or in an action in which the complaint or answer demands judgment for fifty dollars or more, exclusive of costs and disbursements, when an issue of law is raised by demurrer, the party in whose favor such issue may be decided shall be entitled to a sum, in the discretion of the city judge, not exceeding ten dollars, which shall, in case final judgment is awarded against him, be deducted therefrom.

Costs in certain actions of \$50 or more.

Sec. 123. In an action in which a trial is had and judgment rendered for two hundred and fifty dollars or more, the city judge may, in his discretion, grant to the successful party an additional allowance of costs, not exceeding ten dollars. All costs and disbursements allowed to be taxed in any action or proceeding before justices of the peace in towns up to but not exceeding fifteen dollars, shall be included in the judgment as disbursements in addition to the costs hereinbefore provided, but in actions within the jurisdiction of justices of the peace of towns such disbursements shall not exceed the limits prescribed by section thirty hundred and seventy-six of the code of civil procedure for justices.

Additional allowances.

Disbursements in judgments.

Fees of city
judge and
clerk.

Recovery
thereof.

Monthly pay-
ment to cham-
berlain.

Sec. 124. In each action and proceeding in the city court, the city judge and the clerk of the said court shall each demand and receive for the use of the city for each service rendered by them respectively, the same fees as justices of the peace of towns are or may be entitled to receive for a like service. And no such service shall be rendered by either of them until such fee shall have been paid therefor. In the case provided for in section thirty hundred and eighty-one of the code of civil procedure recovery shall be had from the city of Elmira instead of the city judge. All such fees collected by the said judge or the clerk of the city court during any month shall be paid to the city chamberlain on or before the sixth day of the next succeeding month, and the city judge and the clerk of the city court shall each file with the city clerk at or before the time of the first regular meeting of the common council in each month next after the sixth day thereof a complete and detailed statement verified by his oath to be true, of all moneys payable to the city chamberlain by virtue of the provisions of this act, which were received by him during the next preceding month, with the written receipt of the said chamberlain for the payment of said moneys to him attached to said statement.

Council to pro-
vide offices,
stationery, etc.

Sec. 125. The common council shall provide suitable offices for holding said city court, and shall furnish heat, light and suitable furniture for the same, and provide necessary blank books, blanks and stationery therefor, and provide for the payment of the salaries of the city judge and the clerk and stenographer of the city court, and for all other necessary expenses of said court, the ex-

pense of which shall be a city charge. And in default of such provisions or any of them being made by the common council any justice of the supreme court residing in the sixth judicial district of the state is authorized, on application of the city judge showing such default, to make such provision by an order which shall be of the same effect as though the directions contained therein had been made by the common council, and the expense thereof shall be a city charge.

Proceedings upon default of making provisions.

Sec. 126. Said city court shall be open for such business as may lawfully come before it each day, excepting Sundays and legal holidays, during all seasonable hours from nine o'clock in the forenoon. The city judge shall be entitled, without deduction of his salary, to a vacation of thirty days consecutively in each year. And in case of the sickness, absence, or disability of the city judge the duties of such city judge shall be performed by the acting city judge appointed as hereinafter provided.

Business hours.

Vacation for city judge.

Disability.

Sec. 127. The city judge shall receive for his services rendered under this act an annual salary of two thousand dollars, less a pro rata deduction for each day the said court is by the next preceding section of this act required to be kept open on which he shall have failed from any other cause than illness, and his thirty days vacation, to attend the same; and such salary shall be paid to him by the city in twelve monthly installments, and provided he shall not be absent on account of illness without a deduction of his salary more than ten days in each year.

Salary of city judge.

Sec. 128. The stenographer of the city court shall receive a salary to be fixed by the city judge

Salary of stenographer.

with reference to the qualifications of such stenographer, not exceeding seventy-five dollars per month. In case of his absence, by reason of sickness or other cause, for the time in which he is absent, a pro rata deduction shall be made from his salary.

Salary of clerk.

Sec. 129. The clerk of the city court shall receive a salary of twenty-five dollars per month. In case of his absence by reason of sickness or other cause, for the time in which he is absent a pro rata deduction shall be made from his salary.

Acting stenographer or clerk

Sec. 130. In case of the sickness or absence of the stenographer or clerk of the city court, the city judge, or acting city judge, if he be at the time acting, may appoint a stenographer or clerk to act during such sickness or absence, and who shall, for such service, receive the same salary as the clerk or stenographer in whose place he is acting.

Acting city judge; appointment of, etc.

Sec. 131. It shall be the duty of the mayor and common council of the city of Elmira, in the month of March in each year, to appoint some suitable person, who shall possess the qualifications of a city judge as in this act provided, to act as judge of the city court in case of the sickness, absence or disability of the city judge. While so acting, the said acting judge shall sign all papers as acting judge of the city court of Elmira, and shall have all the powers and perform all the duties incumbent upon the city judge. He shall be entitled to receive for his services the same rate of salary as is paid the city judge.

Election of city judge.

Sec. 132. The city judge shall be elected under this act at the first general election held in the city

of Elmira for the election of city officers, after the passage of this act at which a city officer might be lawfully elected.

Sec. 133. No person shall hereafter be elected to the office of justice of the peace in the said city of Elmira. No election of justices hereafter.

Title VIII.

Board of Public Works.

Sec. 134. On the first Tuesday next after the annual election in the year eighteen hundred and ninety-five, or at some subsequent meeting, and as soon thereafter as may be, the mayor shall nominate from the taxpaying electors of said city, not holding any other city office, and by and with the consent of the common council, manifested by the concurring vote of at least two-thirds of the members thereof, shall appoint two commissioners of public works, who shall be so nominated and appointed that the two principal political parties represented in the common council shall be represented by the two commissioners, respectively, one who shall hold his office until April first eighteen hundred and ninety-six, and one who shall hold his office until April first, eighteen hundred and ninety-seven. First appointment of commissioners of public works.

Sec. 135. At the expiration of the said respective terms of office, the full term thereof shall be for two years; and on the first Tuesday next after the annual election in each year, or at some subsequent meeting, and as soon thereafter as may Terms of office

Subsequent appointments and terms.

Representation of parties. be, the mayor shall, from the taxpaying electors of said city, nominate and by and with the consent of at least two-thirds of all the members of the common council, appoint one commissioner to fill the impending vacancy, which appointment shall be for the ensuing two years. All appointments of said commissioners shall be so made that the two principal political parties represented in the common council shall at all times be represented by said commissioners respectively. Said commissioners of public works shall receive no compensation for their services as such commissioners.

Board of public works.

Sec. 136. The said commissioners, with the mayor, shall constitute the board of public works for the city of Elmira, of which board the mayor shall be president, and the city clerk the clerk, and any two members of said board shall form a quorum for the transaction of any business other than the dismissal of subordinate officers.

Quorum of.

(Thus amended by Laws of 1895, Chap. 371.)

Oath of office.

Sec. 137. The said commissioners, when entering upon the duties of their offices, respectively, shall take upon themselves the usual oath of office.

Meetings.

The board of public works shall meet at the mayor's office, or at any other suitable place, at such time as may be expedient, or as it shall from time to time designate, and on special occasions as the mayor may appoint in writing, notice of which shall be served upon such commissioners personally, or be left at the place of residence or of business of such commissioners respectively, and if either of said appointed commissioners should be elected to and accept the office of mayor, then the mayor and common council shall proceed as in

Vacancies.

case of a vacancy, and any of the appointed commissioners who shall hereafter be elected or appointed to any office in the city created by this act, and shall not within ten days publicly decline the same, shall be deemed to have vacated his office of said commissioner.

Sec. 138. Said board shall appoint one city engineer and surveyor by the concurring vote of at least two of its members. He shall receive such annual salary, not exceeding two thousand dollars, as may be fixed by said board, payable monthly. Said board may employ such and as many assistants to said city engineer and surveyor as in its judgment may be necessary.

City engineer and surveyor appointment and salary of.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 139. Said board shall appoint, by the concurring vote of at least two of its members, a superintendent of public works, who shall receive an annual salary not exceeding twelve hundred dollars, to be fixed by the said board, payable monthly. Said board may appoint one or more sidewalk inspectors, who shall serve during the pleasure of the board, at a salary not to exceed two dollars per day, respectively, while actually employed, to be paid out of the street fund.

Superintendent of public works.

Sidewalk inspectors.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 140. The city engineer and surveyor shall hold his office during the pleasure of the board of public works. He may be dismissed by the vote of at least two of its members. He shall, under the direction of the board of public works, have the general supervision of the construction, building, repairing or relaying of all pavements, sewers and bridges of the city, and by and with the ap-

City engineer; his term and duties.

proval of the board may appoint inspectors or superintendents upon any such work, and discharge any such inspector or superintendent. He shall perform such other duties with regard to surveying, engineering and other similar work as the board of public works or the mayor of the common council may prescribe or direct.

(Thus amended by Laws of 1895, Chap. 371.)

Superintendent of public works; his term and duties.

Sec. 141. The superintendent of public works shall hold his office during the pleasure of the board of public works. He may be dismissed by the concurring vote of at least two of its members. He shall, under the direction of the board of public works, superintend all repairs and improvements, or work to be done or performed upon any of the public highways, streets, walks, grounds, or property of said city, except as otherwise provided in this act, hire and employ the requisite laborers, direct them as to the time and manner of the execution of their work, and certify to the board of public works as often as said board may require, all persons who shall have been employed as aforesaid, and the hours or days of labor performed by each. He shall not directly or indirectly, employ his own team or wagon, nor shall he be directly or indirectly interested in any work or in any contract for work, or furnish material to said city, under the penalty of the forfeiture of his office.

Not to employ own team or be interested in contracts.

(Thus amended by Laws of 1895, Chap. 371.)

Exclusive authority in expenditures of money.

Sec. 142. Said board of public works shall have exclusive authority to expend the moneys provided and directed by said common council to be raised, and forming the following named funds:

the "street fund"; the "bridge and water-course fund" and the "sewer fund." The expenditure of each of such funds shall be for the purpose or purposes hereinbefore prescribed for them respectively.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 143. Said board of public works shall audit and certify to the common council of said city all just demands and claims presented to it for purchases by said board, and for all work, labor and services rendered under its employment, and all expenditures by it and herein authorized. The salaries provided for in this title of the city engineer and surveyor and assistant or assistants to him, and of the superintendent of public works shall be payable out of the "general fund."

Audit of claims for work and services.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 144. The board of public works shall annually, and at the last stated meeting of the common council in each civil year, report to the common council the amount of money estimated by said board to be necessary to be expended for each of the following purposes for the current year, to-wit :

Annual estimate of expenditures.

a. To defray the expenses of grading, repairing and cleaning and keeping in good order the unpaved streets; to defray the expenses of cleaning paved streets; to defray the expenses of cleaning repairing and building crosswalks; to defray the expenses of putting down a superficial macadam, the same not to cost to exceed the rate of seventy-five cents per square yard; to defray the expenses of keeping in repair and cleaning macadamized

For streets.

streets. The aggregate amount of the foregoing estimates shall be known and designated "street fund estimates."

For bridges,
etc.

b. To defray the expenses of building, rebuilding or repairing bridges, culverts, sluiceways; to defray the expenses of cleaning out or repairing waterways; of cleaning out creeks and other water courses under the charge of the city. The estimated expenses for such purposes shall be known and designated as "bridge and water course fund estimates."

For sewers.

c. To defray the expenses of constructing and repairing sewers and keeping the same in good order, the same to be known and designated as "sewer fund estimates."

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 145. Said board of public works shall have exclusive power and authority to

Power and au-
thority of
board as to
streets, curb-
ings and side-
walks.

a. Fix the grades of and grade, repair, clean and keep in good order the unpaved streets of said city; clean or cause to be cleaned and kept clean the paved streets; fix grades for all public sidewalks and curbing, and fix the width thereof; alter the grade of any existing public street, sidewalk or curbing, when in its judgment it shall be necessary so to do; set or lay suitable curbstones and gutters on or along the side of any street or highway; reset or relay any curbstone or gutter whenever in the judgment of said board it may be necessary so to do; build, repair and clean the public crosswalks; put down superficial macadam; keep in repair and clean macadamized streets, and do

any regrading, constructing and repairing of the public streets when in its judgment it shall be necessary.

b. Build, rebuild or repair the public bridges, Bridges, etc. culverts and sluiceways; clean out the waterways and repair the same; clean the creeks and other water-courses under the charge of the city.

c. Construct all public sewers and all lateral Sewers. connections therewith in said city, and repair or extend the same.

d. Pave or repair any streets or any part or portion of any street in such manner and with such material as in the judgment of said board may be deemed best; repair a pavement upon any street, or any part or portion of any street, in such manner and with such material as in the judgment of said board may be deemed best. Pavements and paving.

e. By its order, to be published for one week in all the daily newspapers published in said city, fix the route of travel for teamsters, draymen and draft wagons, and exclude from their use streets or parts of streets not necessary to their service in the receipt or delivery of merchandise or material. Routes of travel for teamsters, etc., may fix.

f. Permit the opening of and excavating in any public street or sewer of said city at such time and in such manner and under such superintendence thereof as said board may prescribe in their order granting such permission. Any expense incurred by said board in any such superintendence, restoration or repairment, shall be a lien until paid upon the premises or lot for the benefit Permits for street excavations. Expenses incurred by board; how enforced.

of which any such work was done, to be enforced as unpaid claims for the construction of sidewalks as directed to be enforced in said city, and said city shall have a lawful demand against the applicant to whom such permission may have been given, and such expense may be sued for in the name of the city, and when collected, shall be paid to the chamberlain of said city, and by him credited to the fund against which said expense is properly chargeable.

Planting and preserving of trees.

g. Determine the place for planting and the relative location of any shade or ornamental trees in the streets of said city, and the pruning and trimming thereof, and of any trees now in such streets; and to that end shall adopt general rules and regulations in reference thereto, which rules and regulations shall be published once in each week for three successive weeks in all the daily newspapers of said city. Any owner or occupant of premises in said city in front of which there shall be any shade or ornamental tree or trees, who shall neglect to comply with such rules and regulations in reference thereto twenty-four hours after service or the posting of a copy of such rules and regulations in a conspicuous place on said premises, shall be subject to a penalty not to exceed five dollars, to be sued for and recovered by the city of Elmira, and paid to the city chamberlain of said city and by him credited to the "street fund." The said tree or trees may be pruned and trimmed under the direction of the said board. The expense thereof shall be collected by said board from such owner in addition to and in the suit for the penalty above provided.

Rules and regulations.

Penalty for neglect to comply therewith.

Trees may be pruned by board.

Sidewalks: building and repairing of.

h. Construct or build any sidewalk or any part or portion of any sidewalk in such manner and

with such material as in the judgment of said board may be deemed best; repair any sidewalk upon any street, or any part or any portion of any street, in such manner and with such material as in the judgment of said board may be deemed best; regulate or change the width of space between a sidewalk and the curb line in the street. Provided, however, that the owner or owners of property along or in front of which a sidewalk is to be built or rebuilt shall, upon request in writing to the superintendent of public works, be given permission to build or rebuild such sidewalk, without expense to the city, in conformity, however, with all requirements as to time of building or rebuilding, material therefor, grade thereof, and manner and method of construction, of the board of public works. If such requirements are not complied with, the board of public works shall make said sidewalk conform therewith.

(Thus amended by Laws of 1896, Chap. 693.)

i. Make all necessary purchases, contracts, and engagements, hire, employ and engage all persons, teams, implements and articles, and do all the acts necessary to enter upon and complete the powers and duties imposed upon it by this act. The said board in the exercise of each and every of said powers shall not exceed the sum of money or fund legally applicable thereto.

Purchases, contracts, etc.; board to make.

Not to overdraw funds.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 146. Said board shall also have the power to repair, renew or repave any existing pavement in such manner and with such material as in the judgment of said board may be deemed best. The expenses of paving, renewing or repaving any street heretofore constructed, shall be paid as fol-

Repairing or repaving streets.

Expenses, how paid.

lows: The owner of the property fronting or adjoining such street shall pay two-thirds of the expense of the aforesaid work, from the curbstone in front of such property to a line to be drawn one foot outside of the outside rail of the track of any street railway located on said street, and the remaining one-third of such expense shall be paid by the city out of the pavement fund; the owner or owners of said street railways shall pay the expense of said work between two parallel lines to be drawn one foot outside of each of the outside rails of the track or tracks of said street railway. Upon any street on or through which there is no street railway located the owner of the property fronting or adjoining such street shall pay two-thirds of the cost of the aforesaid work from the curbstone in front of said property to the center line of said street, and one-third shall be paid by the city out of the pavement fund. The expense of repairing pavements shall be paid by the owner of the property in front of which the work is done.

Expenses of re-
pairing, by
whom paid.

Ordinances
regulating the
width of tires.

Sec. 147. The common council may at the request of the board of public works enact such ordinances as it may deem necessary, regulating the width of tires of draft wagons. The term "draft wagon" in this act shall mean a wagon to carry twelve hundred pounds or more.

(Thus amended by Laws of 1895, Chap. 371.)

Pavement and
sidewalk
fund, tax for.

Sec. 148. In addition to the sum hereinbefore authorized to be raised the common council shall, in the year eighteen hundred and ninety-six, and each year thereafter, levy upon the taxable property of said city, a sum not to exceed twenty-five thousand dollars and place this same to the credit of

a fund which shall be known and designated as the pavement and sidewalk fund. The board of public works shall have full charge of expending such fund, and shall expend the amount thus levied and raised, or so much thereof as may be necessary, in paving or repaving streets of the said city, or repairing pavements, or building or constructing sidewalks or repairing sidewalks in the city.

Expenditures thereof.

(Thus amended by Laws of 1895, Chapter 371 and Laws of 1896, Chap. 693.)

Sec. 149. A street surface railway company owning or operating a railway upon a street or a portion of a street paved or repaved, shall pay to the city chamberlain the entire cost of the paving between its tracks, the rails of its tracks, including switches and turnouts, and a space of one foot in width outside of and adjacent to either exterior rail of its track or tracks, including switches or turnouts. The owners of the property adjoining such street upon which a street surface railway is constructed or operated or the said portion thereof so paved or repaved, shall pay to the city chamberlain two-thirds of the balance of the entire cost of the paving thereof, apart from the cost of paving the intersections with other streets. The owners of the property adjoining a street or the portion of a street paved or repaved upon which a street railway is not constructed or operated, shall pay to the city chamberlain two-thirds of the entire cost of the paving thereof apart from the cost of paving the intersections thereof with other streets. The owner or owners of each property shall pay proportionately to the frontage of his, their or its property upon the street, and the quantity of pavement chargeable to said property shall be estimated from the curbing in front of said property to the center

Expenses of paving or repairing, how paid.

line of said street, in case no street railway is constructed or operated upon the portion of said street adjacent to said property; or the line one foot outside of the exterior rail of a street railway track nearest said curbing, if a street railway be constructed or operated upon the portion of the street adjacent to said property. The owner or owners of the property along or in front of which, or any part of which a sidewalk is constructed, built, rebuilt or repaired, shall pay to the city chamberlain the entire cost of such sidewalk so constructed, built or rebuilt, and the entire cost of the repairing of any sidewalk along and in front of his or their property, or any part thereof.

(Thus amended by Laws of 1895, Chap 371, and Laws of 1896, Chap. 693.)

Expenses of repairing to be paid to city chamberlain.

Sec. 150. A street surface railway company shall pay to the city chamberlain the entire cost of the repairing the pavement between its tracks, the rails of its tracks including switches and turn-outs, and for one foot in width outside of and adjacent to the either exterior rail of its track or tracks including switches or turn-outs. The owner or owners of each property adjoining a street or a portion of a street upon which a street surface railway is constructed or operated, shall pay to the city chamberlain the entire cost of repairing the pavement upon the portion of the street adjacent to his property from the curbing in front of his said property to the line one foot outside of the exterior rail of the said street railway track nearest said curbing. The owner or owners of each property adjoining a street or the portion of a street upon which a street railway is not constructed or operated, shall pay the entire cost of repairing the pavement upon that portion of the street adjacent

to his property from the curbing in front of his said property to the center line of said street. The city shall pay the cost of paving or repaving or repairing the pavement upon the intersections of streets, except that portion of such cost which must be paid by the street surface railway company constructing or operating a street surface railway thereon as hereinbefore provided.

Expenses for street intersections paid by city.

(Thus amended by Laws of 1895, Chapter 371.)

Sec. 151. The amount to be paid by a street surface railway company, or the owner or owners of any property for paving or repaving a street or portion thereof, or for repairing the pavement upon any street or portion thereof; or for building or rebuilding a sidewalk or any portion thereof, or for repairing a sidewalk, shall, as soon as practicable, be ascertained by the board of public works, and by it assessed to said company or the owner or owners of such property and upon such property. Said board of public works shall thereupon deliver the statement of such ascertainment and assessment to the common council, which shall thereupon give public notice in one morning daily newspaper and one evening daily newspaper of said city, that the same has been delivered to it, and that it will, on a certain day therein specified, which shall be at least ten days after the first publication of said notice, consider the same for the purpose of confirmation. At the time so specified any person interested may appear before the common council and apply to have such assessment altered or corrected as justice may require. The common council may thereupon alter and correct and confirm such assessment without further notice. The amount so assessed to a street surface railway company shall thereupon become and at all times thereafter the portion thereof re-

Board to ascertain amount to be paid for paving.

To deliver statement to common council.

Notice of to be given.

Application to alter assessment.

Assessment a lien upon street railway company.

maining unpaid at any time, shall remain and constitute a lien, charge and assessment upon the entire of the property of said street surface railway company. The amount of each other of such assessments shall be a lien upon the real property upon which it is assessed. The common council, after confirming said assessment, shall forthwith transfer the same, or a copy thereof, certified by the city clerk, to the city chamberlain. Any amount so assessed, or the part thereof remaining unpaid at any time, with the accumulated interest thereon as herein provided, may be paid at any time. Any amount or assessment for paving or repaving, or constructing or building or rebuilding any sidewalk, may be paid in five equal succeeding annual installments. The first installment shall be paid during the fiscal year in which the paving or repaving, or the constructing, building or rebuilding of the sidewalk is done. At the expiration of sixty days after the assessment therefor is made, interest at the rate of four per centum per annum upon the sum unpaid shall be paid with each of said installments. Any amount or assessment for repairing any pavement, or for repairing any sidewalk, shall be paid within sixty days after the assessment therefor is made by the common council. The expense or setting or laying suitable curbstones and gutters on or along the sides of the streets, or resetting or relaying any curbstone or gutter, shall be paid from the street fund, and shall be charged upon the property fronting or adjoining the streets or highways in which such work is done, and shall be paid, and payment thereof shall be enforced, in the same manner as is provided herein for the payment and enforcement thereof of amounts to be paid for repairing pavements or sidewalks. Any gutter forming part of a pavement shall not be within this provision. The amounts paid by property owners

Copy of assessment to be delivered to city chamberlain.

Payment of assessments.

Expenses of curbstones and gutters.

under this provision relative to curbstones or gutters shall be by the city chamberlain credited to the street fund.

(Thus amended by Laws of 1895, Chapter 371, and Laws of 1896, chapter 693.)

Sec. 152. When the board of public works, by resolution, declares its intention to pave or repave any street, or any portion of any street, upon which a street surface railway is constructed or operated, it shall notify the company which constructed, or is operating said railway, of such intention; and thereupon it shall be the duty of such street surface railway company forthwith to make all needful repairs, changes or improvements in the track or tracks thereof, and the materials and construction thereof, and put such railway in such condition that the board of public works may most advantageously do such paving or repaving. The board of public works may order and direct such street surface railway company to make such changes in the materials and construction of said railway as may be necessary to enable said board to so lay said pavement that it will be workmanlike and durable, and subject to the least possible disturbance. Whenever the board of public works shall by resolution declare its intention to pave or repave any street or any portion of any street, in which a water main or a gas main or a conduit for telephone or telegraph wires is not laid or placed, it may by its order in writing direct the laying or placing therein forthwith of such lacking main or conduit. Such order shall be served personally upon an officer or the local managing agent at Elmira of the company affected by said order. In case of the failure or neglect of the company so ordered to so lay said main or conduit, said board

Declaration of intention to pave or repave.

Duty of street railway company.

Board may order changes to be made.

Notice to be given to water, gas, and telephone companies.

May order mains laid.

Board may cause work done.

of public works may lay or place the same of such size, material, quality and construction as it may deem suitable for said street, and the entire cost and expense thereof shall be a lien, charge and assessment upon the entire property of said company.

Expense a lien. The board of public works shall forthwith upon completing any such main or conduit ascertain and assess the entire cost and expense thereof so to be borne by said company to said company and the entire of its property; and shall deliver a written statement of such assessment to the common council, which shall cause public notice to be given by publication in one morning daily newspaper and one evening daily newspaper of the city that the same has been delivered to it and that it will on a certain day therein specified, which shall be at least ten days after the first publication of said notice, consider said assessment for the purpose of confirmation. At the time so specified any person interested may appear before the common council and apply to have such assessment altered or corrected as justice may require. The common council may thereupon alter and correct and thereupon confirm such assessment without further notice. The common council shall then deliver such assessment or a copy thereof certified by the city clerk to the city chamberlain. Immediately upon the confirmation thereof by the common council, said assessment shall become a lien, charge and assessment hereinbefore provided, and shall remain such until paid. Said assessment shall become due at the expiration of sixty days next subsequent to said confirmation, and shall be paid within said sixty days.

(Thus amended by Laws of 1895, Chap. 371.)

Unpaid assessments. Sec. 153. In case any assessment shall have become due and payable, and any part thereof remain

unpaid, it shall be the duty of the city chamberlain to report the same to the city clerk, who shall deliver the report to the common council. The common council may thereupon issue its warrant under the hands of the mayor and the city clerk, and the corporate seal of the city, for the collection of such due and unpaid assessment, or the part thereof remaining unpaid, to the city chamberlain, who shall proceed to collect the same out of the personal property of the corporation or person or persons so assessed within sixty days after the receipt of such warrant by said chamberlain. Said chamberlain shall proceed under said warrant the same as a sheriff proceeds under an execution against the personal property of a judgment debtor. If the chamberlain shall return said warrant at the expiration of sixty days unsatisfied, in whole or in part, said assessment, or the part thereof remaining unpaid, or in case no warrant for any due and unpaid assessment be issued, such due and unpaid assessment likewise shall be enforced as a lien in the following manner: The city clerk in preparing and extending the next succeeding assessment roll for general city taxes, shall insert therein against the property on which it was assessed the amount of such unpaid assessment, with interest thereon at the rate of ten per centum per annum from the time when due to the first of July thereafter. Such amount shall be in a separate column from the general city tax to be levied for the current year, and the entire amount shall be collected as hereinbefore provided in reference to general city taxes; and if such amount is not paid, the land or the property assessed shall be sold therefor as hereinbefore provided in sections fifty-six and fifty-seven, and said sale and the effect thereof and the rights thereunder shall be controlled by the provisions hereinbefore relative to the sale of lands for general

Warrant for
collection of.

Chamberlain
to collect.

Duty of clerk.

Sale of real es-
tate for unpaid
assessments.

Collections to be credited to pavement fund.

Previous unpaid assessments.

Limitation of taxes.

city taxes in so far as the same may be applicable thereto. All moneys received or collected on account of the paving or repaving or repairing pavements, or building or rebuilding or repairing sidewalks, shall be by the city chamberlain credited to the pavement and sidewalk fund. The expense and cost of laying a water main or gas main or conduit shall be paid from the pavement and sidewalk fund; and when collected shall be by the city chamberlain credited to such pavement and sidewalk fund. On assessments heretofore unpaid, the property assessed may be sold for such assessment as heretofore provided in the city charter. The common council is hereby expressly prohibited from levying in any one year a sum exceeding twenty-five thousand dollars for the pavement and sidewalk fund; nor shall there be levied or raised by taxation a sum which in addition to the balance to the credit of the said pavement and sidewalk fund at the end of the preceding fiscal year shall exceed the sum of fifty thousand dollars; except that moneys received or collected on account of the paving or repaving or repairing pavements, or building or rebuilding or repairing sidewalks done with the avails of bonds of said city shall not be deemed any part of said balance.

(Thus amended by Laws of 1895, Chap. 371, and Laws of 1896, Chap. 693.)

Service connections with sewer, water and gas mains.

Sec. 154. Before any street in which a sewer, water or gas main is placed, shall be paved or repaved, the board of public works shall make, after notice to and failure of the owner or owners of property adjacent thereto and not having the pipe connections hereinafter designated so to do, pipe connections with said sewer, water or gas main, or either thereof as the case requires, therefrom to

sidewalk side of the curbing at such locations and of such size and dimensions as it may determine ; the expense of which connections shall be a charge upon the property or properties adjacent to said street on account of which they were respectively made, and shall be paid or collected in the same manner as the expenses of repairing pavements as hereinbefore provided, and each provision herein relative to the payment or collection of the expense of repairing pavement shall be applicable to the payment and the collection of the expense of making any such pipe connection. All connections with sewers, water or gas mains shall extend to the sidewalk side of the curbing on said streets. Any gas or water main or conduit for telephone or telegraph wires shall not be laid or placed upon or in any paved street except under the supervision of the board of public works. The actual expense of the supervision shall be paid by the company doing the work, and may be recovered by the board of public works in an action at law therefor in the name of the city, after the refusal of said company to pay the same upon demand therefor. The said board of public works may by its order or regulation require that pavements torn up or displaced or disturbed by any water company or gas company or telephone or telegraph company. or street surface railway company shall be repaired or replaced by the board of public works only, in which event the expense of such replacing or repairment shall be paid by the company necessitating such repairing or replacement and may be recovered in an action at law in the name of the city against said company, or may be collected in the same manner as the expense of repairing a pavement as hereinbefore provided.

Expense a charge upon property.

Laid under supervision of board.

Expense of supervision to be paid by company.

Repairing or replacing done by board and expense paid by company.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 155 repealed by Laws of 1896, Chap. 698.

Sec. 156 repealed by Laws of 1896, Chap. 698.

Disturbing or tearing up pavement prohibited.

Sec. 157. All corporations and persons except a street surface railway company, constructing a railway under the consent of the common council are hereby prohibited from disturbing, tearing up or removing any pavement or any portion of any pavement, or any macadamized street, or any portion thereof, without the written consent thereto of the board of public works, or two of the members thereof. Said board of public works may adopt such rules and regulations, and may make such order or orders relative to digging or excavating the streets, disturbing, tearing up or removing any pavement or portion thereof, or any macadamized street or portion thereof, interference with the streets, constructing, repairing or cleaning sidewalks, the placing or removal of shut-offs in water pipes or water mains, or gas pipes or mains in or from the street, the placing of pipe connections, the placing of man holes or conduits, acquiring facilities or opportunities for properly making main and service pipe connections, the removal and disposition by railroad companies of the snow from, or thrown or displaced from their track or tracks upon the streets, the maintaining in safe, suitable and proper conditions the streets or sidewalks and all matters or things essential to the performance of the duties and the fulfillment of the rights given them by the provisions of this act as it in its judgment may deem necessary and wise. Orders, rules and regulations, general in their character, must be published daily for one week in one morning daily newspaper and one evening daily newspaper of the city, and thereupon shall become effective and obligatory. Or

Rules and regulations relative to excavations, pavements, sewer mains, etc.

General orders, etc., must be published.

Special orders, etc., service of.

ders, rules and regulations special in their character shall take effect upon the service thereof personally or by mail upon the person or persons affected thereby, unless a different time be spec-

ified in such order, rule or regulation. The board of public works shall determine whether improvements herein authorized to be made by them shall be by advertisements for bids and lettings by contract, or by direct employment, and shall determine the details of such improvements. Whenever the board of public works contemplates expending a sum exceeding five hundred dollars for any one piece of pavement or sewer, it shall be the duty of the said board to advertise for bids for such work, and to let such piece of pavement or sewer by contract. Said board shall have the right to reject any such bid. Said board shall cause a map to be made of the sewers and lateral connections now existing, and shall delineate thereon from time to time any sewers and lateral connections that may be constructed or opened with the size and kind of material thereof, and file the same in its office, or the office of the city engineer and surveyor. Said map shall during all business hours be open to public inspection. Said board shall audit a properly verified account of the expense thereof, and certify the same to the common council who shall audit and pay the same from the "general fund."

Advertising for
bids and letting
of contracts.

Map of sewers
and lateral
connections.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 158. No member of said board of public works, nor the city engineer and surveyor, nor the superintendent of public works, nor any foreman, superintendent or inspector employed by said board, or either of said officers, shall be pecuniarily interested, directly or indirectly, in any bid, letting or contract, to which said board, or either of said officers shall be a party, or in any job, work, team or labor of any person employed by it

Interest in con-
tracts, etc..
prohibited

or either of said officers in the discharge of their official duties.

(Thus amended by Laws of 1895, Chap. 371.)

Penalty for violation of rules of board.

Sec. 159. Any person neglecting to comply with or violating any order, rule or regulation, the said board is authorized, by this act to make, or any of the provisions of the city charter relating to the streets, sidewalks or sewers in said city, shall be subject to a penalty not to exceed twenty-five dollars for each offense; and in case an order requires the doing of any act or the making of any change, repair or improvement, to an additional penalty not exceeding fifty dollars, to be fixed by said board in said order for each day on which compliance with and obedience to said order is neglected or refused, to be sued for and recovered by the city of Elmira, and to be credited to the "street fund," and shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or be imprisoned not exceeding fifty days, or by both, such fine and imprisonment, in the discretion of the court.

(Thus amended by Laws of 1895, Chap. 371.)

Title IX.

Fire Department, Fire Limits and the Prevention and Extinguishment of Fires.

Fire commissioners.

Sec. 160. The fire department of the city of Elmira shall be under the general control and management of fire commissioners thereof, who shall be the mayor and two other persons (to serve without compensation), who shall constitute a board of fire commissioners for said city.

Sec. 161. The present fire commissioners shall respectively continue to be such until the expiration of the term or period for which they were appointed. The term of office of fire commissioners shall be two years. Upon the expiration of the respective terms of said present fire commissioners and of each and every term thereafter or within twenty days prior thereto, the mayor shall nominate from the electors of said city, and by and with the consent of a majority of all the members of the common council, appoint a fire commissioner.

Terms of office

Appointments.

Sec. 162. The mayor shall be president and the city clerk shall be clerk of said board, and any two of said commissioners shall form a quorum for the transaction of any business other than the appointment or dismissal of members of the fire department, and such board may adopt rules and by-laws for the government thereof, and also may establish, promulgate and enforce proper rules, regulations and orders for the good government and discipline of the whole department, and cause a suitable number of copies thereof, to be printed for the use of the department, provided that such rules, regulations or orders shall not conflict with any of the provisions of this act, or with the laws or constitution of this state or of the United States; and said board shall have the charge and control of the fire engines, other apparatus and teams used for the extinguishment of fires, and shall have authority to purchase all necessary supplies therefor, and to make all needed repairs thereto.

President and clerk.

Quorum.

Rules and by-laws.

Control of engines, apparatus, etc.

Sec. 163. The said fire commissioners, when entering upon the duties of their office respectively, shall take upon themselves the usual oath of office, and shall meet at the mayor's office, or at any other

Oath of office.

Meetings.

suitable place, at such time as may be expedient, or as they shall, from time to time, designate; and on special occasions, as the mayor may appoint, in writing, notice of which shall be served on such commissioners personally or be left at the place of residence or of business of such commissioners, respectively; and if either of said appointed commissioners should be elected to and accept the office of mayor, then the mayor and common council shall proceed as in case of vacancy, and no alderman shall be eligible for appointment as fire commissioner, and any of the appointed commissioners who shall hereafter be appointed to any political office in the city, and shall not, within ten days, publicly decline the same, shall be deemed to have vacated his office of said commissioner.

Vacancies upon election.

Aldermen ineligible.

Vacancies upon appointment.

Appointment of firemen.

Sec. 164. It shall be the duty of said board of fire commissioners to select from time to time and unanimously appoint, by warrant of appointment, bearing the signatures of all three of said commissioners, and to be immediately filed with the city clerk, so many permanent firemen who shall be electors of said city as they may deem necessary.

Chief engineer and assistants: appointments of.

And said board shall, in like manner, also appoint one chief engineer and such assistant engineers as said board may deem necessary, through whom said board may promulgate all rules, regulations and orders to the whole department, and who shall have the immediate direction and control of the said department, subject, however, at all times to the rules, regulations and orders of said board and to the orders of any member thereof, provided the orders of any such single commissioner do not conflict with the rules, regulations and orders of said board then in effect, and such chief engineer and assistant engineers and each fireman appointed in

the manner aforesaid, may hold his respective office, during good behavior, or until said board, by unanimous vote shall decide such chief engineer, assistant engineers or firemen to be incompetent or inefficient and cause his removal; but in case of misconduct on the part of such chief engineer or fireman, then he may be removed by the decision of a majority of the said board, as hereinafter provided; and in case said board, by reason of disagreement or otherwise, should fail to appoint, in the manner above specified, such chief engineer or necessary firemen, then a majority of such board may nominate, and, with the approval of the common council, by a concurring vote of at least two-thirds of the common council elected, may appoint such chief engineer or fireman, and upon warrant of appointment, duly filed, shall appear the approval of the common council, properly certified by the clerk, and all such appointments shall have the same effect as if made by the unanimous action of the board hereinbefore provided.

Term of office.

Removal of firemen.

When common council may appoint.

Sec. 165. The mayor, or any one of said commissioners, or the chief engineer, at any time, upon charges being preferred, or upon finding any member of the fire department guilty of misconduct, shall have power to suspend such member of the fire department from service until the board of commissioners shall convene and take action in the matter, provided, however, that such member shall not remain so suspended for a longer period than thirty days without an opportunity of being heard in his own defense; and upon hearing the proofs in the case, a majority of such commissioners may discharge or restore such member in accordance with the decision of the majority of such board thereon; and the pay or salary of any mem-

Suspension of firemen.

Discharge or restoration of.

Pay during suspension.

Cause for
removal.

ber shall cease from the time of suspension to the time of restoration to service, unless otherwise ordered by said board of commissioners in its written decision, which shall be filed with the city clerk ; and any violation of the rules, regulations or orders of the board or orders of any superior shall be good cause of removal.

Erection of
buildings, etc.

Fire limits
constituted.

Sec. 166. No wall, structure, building, part or parts thereof, shall hereafter be built, constructed, altered, repaired or removed in said city within the following limits, namely : Beginning at a point in the center of East Church street and in the corner of Madison avenue ; thence south in the center of said avenue to the low-water mark of Chemung river ; thence westerly along said low-water mark of said river to a point in the center of Columbia street ; thence north along the center of Columbia street to the center of West Church street ; thence east along the center of West Church street to the center of College avenue ; thence north along the center of College avenue to the center of West Fifth street ; thence east along the center of West Fifth street to the center of Baldwin street ; thence south along the center of Baldwin street to the center of East Second street ; thence east along the center of East Second street to the center of Madison avenue ; thence south along the center of Madison avenue to the place of beginning. Beginning at low water mark of the Chemung river in the center of Sly street ; thence southwesterly along the center of Sly street and Pennsylvania avenue to the center of Partridge street ; thence west along the center of Partridge street to the center of Harmon street ; thence north along the center of Harmon street to the low-water mark of the Chemung river ; thence east along said low-

water mark of said river to the place of beginning, except in conformity with the provisions of this act ; and the said board of fire commissioners shall have power within said limits to direct and provide that every such wall, building, structure, part or parts thereof, which shall hereafter be constructed, built, altered, repaired or removed within said limits shall be constructed of brick or stone or some metallic or incombustible material, with partition walls, fireproof roof and brick, stone or metallic cornices and eaves troughs.

Fire commissioners may provide for fire proof structures.

Sec. 167. The said board of fire commissioners shall have power and it shall be their duty to regulate the construction of chimneys, flues, stove-pipes and other conductors of smoke, and prevent the dangerous construction or condition of chimneys, fireplaces, hearth-stones, stove-pipes, ovens, boilers and apparatus used in any building or manufactory in said city, and to cause the same to be removed or placed in a safe and secure condition when considered dangerous ; to prevent the deposit of ashes in unsafe places ; to regulate and prevent the carrying on of manufactories dangerous in causing or promoting fires ; and to regulate and prevent the use of fireworks within the city limits ; to compel the owners and occupants of houses and other buildings to have scuttles in roofs and stairs and ladders leading to the same ; to keep away from the vicinity of any fire, all idle and suspicious persons ; to compel all officers of the city and other persons to aid in the extinguishment of fires, and in the preservation of property exposed to danger thereat ; to compel the construction of suitable fire escapes and means of egress from all theaters and places of amusement, hotels, churches and factories, and other buildings and

Prevention and extinguishment of fires, power of board as to.

Deposit of ashes.

Fire works.

May compel construction of fire escapes, etc.

generally to establish such regulations for the prevention and extinguishment of fires and the safety of occupants of buildings, as they may deem expedient. Said fire commissioners and fire marshal shall also be fire wardens and possess all the powers of fire wardens under this act. They shall have power at all reasonable times, and it shall be their duty; to enter into and examine all buildings, lots, yards and premises in the daytime; to inspect all places therein where fires are used; to ascertain how ashes are kept, and to direct obedience to all the provisions of this act and rules and regulation of the board of fire commissioners relating to the prevention of fires and to the construction, alteration, removal and repairs of all buildings in said city. The rules and regulations to be adopted by the said board of fire commissioners, under the provisions of this act shall be published in the same manner as is now provided by this act for the publication of city ordinances, adopted by the common council.

Fire wardens, their powers, duties.

Publication of rules and regulations.

Statements of owners as to erection, etc., of building.

Sec. 168. Before the erection, construction, alteration or repair of any building or part of any building within the limits hereinbefore defined is commenced, the owner shall submit to the board of fire commissioners a detailed statement in writing of the specifications of such proposed building erection, alteration, removal or repair, which shall be accompanied by a statement in writing, sworn to before an officer duly authorized to take proof and acknowledgment of deeds, giving the full name and residence of the owner or each of the owners of such building or proposed building, with street and number where same is to be placed. If such erection, construction; alteration, removal or repair is proposed to be made by any other per-

Statement by persons other than owners.

son than the owner or owners of the land in fee, the person or persons intending to make such erection, alteration or repair shall accompany said detailed statement of the specifications with a statement in writing, sworn to as aforesaid, giving the full name and residence of the owner or owners of the land, and also of every person interested in said building or proposed building, either as owner, lessee or in any representative capacity; such sworn statement may be made by the agent of the person or persons hereinbefore required to make the same, and the same, with the copy of said specifications, shall be kept on file in the office of the board of fire commissioners; and the erection, construction, alteration or repair of said building or any part thereof shall not be commenced or proceeded with until said sworn statement shall have been so filed, and said specifications have been approved by the fire marshal. But the board of fire commissioners may in their discretion and for reasons to be stated in writing and filed with the plans and specifications, dispense with the making of said sworn statement in any case. Any false swearing in a material point in any statement submitted in pursuance of the provisions of this section, shall be deemed perjury and shall be punished as such.

Commencement of work restricted.

Board may dispense with sworn statements.

Penalty for false swearing.

Sec. 169. The board of fire commissioners shall have full power in passing upon any question relative to the mode, manner of construction or materials to be used in the erection, alteration or repair of any building within the limits hereinbefore defined, to make the same conform to the rules and regulations established by them for the construction thereof, and shall also have discretionary power upon application therefor to modify or

Discretionary powers of fire commissioners, to modify rules, etc.

Modification of rules, etc.

vary any of the rules and regulations by them made to meet the requirements of special case, where the same do not conflict with the public safety and the public good, so that substantial justice shall be done, but no such deviation shall be permitted, except a record of the same shall be kept by said board of fire commissioners, and a certificate be first issued to the party applying for the same.

Record of deviations to be kept.

Penalty for violation of rules, etc.

Sec. 170. The owner or owners of any wall, structure, building, part or parts thereof hereafter to be built, constructed, altered, repaired or removed within the limits hereinbefore defined, of any kind whatsoever, whether he or they be the owner or owners in fee of the land, or lessee or lessees thereof, or shall have a qualified or contingent interest therein by virtue of some agreement or contract in writing or in any other manner, and any master architect or architects, builders, carpenters or masons, who may be employed or assist therein, and any and all persons who shall violate any provisions of this and the foregoing sections, or any rule and regulation duly adopted and published by said board in pursuance of the provisions of this act, shall severally and for each and every such violation respectively forfeit and pay a penalty in the sum of fifty dollars, for the recovery of which an action may be brought in the name of the city of Elmira in any court of competent jurisdiction. The said board of fire commissioners is hereby authorized in its discretion, good and sufficient cause being shown therefor, to remit any fine or fines, penalty or penalties, which any person or persons may have incurred, or may hereafter incur under the provisions of this act. Any court of record in said city or any judge or justice

Remission of fines and penalties.

Injunctions.

thereof, shall have power at any time after the service of notice of violation of any of the provisions of this act, or any of the rules and regulations of the board of fire commissioners duly adopted and published in accordance with the provisions of this act, and upon the affidavit of the fire marshal, or any member of the board of fire commissioners, to restrain by injunction the further progress of any violation, and no undertaking shall be required as a condition to the granting or issuing of such injunction, or by reason thereof. Any person violating any of the provisions of this act, or any of the rules and regulations of the board of fire commissioners duly adopted and published shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or be imprisoned not exceeding six months, or both such fine and imprisonment in the discretion of the court.

Misdemeanors.

Sec. 171. The said board of fire commissioners shall annually and at the last regular meeting of the common council in March in each year, report to the common council the amount of money estimated by them to be necessary to be expended by said board for each of the following purposes for the current year, to-wit :

Annual estimate of expenses.

a. To pay the salary and wages of chief engineer and assistant engineers and firemen and other subordinate employees of fire department to be designated "fire department fund—wages."

For wages.

b. To defray the expenses of keeping in good repair and condition the fire engines, fire alarm telegraph, and other apparatus and teams used for the extinguishment of fires, and the buildings occupied by the fire department, and of purchasing

Repairs and supplies.

all necessary supplies, not including hose, therefor, and of extending the fire alarm telegraph, to be designated "fire department fund--repairs and supplies."

New apparatus c. To defray the expenses of purchasing new fire engine teams and apparatus used for extinguishing fires, including hose, to be designated "fire department fund--new apparatus."

Buildings. d. To defray the expenses of purchasing or renting new premises, or of erecting new buildings for the purposes of the fire department, to be designated "fire department fund--buildings."

General expenses. e. To defray the contingent expenses of the fire department not otherwise specified, to be designated "fire department fund--general."

Statement of moneys on hand. The said board of fire commissioners shall also include in said report a statement of the amount of moneys on hand to the credit of each of said funds, and the amount receivable during each year by said board for fire department purposes, other than from city taxes.

Council to certify amounts fixed. Funds to be credited. Sec. 172. After the common council shall have fixed the amount to be expended for each and all of said purposes, the common council shall thereupon certify the same to the board of fire commissioners and also to the city chamberlain. The city chamberlain shall thereupon credit to each of said fire department funds the amount so allowed for each fund respectively by the common council.

Sec. 173. All contracts by and in behalf of the city of Elmira for such purposes, and the payments therefor, as hereinafter provided, shall be made by said board of fire commissioners. And it shall be the duty of said board to keep accurate accounts of its receipts and expenditures for each of such purposes separately; and it shall not be lawful to expend any portion of the money raised for the use of any one of said funds for the purposes of any other of said funds, except by the permission of the common council. In case such permission be given by the common council, the common council shall certify the same to the board of fire commissioners, and also to the city chamberlain, who shall readjust their accounts of said funds accordingly. In case of serious damage to any of the property under the control and management of the said board of fire commissioners, by fire, cyclone, or similar unusual accident, requiring immediate and extraordinary expenditures, the common council may transfer from the general fund of the city to the appropriate fire department fund such sum as they may deem necessary to meet such unusual and extraordinary expenditure, and shall thereupon certify the same to the city chamberlain and to the board of fire commissioners, who shall readjust their accounts of said fire department funds accordingly. All payments by the fire commissioners shall be made by drafts upon the city chamberlain, each of which drafts shall designate the fund from which the same is to be paid, to correspond with the purpose of such expenditure. In case any expenditure shall be contracted by said board of fire commissioners for any of such purposes in excess of the amount properly standing to the credit of said fund on the books of the city chamberlain, the city shall not be liable upon such contract, but the members of

Contracts and payments.

Accounts.

Diverting of funds.

Unusual and extraordinary expenses, payment of.

Payments made by drafts on chamberlain.

Personal liability of members of board.

Quarterly report of expenditures.

the board of fire commissioners voting in favor of such expenditure shall be personally liable therefor. The said board of fire commissioners shall make a quarterly report of their expenditures to the common council, which shall be published with the proceedings of the common council.

Exemption from militia and jury duty.

Sec. 174. The fire commissioners and all members of the fire department of this city shall be exempt from serving on juries in all cases, and from serving in the militia, except in case of war, invasion or insurrection. The name of each person appointed to any of the said offices or posts shall be registered with the city clerk, and the evidence to entitle him to any exemption provided in this section shall be the certificate of the clerk, made within the year in which the exemption is claimed.

Exemption after expiration of term.

Sec. 175. Every fireman who shall have faithfully served as such in said city, including as well any period before as after the passage of this act, five consecutive years, shall be thereafter exempt from serving on juries in all courts, or in the militia, except in case of war, invasion or insurrection, and the evidence to entitle such person to the exemption, as provided in this section, shall be a certificate under the corporate seal, signed by the mayor and city clerk.

Power to sue and prosecute.

Sec. 176. The said board of fire commissioners may sue and prosecute in the name of the city of Elmira, for and recover the fines and penalties given by law for a violation of any of the provisions of this title, which collection shall be paid to the city chamberlain.

Title X.

Police Department.

Sec. 177. The police department of the city of Elmira shall be under the general control and management of the board of police, which shall be composed of the mayor and four police commissioners. On the first Tuesday next after the annual election in each year, or at some subsequent meeting, and as soon thereafter as may be, the mayor shall nominate from the electors of said city, not holding any other city office, and by and with the consent of the common council manifested by the concurring vote of, at least, a majority of all the members of the common council, including the mayor, shall appoint two police commissioners in place of those whose terms of office shall next thereafter expire. The term of office of every police commissioner shall be two years, and shall commence on the first day of April next after the month of March fixed for his appointment aforesaid. All appointments of police commissioners, however, shall be so made that two of the police commissioners shall belong to each of the two principal parties represented in the common council.

Board of police-

Appointment of commis-
sioners.

Term of office.

Party repre-
sentation.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 178. Every person appointed to the office of police commissioner shall, before entering upon the duties of such office, take the constitutional oath of office. No police commissioner shall receive any compensation for his services as such commissioner. Any person appointed police commissioner who shall after his appointment and

Oath of office.

Compensation.

Vacancies by
election or ap-
pointment to
other city
offices.

prior to the expiration of his term of office as such commissioner be elected or appointed to any other city office, and shall not within ten days, after such last mentioned election or appointment, file with the city clerk a written declination of such other city office, shall be deemed to have vacated his office as such police commissioner. No person who has been appointed a police commissioner shall incur any penalty by refusing to accept or qualify for any other city office to which he may thereafter be elected or appointed prior to the expiration of his term of office as such police commissioner.

No penalty for failure to accept other city office.

Annual meeting.

Sec. 179. A stated meeting of the board of police commissioners shall be held annually on the first day of April, which is not a Sunday or a legal holiday. The mayor shall designate the place and time of day of such meeting, and shall give reasonable notice of such designation to each of the police commissioners, whose term of office shall not expire prior to such day, and also to each person who shall have been appointed police commissioner, and whose term of office shall commence on the first day of April in which such meeting shall be held. The mayor shall be president of the said board, and shall have a vote upon all questions coming before said board.

Designation of place and time thereof.

President of board.

Business quorum.

Sec. 180. The presence of three members of the board shall constitute a quorum for the transaction, at any stated or regularly called meeting of said board, of all business except the appointment of a member of the regular police force. The vote of four members of the board shall be necessary for the appointment of a member of the regular police force. The board of police shall adopt rules and by-laws for the government of such board,

Vote necessary for appointment.

Rules and by-laws of board.

and providing for the times and places of holding stated and special meetings thereof, and for the manner of calling special meetings of said board, and shall also establish, promulgate and enforce proper rules, regulations and orders, not inconsistent with this act and the statutes of this state, for the good government of all members of the regular police force and special policemen, and shall cause a suitable number of such rules, by-laws, regulations and orders to be printed for the use of the police department of said city. Said board of police shall appoint a clerk thereof, and shall fix his salary, which shall not exceed the rate of two hundred dollars per annum. Such clerk shall keep the minutes of the meeting of said board, and shall perform such other duties as shall be prescribed by the board.

Police regulations.

Clerk of board.

Sec. 181. The board of police shall annually, and at the first stated meeting of the common council in February of each year, report to the common council the amount of money which shall in its judgment be necessary to pay the current expenses of the police department, including the salaries of the regular police force and excluding the compensation of special police constables for the ensuing year, together with a detailed statement of all the operations of the police department during the preceding year. The said board shall during the month of June in each year fix the salaries of the several members of the regular police force. The said board in determining such salaries, shall have reference to the amount of money fixed by the common council for defraying the expenses of the police department, including the salaries of the officers of said department for the fiscal year, and shall limit the expenses of said department,

Annual estimate of expenses.

Salaries of police force, how fixed

Transfers of moneys to police fund.

including said salaries, so as not to exceed the amount thus fixed and determined by the common council. The common council may, upon the application of the board of police, at any time during the fiscal year after such determination, transfer from the general fund of the city to the police department fund, such sum as it may deem necessary to meet unusual and extraordinary expenditures thereafter to be made by the board of police.

Liability of commissioners contracting debts.

Sec. 182. In case any expenditure shall be contracted by the board of police in any fiscal year, in excess of the amount properly standing to the credit of the police department fund on the books of the city chamberlain, the city shall not be liable upon any such contract, but the members of the board of police, voting in favor of such expenditure, shall be personally liable therefor.

Removals of police for cause.

Sec. 183. No member of the regular police force shall be removed therefrom, except by the concurring vote of at least four members of the board of police at a stated or regular meeting of said board, and except for inefficiency, misconduct or neglect of duty and after reasonable notice of the charges against him, and an opportunity to be heard in his defense before said board.

Suspension of members of force.

Sec. 184. Any member of the board of police may at any time suspend any member of the regular police force, until such time as said board of police shall convene and take action in the matter, provided, however, that such member of the regular police force shall not remain so suspended for a longer period than thirty days. Unless such suspended officer be removed within said period of thirty days, as hereinbefore provided, his sus-

When to terminate.

pension shall terminate at the expiration of said thirty days. In case of such restoration to service by failure of the board of police to remove him as aforesaid, such suspended member shall be deprived of pay during the period of his suspension unless said board, by the concurring vote of at least four members, shall otherwise determine. Whenever any vacancy shall occur in the regular police force, the board of police may fill such vacancy by an appointment of an elector of said city, who shall have been a resident of said city for at least five years prior thereto.

Pay during suspension.

Vacancies in force, filling of.

Sec. 185. In case said board, by reason of disagreement, or otherwise, shall fail to fill such vacancy as aforesaid, within thirty days after such vacancy shall occur, then said board, by the concurring vote of at least three members, may nominate, and with the approval of the common council, by a concurring vote of at least two-thirds of the members of the common council, elected, including the mayor, may appoint an elector of said city to fill such vacancy.

How filled in case of disagreement.

Sec. 186. The said board may also in its discretion, at the request of any person, firm or corporation in said city, appoint such number of special policemen as said board may deem necessary, but such special policemen shall serve without pay from the city, shall be under the control of the board of police, and shall be removable at the pleasure of said board. No member of the regular police force shall be detailed for duty outside the city, except to execute legal process issued out of a court therein.

Special policemen without pay.

No detail for duty outside of city.

Special police constables. Sec. 187. The mayor of said city may, whenever in his judgment the public interest shall require, appoint special police constables, not exceeding twenty-five in number, who shall hold office by virtue of such appointment for such period as the mayor shall direct, not exceeding two weeks under any one appointment. Such special police constables shall receive such compensation as shall be fixed by the mayor, not exceeding, however, the rate of compensation allowed to the regular police force, which compensation shall be paid out of the general fund of said city.

Compensation.

Chief of police, captain of the night watch, and police constables, appointment of. Sec. 188. The board of police may, by the vote of four members, and it shall be their duty to appoint a chief of police of said city, and to appoint one of the members of the regular police force captain of the night watch, and two of the other members of the regular police force to be regular police constables. The said board of police may appoint other members of the regular police force to such other offices as said board, in its discretion, may deem necessary and proper, all such appointments to be made by the concurring vote of at least four members. The said board may, by like vote by which such appointments are made, respectively, from time to time, in its discretion, change any of such appointments. The said board of police shall prescribe the duties, respectively of the chief of police, the captain of the night watch, police constables and such other subordinate officers as may be designated by it as aforesaid, which duties, however, shall not be inconsistent with this act nor with the statutes of this state.

Change of appointments.

Board to prescribe duties.

Duties of chief of police. Sec. 189. The chief of police shall have immediate control of the members of the regular police

force and special policemen, subject, however, at all times to the rules, regulations and orders of the board of police, and subject, also, to the orders of the mayor, not in conflict therewith. The police constables shall perform their duties as prescribed by the board of police, under the direction of the recorder. The chief of police and the captain of the night watch shall have the power and authority of a captain or sergeant of police, as provided in section five hundred and fifty-four of the code of criminal procedure.

Police constables.

General powers of chief and captain of night watch.

Sec. 190. The clerk of the board of police shall forthwith file with the city clerk duplicate certificates, in writing, signed by the president and clerk of said board, of every appointment made by such board. The mayor shall forthwith file with the city clerk duplicate certificates in writing, of every appointment of special police constable made by him. Every person appointed a member of the regular police force, a special policeman, or a special police constable shall, before entering upon the said office, take the constitutional oath of office and subscribe the same in a book kept by the city clerk, and thereupon there shall be appended to each of the duplicate certificates of his appointment, a certificate signed in writing by the mayor and city clerk, to the effect that such appointee has taken such oath, and is a fully commissioned officer, in accordance with such appointment, one of which duplicates shall thereupon be delivered to such officer, and the other thereof shall be kept on file in the city clerk's office. The members of the regular police force, special policemen, and special police constables shall all be policemen of said city, and shall possess in criminal cases and proceedings all the common law and

Certificates of appointment.

Oath of office.

Powers and duties of police force, constables, etc.

statutory powers of policemen and constables, except for the service of civil process, and shall have the exclusive power of serving all criminal warrants, or other process issued by the recorder, acting recorder, mayor, common council, or a committee of the common council, in any part of the state, without any indorsement of such warrant.

Service of civil process.

It shall also be their duty, and they shall have the same power as constables to serve civil process in behalf of the city in any action or proceeding

Power to arrest without process.

to which the city is a party. Every policeman of said city shall have power and authority to arrest with or without warrant any person or persons by such policemen found violating within said city any penal ordinance or law of said city, and any person or persons found by such policeman in said city begging from house to house, or applying to any of the officers of said city for food or lodging, and who are designated and commonly known as tramps or vagrants, or any other disorderly person found by such policeman engaged in disorderly conduct in said city, and to bring them before the recorder, acting recorder or mayor of said city to be dealt with the same as if said person or persons so arrested had been arrested upon warrant thereto duly issued by such recorder, acting recorder or mayor. No policeman shall receive for his own use any fees for services performed by him in pursuance of this act other than the salary fixed by the board of police as aforesaid, nor shall any policeman receive any present or reward for service rendered, or to be rendered in pursuance of this act, unless with the approval of the board of police. But each of said policemen shall receive in addition to such compensation, his actual traveling expenses in all cases in which he shall have traveled more than one mile outside of the city limits to perform such service, which

Police to receive no fees or reward for own use.

Traveling expenses.

traveling expenses shall be audited and paid out of the general fund of said city as other charges against said city are audited and paid. Each of said policemen shall demand and receive for all processes served by him, and properly chargeable to the county, the same fees as are provided by law for a constable for like services. Each of said policemen shall keep a book in which shall be entered all business done by him, and shall make out his account of all such business chargeable to the county of Chemung, and duly verify the same; which shall be audited; and he shall, annually, at the time of the presentation of claims against the county, present the same to the city clerk, who shall present the same to the board of supervisors of the county of Chemung, which board shall audit and levy the same as other charges are audited and levied, and an order for the same shall be delivered to the city chamberlain as moneys belonging to said city.

Fees for serving process.

Account of services chargeable to county.

Audit and payment thereof to city.

Sec. 191. Each recorder and acting recorder of said city who shall enter upon the discharge of the duties of his office after the thirty-first day of December, eighteen hundred and ninety-four, shall before entering upon the duties of his office, take and file with the city clerk the oath of office prescribed by law for judicial officers, and a bond in such penalty and with such sureties as the common council of said city shall decide and approve, for the faithful discharge of his duties as recorder, or acting recorder, according to the provisions of this act. The common council shall provide a suitable office for the recorder of said city. It shall be the duty of the recorder to attend at such office between the hours of nine o'clock in the forenoon and twelve o'clock at noon, and between the

Recorder and acting recorder official oath and bond of.

Office and business hours.

hours of two o'clock and five o'clock in the afternoon of each day, except Sundays, legal holidays and the period of his vacation, and to hear such matters, issue such processes and institute such proceedings as the proper administration of justice requires, in accordance with the powers and jurisdiction hereinafter conferred upon him. The recorder of said city shall receive an annual salary of one thousand five hundred dollars, which shall be in lieu of all expenses for clerical assistance in the performance of his duties, and which, less such deductions as shall be made by the common council therefrom as hereinafter provided, shall be paid to him in equal monthly installments by the city chamberlain of said city on the first day of each month upon written orders signed by the mayor and city clerk. There shall be allowed to the said recorder a vacation of fifteen days in each year of his term, for which number of days no deduction shall be made in his salary. Such vacation may be taken in consecutive days or otherwise at different times during the year, as the recorder may elect, and it shall be his duty to specify in his monthly report to the common council whether any day or days on which he has failed to perform the duties of his office in the preceding month were taken by him either as the whole or any part of said vacation; but nothing in this section shall be construed as allowing to the said recorder more than fifteen days vacation in any year of his term by reason of his failure to take the full number of fifteen days in any preceding year thereof. With the exception of the time herein allowed as a vacation, the recorder shall not be paid for such time as he fails to perform the duties of his office as hereinafter provided, and the ratable proportion shall be deducted from his salary because of any such failure to perform his du-

Salary of
recorder.

Vacation for.

Deductions
from salary in
certain cases.

ties, and such deduction shall be paid by the city chamberlain upon written orders signed by the mayor and city clerk to the acting recorder hereinafter provided for, who acted during such period. The amount of said deduction shall be detained by the common council. The recorder and acting recorder shall each report to the common council at the first regular meeting thereof in each month, the time, if any, during which the recorder shall have failed in the next preceding month to attend to the duties of his office as aforesaid, and the time, if any, during which the acting recorder shall have acted in the place of the recorder, as hereinafter provided in the next preceding month. The recorder may be removed from office in the same manner as a justice of the peace as provided by title two of the code of criminal procedure, and the constitution of the state of New York.

Reports as to
absences, etc.

Removal from
office.

(Thus amended by Laws of 1895, Chap. 371.)

Sec. 192. The recorder of said city shall in all criminal actions and proceedings and special proceedings of a criminal nature for or on account of offenses committed or charged to have been committed within said city, have all the jurisdiction and the authority which a justice of the peace of any town would have, if such an offense were committed or charged to have been committed in such town, except in proceedings respecting bastards, exclusive of any other officer except the mayor of said city and judges and justices of the courts of record. The said recorder shall have power to let to bail all persons charged with crime before him in all cases of felony, when imprisonment in the state prison, on conviction for such felony, can not exceed five years. He shall also have the same power and authority as a justice of the peace

Jurisdiction
and powers of
recorder.

Summary trial
of certain
offenders.

Tramps and
vagrants.

Further
proceedings
thereon.

within the county of Chemung, to administer oaths and take affidavits and acknowledgments. The said recorder shall have jurisdiction and authority to hear, try and determine summarily and without a jury all charges and complaints against persons for disorderly conduct in said city, as defined by this act, or of such conduct in said city as constitutes such persons, tramps, vagrants or disorderly persons as defined either by this act or by the statute of this state. Whenever any person shall be brought before said recorder, either with or without warrant, charged with being such tramp, if said recorder is satisfied by the confession of such person or by competent evidence upon such summary trial that such person is such tramp, the said recorder shall thereupon have jurisdiction and authority to render judgment convicting such person thereof and imposing such sentence therefor as is provided by section one of chapter four hundred and ninety of the laws of eighteen hundred and eighty-five for such offense, or sentencing such person to hard labor for such city not exceeding twenty hours. Whenever any person is brought before such recorder, either with or without warrant, charged with such disorderly conduct, or with being either such tramp, such vagrant or such disorderly person, if said recorder shall be satisfied by the confession of such person or by competent evidence, upon such summary trial, that such person has been guilty of such disorderly conduct, or is such vagrant or disorderly person, the said recorder may thereupon take such further proceedings thereon, as a magistrate is authorized by the code of criminal procedure to take in such case; or the said recorder may, instead, render judgment convicting such person of disorderly conduct or of being a vagrant or disorderly person as the case may be, and that he pay a

fine not exceeding fifty dollars or be imprisoned not exceeding six months, or both, as the case may require, which judgment shall be enforced in the same manner in all respects as judgments of courts of special sessions are enforced.

Sec. 193. The said recorder is hereby empowered to hold courts of special sessions in said city. Subject to the powers of removal provided for in sections fifty-seven and fifty-eight of the code of criminal procedure, courts of special sessions held by said recorder shall have, in the first instance, exclusive jurisdiction to hear, try and determine all charges of misdemeanor committed within said city, and also all charges of misdemeanors committed by violations of the charter of the city of Elmira or by violation of the ordinances or regulations promulgated pursuant to this act. Courts of special session held by said recorder shall also (subject to removal as provided by sections fifty-seven and fifty-eight of the code of criminal procedure) have jurisdiction to hear, try and determine charges of misdemeanor committed as follows: Committed partly within and partly without said city, or when the acts, omissions or effects thereof, which constitute or are requisite to the consummation of such misdemeanor, occur partly within and partly without said city; committed in this state, in or on board of any railway engine, train or car making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway engine, train or car, in case such railway engine, train or car passes or has passed in the course of the same passage or trip through said city, or any part thereof, or where such passage or trip terminates in said city, or would terminate

Courts of special sessions.

Jurisdiction and powers of such courts.

Jurisdiction, subject to removal, to try certain misdemeanors.

in said city if completed. Otherwise than as hereinbefore provided, courts of special session held by said recorder shall not have jurisdiction to hear, try or determine charges of misdemeanor not committed within said city. When a person shall be convicted by a court of special sessions held by said recorder of any misdemeanor of which such court has jurisdiction, the court of special sessions held by said recorder may render such judgment, imposing such sentence therefor as a court of sessions might lawfully render and impose in case a conviction of such crime were had in a court of sessions. Except as hereinbefore provided, courts of special sessions held by said recorder shall have all the powers and jurisdiction conferred upon courts of special sessions by the code of criminal procedure, and shall be subject to all the provisions of said code relating to courts of special sessions.

Judgment upon conviction.

General provisions applicable.

Acting recorder, appointment of.

Sec. 194. In case of sickness, absence from the city, disability or inability of the recorder to act after the thirty-first day of December, eighteen hundred and ninety-four, his powers and duties are hereby conferred and imposed upon the acting recorder. It shall be the duty of the mayor and common council in the month of December in each year after the passage of this act to appoint, by resolution, some person who shall be an elector of the city of Elmira and an attorney and counselor-at-law of the supreme court of this state, who shall act in such cases for the year commencing on the first day of January following such designation, instead of the recorder, and who shall in all such cases have power to hold all courts which said recorder may hold, in all respects as if held by said recorder, and he shall be designat-

Powers of acting recorder.

ed and known as "acting recorder." In case any warrant issued by the said recorder shall be returned during his absence from the city, or during his inability to attend to the duties of his office after the thirty-first day of December, eighteen hundred and ninety-four, any further proceedings may be had on such warrant before such acting recorder, who, after having once obtained jurisdiction over any matter in any criminal action or proceeding, or special proceeding of a criminal nature by virtue of the provisions of this act, may retain such jurisdiction and proceed to the determination of such action or proceeding. All processes and mandates issued by the recorder or the acting recorder requiring service shall be served by the city policemen, or by officers authorized by the laws of the state to serve such processes and mandates, and the same may be served in any county of this state without being indorsed by any other magistrate. All processes, mandates, orders, commitments or other documents made or issued by the recorder shall be signed, in addition to his name "recorder of the city of Elmira;" when made or issued by the acting recorder, the same shall be signed, in addition to his name, "acting recorder of the city of Elmira." The recorder and acting recorder shall keep a docket of all business done by them, with full items and dates, and with proper and convenient index; such docket shall contain a record or brief statement of all convictions, acquittals and judgments before either of them, and the same shall be open during office hours to public inspection when not in use.

Processes, etc.,
how served and
signed.

Recorder's
docket.

Sec. 195. Neither the said recorder nor acting recorder shall receive for his own benefit any fee for services performed under this act, but they

Fees for
services.

shall each demand and receive in all the proceedings before them, for all services rendered by them as recorder or acting recorder, the same fees as are provided by law for justices of the peace of towns for like services, and all fees and charges which may be legally payable whenever any suit or proceeding before either of them shall be settled or dismissed by consent, including constables' fees.

Payment of fees, fines, etc., to chamberlain

All such costs and fees, and all fines and penalties, or other money collected by either of them during any month, shall be paid to the city chamberlain before the next regular meeting of the common council in the next succeeding month; and any failure or omission to pay over such, fine, penalty or other moneys shall be sufficient cause for removal of such recorder or acting recorder from

Monthly statement thereof.

office; the recorder and acting recorder shall each file with the city clerk, prior to the time of the first regular meeting of the common council in each month, a complete and detailed statement, verified by his oath to be true, of all moneys payable to the city chamberlain by virtue of the provisions of this act which were received by said recorder or acting recorder during the next preceding month, with the written receipt of said chamberlain of the payment of said moneys to him attached to such statement; the recorder and acting recorder shall each keep an account of all such fees and

Account of fees for services.

fines, and of all criminal business done by him, which shall be a county charge, and shall annually, at the time for the presentation of claims against the county of Chemung, present in the name of said city said account, properly made and verified, to the board of supervisors of said county, and said board shall audit said account to the city of Elmira and levy the same in the same manner as other county charges.

Audits and payment thereof to city.

Sec. 196. The mayor or recorder of the city may hear in a summary way, any complaint for any violations of the laws of the state, or of the ordinances of the common council, against any person to whom a license of any description may have been granted in pursuance of this act, and may compel the attendance of witnesses on the hearing of such complaint, in the same manner as justice of the peace in the trial of civil causes, and on such hearing may annul such license or suspend the same for any certain time. Every determination on such complaint shall be forthwith filed with the city clerk, who shall serve a certified copy thereof on the person holding the license affected by such determination, either personally or by leaving the same at his or her usual place of abode or business, and from the time of such service such license shall be deemed to be annulled or suspended according to the tenor of such determination, until the same shall be reversed by the common council. At least twenty-four hours notice of the time and place of hearing such complaint shall be served on the person complained of, and such person may appeal from the determination of the mayor or recorder within forty-eight hours after the same shall have been made to the common council, by filing his appeal with the clerk and stating the grounds thereof, and said common council shall have power to reverse or affirm the same, but such appeal shall not suspend or in any matter affect such determination until the decision of the common council thereon.

Complaint against persons holding licenses, hearing of.

Determination thereon, filing and service of.

Notice of hearing complaints.

Appeal from determination.

Sec. 197. It shall be the duty of the recorder on the first Monday in May and November in every year to deliver an account verified by his oath to the common council of said city of all moneys, goods,

Account of unclaimed goods.

Notice of un-
claimed prop-
erty; sale of.

wares and merchandise then remaining unclaimed in said recorder's office, and immediately thereafter to give notice for one week in an official newspaper of said city to all persons interested in or claiming such property, that unless claimed by the owner with a satisfactory proof of such ownership, before a specified day, the same shall be sold at auction to the highest bidder on the day and place specified in such notice. All property remaining unclaimed, except money, shall be sold by said recorder, or by some one under his direction.

Goods, etc., of
perishable
nature; sale of.

If any goods, wares, merchandise or chattels of a perishable nature, or which shall be expensive to keep, shall at any time remain unclaimed in said recorder's office, it shall be lawful for said recorder to sell the same at public auction at such time and after such notice as to him and the mayor shall seem proper. The said recorder shall immediately after the sale of any property in accordance herewith, pay to the chamberlain of said city, all moneys remaining unclaimed in his hands as such recorder and all moneys received by him upon such sale, after deducting the expenses thereof. It shall be the duty of the recorder aforesaid, whenever he shall obtain possession of any stolen property, on his receiving satisfactory proof of ownership from the owner, to deliver such property to the owner thereof, on his paying all necessary and reasonable expenses which may have been incurred for the preservation and sustenance of such property. No property shall be sold or delivered in pursuance of this section if the district attorney of Chemung county shall direct that it shall remain unsold or undelivered for the purpose of being used in evidence in the administration of justice.

Moneys to be
paid to cham-
berlain.

Stolen prop-
erty to be de-
livered to
owner by re-
corder.

Proviso as to
sale or delivery
of property.

Title XI.

Public Parks.

Sec. 198. The public parks and pleasure grounds owned by the city of Elmira, shall be under the general control and management of park commissioners thereof, who shall be the mayor and four other persons, to serve without compensation, and who shall constitute the board of park commissioners of said city.

Board of park commissioners.

Sec. 199. The present commissioners of parks shall respectively continue to be such until the expiration of the periods for which they were appointed. The term of office of park commissioner shall be two years. Upon the expiration of the respective terms of said present commissioners and of each and every term thereafter or within twenty days prior thereto the mayor shall nominate from the electors of said city, and by and with the consent of a majority of all the members of the common council, including the mayor, appoint a park commissioner.

Term of office.

Appointment of commissioners.

Sec. 200. The said park commissioners collectively shall constitute the board of park commissioners of the city of Elmira, of which board the mayor shall be president, and the city clerk shall be clerk of said board. Such board may adopt rules and by-laws for the government thereof and may promulgate and enforce proper rules, regulations and orders concerning the preservation and use of the public parks and pleasure grounds belonging to said city.

President and clerk of board.

Rules and by-laws.

Oath of office.

Sec. 201. The said park commissioners, before entering upon their duties of their office, respectively, shall take upon themselves the usual oath of office, and shall meet at the mayor's office or any other suitable place at such time as may be expedient, or as they shall, from time to time designate. If either of said appointed park commissioners shall be elected to, or accept the office of mayor or alderman, then the mayor and common council shall then proceed as in case of vacancy, and no alderman shall be eligible for appointment as park commissioner.

Vacation of office.

Aldermen ineligible.

Park fund, how kept.

Sec. 202. The city chamberlain shall keep a separate book for the accounts of the board of park commissioners, and shall be the treasurer of such board. He shall receive and credit the park fund with the amount included in the mayor's estimate for park purposes, all money's received by the commissioners from other sources and also all penalties collected for violations of city ordinances in relation to said parks and shall charge such fund with all sums of money expended as hereinafter provided.

May receive contributions.

Quarterly payment and accounts.

Sec. 203. The board of park commissioners shall be entitled to receive such moneys as may be contributed from any and all sources, except that allowed by the mayor's estimates, for the uses and maintenance of the public parks of said city. They shall at once pay all such money's to the city chamberlain and shall render an account of the same to the finance committee of the common council on the first days of January, April, July and October in each year. They shall make contracts for maintaining, repairing and improving the parks and the property belonging therein, and shall au-

Contracts.

dit all bills incurred on such account, which bills shall be filed with the city clerk, approved by the finance committee of the common council, and paid by the city chamberlain as in the city charter provided for other city accounts.

Audits of bills.

Sec. 204. The board of park commissioners are hereby authorized and empowered to proceed to acquire for public park purposes the title to such lands situate in the city or town of Elmira as they may deem expedient and necessary for the purposes of a public park for said city, by purchasing, subject to the provisions of section two hundred and five of this act, from the owners of said lands, if said board can agree upon the price therefor with the owners or occupants thereof, and if they can not so agree, the said board shall have the right, with the approval and consent of the common council, to take proceedings in the name of said city, to acquire title to the same according to and in pursuance of the provisions of the condemnation law.

Acquisition of title to lands.

Proceedings therefor.

Sec. 205. When the said board of park commissioners shall have ascertained the sum for which such lands may be purchased by agreement, or may be obtained by the proceedings aforesaid, said board shall report such sum, together with all costs and expenses of such proceedings, if any, to the common council. If the said common council shall approve the same, they shall thereupon order a special election to be held in accordance with the provisions of section seventy-one of this act, and if the result of said election shall be in favor of said purchase, then and in that case the said common council shall issue the bonds of said

Report of cost and expense to council.

Special election to vote thereon

Issue of bonds upon favorable vote.

Tax for bonds
and interest.

Proceeds of
sale.

Title to vest in
city.

Lands to form
part of city.

Discontinuance
of proceeding.

city for the amount of said purchase price and expenses, bearing interest not to exceed four per centum per annum, and payable in such amounts and at such times as may be determined by said common council, said bonds to be sold at not less than their par value and accrued interest. And in addition to the amount authorized by the charter of said city to be levied and collected in any one year, there shall be levied and collected on the taxable property in said city, in the same manner as the general city taxes are now levied and collected, an amount sufficient to pay the annual interest on said bonds and the principal thereof, as the same shall become due. The proceeds of the sale of said bonds, or so much thereof as may be necessary, shall be paid to said board of park commissioners for the purpose of completing such purchase by agreement or by the proceedings aforesaid, and upon the completion thereof the real estate so purchased or acquired under and by virtue of this act shall be vested in the city of Elmira, and if said real estate shall have been therefore a part of the town of Elmira the same shall not thereafter be a part of such town but shall be a part of the territory of said city. If the said electors at special election shall, by a majority of the votes cast thereat, determine not to purchase or acquire the said lands, then, and in that case, the said city or said owners may move the supreme court to discontinue the proceeding aforesaid upon such terms as to costs as said court shall determine.

Title XII.

Cemeteries.

Sec. 206. The cemeteries owned by the city shall be under the control of three commissioners, who shall constitute a board of commissioners. The present commissioners of cemeteries shall respectively continue to be such until the expiration of the periods for which they were appointed. The term of office of cemetery commissioner shall be for three years. Upon the expiration of the terms of said present commissioners respectively, and of each and every term thereafter, the vacancy resulting therefrom shall be filled by a person nominated by the mayor and concurred in by a vote of two-thirds of all the members of the common council of said city.

Commissioners
of cemeteries.

Term of office.

Vacancies.

Sec. 207. The commissioners of the cemeteries shall have the care, custody and management of all property upon the grounds, and shall employ a superintendent and such laborers as they may deem proper, and regulate their compensation and services. They shall cause suitable maps to be made and perfected of all grounds, roads and lots therein, shall regulate the sales and prices of lots and interments, and shall make such regulations for the use and protection of the cemeteries as they shall deem proper, in no case, however, being allowed to charge a fee to visitors.

Powers and
duties of
commissioners.

Maps, sale of
lots, etc.

Regulations.

Sec. 208. Said board of commissioners shall create a fund by appropriating thereto annually its entire net receipts, which shall not be less than one-half of the gross receipts of the sale of lots

Creation of
fund.

Application of moneys thereof.

in said cemeteries. The moneys of such fund shall be applied as follows: First, to the payment of any mortgage upon any of the land of said cemeteries and of any bonds existing on account thereof; second, to the accumulation of an improvement fund. The moneys applicable to such improvement fund shall be kept invested securely and as advantageously as is practicable by said cemetery commission, and shall be invested in bond and mortgage on property in the city of Elmira or in Elmira city bonds, and the interest thereof be applied to repairing and maintaining roads, fences, monuments, abandoned lots and grounds of said cemeteries, and to no other purposes or object.

Improvement fund.

Moneys for keeping lots in order may be received, etc.

Sec. 209. Any person owning a lot in any of the said cemeteries, or the executor of the last will and testament of such owner, when so authorized by said last will and testament, may deliver to said board of commissioners, which shall receive the same, a sum of money, not exceeding three hundred dollars for each lot of said owner, as a permanent fund for keeping such lot in order, and no claim for the repayment of such sum, or any part thereof shall thereafter be made against the city of Elmira or said board of commissioners by any person or persons. Said board of commissioners shall invest and keep invested, securely and as advantageously as shall be practicable, in bond and mortgage upon real estate in the city of Elmira, or in Elmira city bonds, all moneys so delivered to and received by it and the interest from each sum so delivered and received shall, during every year after the receipt thereof, be expended in keeping in order the lot for the benefit of which said sum was received. Any person may give or bequeath to said board of commissioners any sum of

Investment thereof.

Gifts or bequests for expenditures.

money, to be wholly expended by said board within a time specified by the donor, or, if no time be so specified, to be expended by the said board, in its discretion, in keeping in order or beautifying such lot or lots as may be designated in connection with such gift or bequest, or, in case no such designation shall be made, then in keeping in order and beautifying said cemeteries.

Sec. 210. The city chamberlain shall be the treasurer of the board of commissioners, and shall receive and deposit in the bank selected for city deposits, all moneys from the sale of lots and other sources, and also all penalties collected for violation of city ordinances in relation to said cemeteries, and shall pay all expenses incurred on the cemeteries by making his check upon such bank, which check shall, in all cases be countersigned by the chairman of said commissioners.

Treasurer of board.

Sec. 211. The said treasurer of the board of commissioners shall receive all moneys paid for lots, and give his receipt therefor, specifying the section and number of the lot sold, and the price paid therefor, and it shall not be lawful to make interment on any lots until the same shall be paid for. All deeds or conveyances of lots shall be executed by the mayor and countersigned by the city chamberlain and recorded in the city clerk's office. The commissioners of the cemeteries shall receive no compensation for their services, and shall make an annual report under oath, to the common council at its last regular meeting in January, of their receipts and expenditures, and of all matters committed to their charge.

Receipts for moneys paid for lots.

Deeds for lots.

Compensation.

Annual report.

Title XIII.

Miscellaneous Provisions.

Contracting debts.

Sec. 212. No officer of the city, or any other person, shall have power, and each and every person is prohibited from making any purchase, or contracting any debts on the part of the city unless duly and fully authorized so to do; and no account, claim or demand shall be audited, allowed or paid unless the same was duly authorized.

Audit of unauthorized claims

Resolutions for expenditure of money; restrictions upon.

Sec. 213. All resolutions adopted by the common council authorizing the expenditure of money shall appropriate specifically the amount to be expended, and no extra or additional compensation shall be allowed or paid on any contract, or to any officer, person or persons, for any services, or work done or materials furnished to the city.

Extra compensation prohibited.

Examination and settlement of accounts, fixing salary of officers.

Sec. 214. The common council shall, in such manner and form as they may deem proper, examine and settle and allow all accounts chargeable against the city, as well of its officers as of other persons, except as herein otherwise provided; and shall determine and prescribe the compensation, if any to be paid to any officer elected or appointed under this act, not otherwise herein provided.

Accounts how made and verified.

Sec. 215. The common council of said city shall not audit any account for services rendered, material found or disbursements paid out in such services, unless such account shall be made out in items, and accompanied with an affidavit attached thereto, and to be filed with such account made by the person (or by one of the persons, when more

than one person is interested in a bill) presenting or claiming the same, that the items of such account are correct, that the services and disbursements charged therein have been, in fact, made and rendered, and that no part thereof has been paid or satisfied.

Sec. 216. No costs, fees, disbursements or allowance shall be recovered or inserted in any judgment against the city of Elmira, or against any of its officers or authorized agents, where said city would be liable to such officer or authorized agent, unless the claim, whether arising on contract, express or implied, or on tort, upon which such judgment is founded, shall have been presented for payment to the common council of the city of Elmira, at least, ninety days before the commencement of an action thereon.

Costs against city not allowed unless claim has been presented for payment.

Sec. 217. All actions brought to recover any penalty or forfeiture incurred under this act, or the ordinances, by-laws, or public regulations made in pursuance of it, shall be brought in the name of the city of Elmira, unless otherwise herein provided, and in any such action it shall be lawful to declare, generally, orally, or in writing, for such penalty or forfeiture, referring only to the section of this act, or the section of the ordinances, by-laws or public regulations passed in pursuance of such act, under which the penalty or penalties, or forfeiture is, or are claimed, and the defendant may deny, generally, in like manner, and either party may give in evidence, under such general declaration or denial, and special matter that may legally be the subject of such claim for penalty or penalties or that may legally be the subject of the defense under such general denial of

Action to be brought in name of city.

Complaint what to contain.

Answer; what to contain.

Civil warrant;
when it may be
issued.

the defendant. When such action shall be commenced, if it shall be made to appear by the oath or affidavit of any person that any ordinance has been violated by the person against whom process is applied for, a civil warrant may issue at the commencement of such action directed to any constables, police constables, policeman or chief of police of said city, commanding him to take the body of such person and bring him before the court to answer the complaint of said city in a civil action for the violation of such ordinance or by-law. No affidavit or bond shall be required

No affidavit or
bond for short
summons or
civil warrant.

to authorize the issuing of any short summons or civil warrant in behalf of said city, except that in actions for violations of ordinances or by-laws the affidavit or oath above provided for shall be required before issuing a warrant. And any person may be summoned to appear forthwith, or at a designated time before the court to make an affidavit or be sworn and examined on such application for a warrant in relation to his knowledge of the violation of such ordinance or by-law. Such examination shall be reduced to writing and filed with the process and proceedings in the case; and all the affidavits made in such case shall be so filed or kept with the process and proceedings in the case. No witness so summoned to appear shall be entitled to any fee or compensation for such attendance or examination; and for a failure to so attend or be sworn or examined, such witness shall be liable to the same penalty and may be punished in the same manner as witnesses who refuse to appear when duly subpoenaed, or to be sworn or testify on trials in actions in the supreme court. On return of such warrant the parties and court shall proceed in the same manner, and the same proceedings shall be had and adjournments may be granted in the same manner, for the same

Summons and
examination
upon applica-
tion for
warrants.

Penalty for
failure to at-
tend or to be
sworn.

Proceedings on
return of
warrant.

time and on the same terms as provided by statute on the return of a civil warrant in other actions before justices of the peace. Any action for the violation of any of the ordinances or by-laws adopted or passed by the common council may be brought on the direction or authority of the mayor or either of the aldermen.

Actions for violations of ordinances.

Sec. 218. Every execution in an action for any penalty, penalties or forfeitures recovered for the violation of any ordinance, by-law or public regulation enacted in pursuance of this act, or for a violation of any of the provisions of this act, when the defendant against whom judgment was recovered upon which such execution is issued, shall decline or fail to pay the amount of such judgment and costs, shall command the officers to whom it is directed to take the body of said defendant and commit him or her to the county jail of the county of Chemung, there to remain until discharged by due course of law. And the person or persons against whom such judgment is recovered shall not be entitled, under any execution issued on such judgment, to the liberties of the jail.

Execution in action for penalty or forfeiture.

Defendant not entitled to jail liberties.

Sec. 219. All expenses incurred in prosecuting for any penalty, penalties or forfeitures shall be defrayed by the corporation, and all penalties and forfeitures when collected shall be paid to the chamberlain for the use of the city.

Expenses; how paid.

Penalties; disposition of.

Sec. 220. If a suit be commenced against any person elected or appointed under this act, to any office, for any act done or omitted to be done under such election or appointment, or against any person for having done anything or act by the command of any such officer, and if final judgment shall be rendered on such suit whereby any such

Double costs; when defendant entitled to

defendant shall be entitled to costs, he shall recover double costs.

Judge, justice, witness or juror competency of.

Sec. 221. No person shall be an incompetent judge, witness or juror, by reason of his being an inhabitant or freeholder, or taxpayer, in the city of Elmira, in any action or proceeding in which said city is a party interested.

Oaths, and affidavits; mayor or chairman of committee may take.

Sec. 222. The mayor or the chairman of any committee or special committee of the common council, or the presiding officer of any board or body of commissioners created or authorized by the provisions of this act shall have power to administer any oath or take any affidavit in respect to the matter pending before the common council or such committee, board or body, and any person who may be required to take any oath or affirmation or to make an affidavit or statement under oath or affirmation under or by virtue of any provision of this act, who shall, under such oath or affirmation in any statement or affidavit, or otherwise, willfully swear falsely as to any material fact or matter shall be guilty of perjury.

Perjury.

(Thus amended by Laws of 1895, Chap. 371.)

Act in relation to common schools continued in force.

Sec. 223. The act of the legislature of the state of New York, entitled "An act in relation to the common schools in the village of Elmira," passed April fourth, eighteen hundred and fifty-nine, and the several acts supplementary to and amendatory or revisory of said act, shall continue in full force and applicable to the city of Elmira in the same manner as if this act had not been passed, anything herein contained to the contrary notwithstanding.

Sec. 224. When corporations, associations, co-partners, joint tenants or tenants in common, are to be served with a notice under any provisions of this act, or under the direction of the common council, it shall be deemed a sufficient, valid and legal service of such notice to serve a copy thereof upon the president, cashier, treasurer, one of the directors, or the managing agent of such corporation or association, or upon any one of such co-partners, joint tenants or tenants in common.

Service of notice on corporations, joint tenants, etc.

Sec. 225. The affidavit of the service of any notice under the provisions of this act, or under the direction of the common council, made by the person serving the same, or where the service is by publication, the affidavit of the publisher of the paper, the clerk, editor or foreman in his office, stating that such notice has been published the time required by law and filed with the city clerk shall be presumptive evidence of such service in all courts and places, as shall be also certified copies of the same.

Proof of service of notice.

Sec. 226. Every act, ordinance, by-law, public regulation, resolution or proceeding of the common council of the city of Elmira may be read in evidence in all courts and places in this state, either : (1) From a copy of such act, ordinance, by-law, public regulation, resolution or proceeding certified by the city clerk, with the seal of the corporation affixed. (2) From the printed volume of ordinances, by-laws and public regulations printed by authority of the common council.

Ordinances, by-laws, etc.; reading of in evidence.

Sec. 227. The charter of the city of Elmira may be read in evidence from the volume containing such charter, printed by authority of the common

Charter; reading of in evidence.

council, or from a copy certified by the city clerk, or from the session laws of the state of New York, containing the same.

Description and map of streets, alleys, lanes, walks, public grounds, etc.

Sec. 228. A description and map of all the streets, highways, alleys, lanes, side and crosswalks, drains, sewers, public walks and cemeteries in said city heretofore laid out or which shall have been dedicated to the public, or given to the village or city of Elmira, or which shall have been used or occupied by the public for twenty years, shall be recorded in a book to be kept by the city clerk for that purpose, and said map shall be filed and kept in the office of the city clerk. A description of every street, public ground, sidewalk, crosswalk, drain and sewer thereafter made or altered or discontinued, shall be recorded in the same book, or in a set of books to be kept for that purpose, and a map of every new street hereafter made, and of every alteration in a street, shall be made and filed with and kept in the office of said clerk. Said record and map shall be prima facie evidence of the facts therein stated, described or portrayed, in all actions and courts.

Recording and filing of.

Records and maps prima facie evidence.

(§ 229 Repealed by Laws of 1895, Chap. 371.)

Claims for damages arising from defective streets, sidewalks, etc.

Sec. 230. All claims against the city for damages or injury alleged to have risen from the defective, unsafe, or dangerous condition of any street, highway, bridge, culvert, sidewalk or crosswalk of or in said city, or from negligence of the city authorities in respect to any street, highway, bridge, culvert, sidewalk or crosswalk shall, within three months after the happenings of such damage or injury, be presented by or in behalf of such claimant to the mayor or city attorney in writing, signed by the claimant or his agent or

When and to whom presented.

representative's attorney, and duly verified by one of such parties, describing the time and location of the place where such injury occurred, cause and extent of damage or injury. The omission to present such claim as aforesaid within said three months shall be a bar to any action or proceeding therefor against the city. No action for such damages or injury shall be maintained unless commenced within two years from the happening of the same. Every process commencing an action against the city, shall be served on the mayor of said city, and not otherwise.

Must be verified.

When an action cannot be maintained.

Process to be served on mayor.

Sec. 231. The common council of said city shall have power to clear out and deepen the channel of the Chemung river through said city, so that, in times of flood, the said river shall have as much waterway within its banks as when said river was in its natural state, and to keep the channel of said river cleared and deepened as aforesaid, and they shall have power to cause to be removed all unlawful obstructions therein (except buildings heretofore or hereafter to be erected, or erections heretofore made for mechanical purposes), and they shall have power to levy and collect at any time, in the manner in which other taxes are collected in said city, a special tax sufficient for the purposes aforesaid, from the taxable property any taxpayers of the city, according to the valuation of the last city assessment.

Chemung river; power to clean out and deepen channel and remove obstructions in.

May levy and collect special tax therefor.

Sec. 232. The said common council may pass ordinances prohibiting the erection of buildings on the banks of said river so as to obstruct the flow of the waters thereof in times of flood, and prohibiting the driving of piles, or the putting of ob-

Ordinances prohibiting erection of buildings on river bank.

structions in said river, under such penalties as they may deem best.

(§233 *Repealed by Laws of 1895, Chap. 371.*)

Jurors, return
of from city.

Sec. 234. The city shall be regarded as a town under and for the purposes of the provisions of article two of title three of chapter ten of the code of civil procedure, respecting the return of jurors, and the supervisors and clerk of the said city shall perform the duties thereof as enjoined upon the supervisors, assessors and town clerk of the several towns of the state, except that a duplicate list of the return of jurors made by them shall be filed in the office of the clerk of the city. Each ward of the city shall be regarded as a town under the fourth article of the fourth title of the eleventh chapter of the first part of the revised statutes; and the supervisor and alderman of each ward shall be fence viewers and shall possess all the powers and authority in respect to division fences or walls in their ward, which are given by the said article to town fence viewers with respect to division fences.

Each ward to
be regarded as
a town.

Fence viewers,
supervisors
and aldermen
to act as such.

Holding over
of office.

Sec. 235. All officers appointed pursuant to the provisions of this act shall, upon the expiration of their respective terms, continue to hold their respective offices until a successor thereto is appointed and has qualified. Any appointed officer may be removed by the common council except as otherwise herein provided, upon specific charges in writing preferred against such officer, and filed with the city clerk, and a reasonable notice to such officer that such charges have been made, and of the time and place of a hearing thereon, and a hearing thereon if requested by such officer

Removal of
appointive
officers.

by the votes of ten members of the common council. Each appointed officer shall, within ten days after receiving notice of his appointment, take the constitutional oath of office and qualify by executing and filing the required bond in case a bond be required of him. If an appointment of a person to fill a vacancy in an appointive office be made by the officer or by the officers, body or board of officers authorized to make appointments to the office for the full term, or by the common council, the person so appointed to such vacancy shall hold office for the balance of the unexpired term. In case of a vacancy occurring for any reason in any appointive office before the expiration of the full term thereof, the vacancy shall be filled by the same officer or body or authority or authorities empowered to make the regular appointment for such office for the full term. Any officer elected or appointed now in, or heretofore elected to an office, not continued or provided for under this act, shall, until the term for which he was appointed or elected has expired, continue to perform the duties and be subject to all the responsibilities and liabilities provided for and imposed upon such officer by the act or law under which he was appointed, or elected, and the general laws of the state so far as may be. Any officer elected or appointed now in an office continued or provided for under this act, shall continue to hold his office until the expiration of the term for which he was elected or appointed except as herein otherwise provided, and all the provisions of this act defining and regulating the rights, powers and duties of such officer shall apply to and regulate the rights, powers and duties of such officers. All firemen and other employes of said city or the departments may continue to be such without reappointment under this act.

Oath of appointive officer

Term of appointees to fill vacancies.

Vacancies in appointive offices.

Officers to continue to perform duties, etc.

Ordinances,
etc., continued.

Sec. 236. All ordinances and by-laws heretofore passed by the common council of said city, or by any board thereof, and not inconsistent with this act or with law, shall continue in full force and effect until amended or repealed.

Word "person"
defined.

Sec. 237. The word "person" as used in this act shall be construed to include all persons, firms, companies, corporations and associations.

Public act.

Sec. 238. This act is hereby declared a public act and shall take effect January first, eighteen hundred and ninety-five.

- Repeal.

Sec. 239. Chapter three hundred and seventy of the laws of eighteen hundred and seventy-five, and all acts and parts of acts amendatory thereof, or supplemental thereto, and all acts and parts of acts inconsistent with and repugnant to the provisions of this act are hereby repealed; but such repeal shall not revive any act or part thereof heretofore repealed and nothing herein contained shall be so construed as to destroy, impair, or take away any right or remedy acquired by any act hereby repealed; and all proceedings or actions commenced under such acts may be carried out and continued as though this act had not been passed except as herein otherwise provided.

Saving clause.

LEGISLATIVE ACTS

Relating Specially to

The City of Elmira.

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ACTS

RELATING TO THE

ELMIRA WATER WORKS CO.,

OF THE

CITY OF ELMIRA, N. Y.

Being Chapter 402 of the Laws of 1869.

ACTS
RELATING TO THE
Elmira Water Works Co.

Being Chapter 402, Laws of 1869.

An act to incorporate the Elmira Water Works Company, and to provide for supplying water to the city of Elmira.

(Passed April 29, 1869; three-fifths being present.)

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

SECTION 1. Jervis Langdon, Edwin Eldridge, Alexander S. Diven, George M. Diven, James L. Woods, Uriah S. Lowe, Eugene Diven, and all such persons as are or may hereafter be associated with them, are constituted a body corporate, by the name of the Elmira Water Works Company.

SEC. 2. The capital stock of said company shall be fifty thousand dollars, to be divided into shares of one hundred dollars each, and the said company is hereby empowered to increase its capital stock at any time not to exceed one million dollars.

Thus amended by Chapter 49, Laws of 1887.)

SEC. 3. Books of subscription for the capital stock of said corporation shall be opened under the direction of the directors hereinafter named, subject to such rules and regulations as they shall prescribe, and the stock shall be considered personal property,

and shall be assignable and transferable on the books of the company.

SEC. 4. The concerns of said corporation shall be managed by seven directors, who shall be stockholders, and who shall hold their offices for one year and until others are chosen in their places. The directors shall be chosen annually on the first Monday of June, at such time of day and place in the city of Elmira as the directors for the time being shall appoint. The first election shall be held on the first Monday in June, eighteen hundred and sixty-nine. Three weeks' notice of such election, and of every subsequent election, shall be given by publication, at least once in each week, in two newspapers published in said city, if so many newspapers shall be published therein. Each stockholder shall be entitled to one vote upon each share of stock held by him or her, for at least twenty days previous to an election. Voting shall be by ballot, and may be in person or by proxy. The stockholders may at any annual meeting for the election of directors, by a vote of the majority of the stock of the company, increase the number of directors to any number, not exceeding eleven.

(Thus amended by Chapter 49, Laws of 1887.)

SEC. 5. The directors shall annually appoint a president, secretary and treasurer, and such other officers as they shall deem necessary, who shall hold their offices until others are appointed in their places, and may make and ordain such by-laws and regulations as they may deem necessary and proper for the management of their business and for accomplishing the purposes of the corporation.

SEC. 6. The directors may require payment of subscriptions to the stock at such times and in such

proportions as may see fit, under the penalty of forfeiting all stock and previous payments thereon, and may sue for and recover all such subscriptions. Notice of the time and place of said payments shall be published for four weeks previous to said time, at least once each week, in two newspapers published in said city.

SEC. 7. The persons named in the first section shall be the first directors, and shall hold their offices until the said first Monday of June, eighteen hundred and sixty-nine, and until others are chosen in their places, and in case of vacancy in the direction by reason of the death or resignation of any director or of his ceasing to be a stockholder, it may be filled by the remaining directors, until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen the directors may appoint three from time to time. The directors may remove all officers appointed by them and appoint others in their places, and fill all vacancies in the offices. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day in such manner as shall be prescribed by the directors or provided for by the by-laws.

SEC. 8. For the purpose of supplying the said city of Elmira with pure and wholesome water, the said company may purchase, take and hold any real estate, and by its directors, agents, servants or other persons employed, may enter upon the lands of any

person or persons, which may be necessary for said purpose, and may take the water from any springs, not used for domestic purposes, streams, fountains, rivers, ponds or lakes, and divert and convey the same to the said city, and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs, and other works or machinery necessary or proper for said purpose, upon any lands so entered upon purchased taken or held, and may as aforesaid enter upon any lands, streets, highways, roads, lanes or public squares through which said company may deem it proper to convey the water from said springs, streams, fountains, rivers, ponds or lakes, and lay and construct any pipes, conduits or other works for that purpose, under and subject to such reasonable rules, regulations and penalties as the common council of said city may from time to time prescribe, and leaving the said lands, streets, highways, roads, lanes and public squares, in the same condition, as nearly as may be, as they were before said entry, and the said city may sue and recover from said company for any damages that may be sustained by said city by reason of failure on the part of said company so to restore said lands, streets, highways, roads, lanes and public squares. And the said company may purchase, upon such terms as may be agreed upon, any works now existing for supplying said city with water, and may pay therefor in the shares of the capital stock of said company at the par value of said shares, and the shares of capital stock issued to pay for such works shall, for all the purposes of this act, be considered as full paid shares of said stock.

SEC. 9. Before entering, taking or using any land for the purpose of this act, the directors of said company shall cause a survey and map to be made of the lands intended to be taken or entered upon

for any of said purposes, and by which the land of such owner or occupant intended to be taken or used, shall be designated, and which map shall be signed by the surveyor or engineer making the same, and by the president of said company and be filed in the office of the clerk of the county of Chemung. The company, by any two, three or four of its officers, agents or servants, may enter upon any lands for the purpose of making any examination, and of making said survey and map.

SEC. 10. In case the said company cannot agree the said owners and occupants of any lands or water intended to be taken or used as aforesaid, for the purchase thereof, or with any person who may be injured or suffer damage by reason of the permanent diversion of water, intended to be taken or used as aforesaid, the directors may apply to the Supreme Court, at any term or session thereof, held in the sixth judicial district, for the appointment of three commissioners, by whom the compensation to be paid for the damages suffered or to be suffered by any person or persons, by reason of taking or diverting said lands and water, and constructing any of the works of said company, shall be ascertained and determined; and in case of the death, resignation, refusal or disability to act of any of said commissioners, the said court may appoint others in their places. The commissioners shall cause a notice of at least twenty days, of the time and place of meeting, to be served upon such of the owners of said land and water as can be found in this state, which may be served personally, or, in their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age; and in case of any legal disability of such owner to act, by serving notice in like manner upon his guardian or person appointed to

act for him, as hereinafter directed ; and in case any of said owners cannot be found in this state, such notice shall be served upon them as is required in the case of procedure for the service of summons on non-residents of this state ; and if any of said owners shall be married women, insane, infants or idiots, the court shall appoint some suitable person to attend in their behalf before said commissioners, and take care of their interests in the premises. The commissioners may issue subpoenas to compel the attendance of witnesses to testify before them, and they or any one of them may administer the usual oaths to such witnesses. They shall make a written report of all their proceedings containing the testimony taken by them, and showing the sum awarded to each owner or any other person, and return the same to the said court to be filed of record. The company shall pay to each commissioner the sum of three dollars per day for every day necessarily spent by him in the performance of his duties under this act, and to each witness sworn and testifying, and if not sworn and testifying, who the commissioners shall certify were properly and necessarily subpoenaed, the sum of one dollar per day and four cents per mile travel in going and returning, if living more than three miles from the place of meeting.

SEC. 11. The said company, or any party to the proceedings of the commissioners, may appeal from any award or determination of the commissioners ; providing the party appealing shall, within ten days after such award or determination shall be made and published, give notice in writing, as provided in the tenth section, of the appeal to the party or parties interested in the same, and the said court shall, upon the report of the commissioners and upon additional testi-

mony to be taken by them, if they deem the same to be necessary, proceed to hear the said appeals, and may confirm the proceedings of the commissioners, or may increase or diminish the amount of compensation awarded by the said commissioners; and if their proceedings in any case have been irregular, the court may set them aside, and order new proceedings and appraisement; and the said court may make such orders in reference to the proceedings of the commissioners and of the notice to be given to parties as may not be inconsistent with this act, and as the nature of the case and the interest of the parties may require.

SEC. 12. Upon the payment or legal tender of the compensation awarded by the said commissioners or (in case of appeal) by the said court, the said company shall be entitled to enter upon, for the purposes contemplated by this act, all the lands, waters and real estate for which said compensation shall be paid or tendered, as aforesaid, and to hold, use and divert the same and continue to hold, use and divert the same for the said purposes, to it and its successors forever. If any person to whom any compensation shall be awarded, or who shall be entitled to the same by virtue of said award, cannot be found, or shall refuse to receive the sum awarded to him when duly tendered, then the said payment may be made by depositing the amount of said award to the credit of said person in such bank as may be appointed by said court, and by serving notice upon him as provided in the tenth section hereof, of such deposit having been made. If the person to whom compensation is awarded, or who is entitled to receive the same as aforesaid, be under legal disability, as aforesaid, payment may be made to his guardian, or person appointed, as aforesaid,

by the said court, and if said guardian, or person appointed, cannot be found, then by deposit in bank as aforesaid.

SEC. 13. The said company shall also take and hold for the purposes contemplated by this act, all the lands, waters and real estate which it shall in any way legally enter upon and take by virtue thereof, to it and its successors forever.

SEC. 14. The said directors of said company may establish rules and regulations for and concerning the conduct of all such persons as shall use the water from their works, so far as respects the preservation and use, and restraining the waste thereof, and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so that such penalty and forfeiture shall not, in any case, exceed twenty-five dollars, which penalties may be recovered, with the costs, in the name of the company, before any justice of the peace of said city, said rules and regulations shall be published for three weeks successively, in two newspapers published in said city, and a copy of said rules and regulations, certified by the president or secretary of said company, with affidavits of the publication of the same, made by any of the publishers of said papers, or by a foreman of their offices, shall be received as evidence in all courts and places.

SEC. 15. The said company shall furnish water to the city of Elmira, for the purpose of extinguishing fire and for other purposes required by said city, upon such terms as may be agreed upon between said company and the common council of said city, and the said common council may contract with said company for such water for a period of time

not to exceed five years for any one contract, and may for that purpose raise by tax, in the manner provided in the charter of said city, for the raising of other taxes, sufficient funds in addition to the taxes which said common council may now levy and collect ; and if the said city and the said company cannot agree upon terms for such supply of water, application may be made by the common council of said city for the appointment of commissioners as provided in section ten of this act, who shall prescribe the terms upon which said water shall be furnished, subject to an appeal by either party, as provided in section eleven of this act ; and such company shall furnish water upon the terms so prescribed for the period of two years, at the expiration of which time a new commission may be applied for by said common council, and thereafter, once in two years a like application may be made.

SEC. 16. The said company may make any agreements, contracts, grants and leases for the sale, use and distribution of water to any person or persons, associations and corporations, which agreements, contracts, grants, and leases shall be valid and effectual in law, and may establish and alter from time to time, as may be deemed expedient, a uniform and reasonable tariff of water rates to be paid by the consumers of water furnished by said company.

SEC. 17. Any person who shall wilfully or maliciously destroy or injure, or cause to be destroyed or injured, any of the works or property of said company, or shall without permission enter upon the reservoir grounds of said company, or who shall maliciously or wilfully commit any act which shall injuriously affect or tend thus to affect or injure the

waters of any of the reservoirs of said company, or flowing thereto or therefrom, shall be deemed guilty of a misdemeanor, and may be punished by fine or imprisonment, or both, in the discretion of the court, and shall also forfeit and pay to the company treble damages sustained thereby, to be recovered in any court having cognizance thereof, with costs.

SEC. 18. Every person who shall wilfully or fraudulently injure or suffer to be injured any meter, pipe or fittings belonging to said company, or wilfully or fraudulently prevent any meter from duly registering the quantity of water supplied through the same, or shall wilfully or fraudulently alter the index of any such meter, or in any manner wilfully or fraudulently hinder or interfere with its proper action or just registration, or shall fraudulently use the water of said company, or waste the same, or shall wilfully or fraudulently divert or convey the water from or around such meter, shall for every offence forfeit and pay to said company the sum of fifty dollars, and in addition thereto, shall pay to said company the amount of damage sustained by reason of such injury, prevention, waste, consumption, diversion or hindrance, to be recovered in any court having cognizance thereof, with costs.

SEC. 19. The corporation hereby created shall possess the powers and be subject to the provisions of title three, chapter eighteen of the first part of the revised statutes.

SEC. 20. All the stockholders of the company hereby created, shall be severally and individually liable to the creditors of said company to an amount

equal to the amount of stock held by them, respectively, for all debts and contracts made by said company, until the whole amount of the capital stock fixed and limited by the directors of said company shall be paid in.

SEC. 21. The stockholders of said company shall be jointly and severally liable for all debts that may be due and owing all their laborers and servants for services performed for said company.

SEC. 22. No person holding stock in said company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of said company, but the person pledging the said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly. And the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such fund would have been if he had been living and competent to act, and held the stock in his own name. Every such executor, administrator, guardian or trustee shall represent the shares of stock owned by him as such administrator, guardian or trustee at all meetings of the company, and may vote as a stockholder; and every person pledging his stock as aforesaid may, in like manner, represent the same and vote accordingly.

SEC. 23. If the directors shall, at any time after the organization of said company determine to increase the capital stock, as herein provided, the said new stock shall be divided among the stock-

holders in proportion to the amount held by them respectively at the time of such increase, as they shall severally elect ; and in case the same shall not be so distributed, then books of subscription for the balance of such additional stock shall be opened in the manner provided in section three of this act, and the directors may require payment of the subscription to the said additional stock in the same manner as provided in section six of this act.

SEC. 24. The said corporation may borrow such sum or sums of money as may be necessary to complete said works and for other purposes authorized by this act, and for that purpose may issue and dispose of its bonds for any amount so borrowed : and the company is hereby authorized to mortgage any or all of its corporate property or privileges to secure the payment of such bonds ; and the said directors may confer on the holder of any bond they may issue, for any money so borrowed, the right to convert the principal due thereon in stock of the said corporation at any time not exceeding ten years from the date of said bond, under such regulations as the directors may see fit to adopt ; and for such purpose the said corporation is authorized to increase its capital stock to the amount so borrowed whenever the persons, or any of them, to whom such money is due, shall elect to convert the same into stock ; but nothing herein contained shall be construed to authorize any increase in the capital stock of said company beyond the sum of one million dollars.

(Thus amended by chapter 49, Laws of 1887.)

SEC. 25. The said city of Elmira may at any time purchase the property and works of said company

upon such terms as may be agreed upon between said city and said company, and may for that purpose make and issue its bonds for an amount sufficient to pay for the same ; but no such purchase shall be made unless ratified by a vote of the inhabitants of said city at a special election to be held in the manner prescribed in the charter of said city.

SEC. 26. This act shall take effect immediately.

AN ACT

TO ESTABLISH A

POLICE RELIEF FUND

IN THE

CITY OF ELMIRA.

Being Chapter 366 of the Laws of 1890.

AN ACT
TO ESTABLISH A
Police Relief Fund
IN THE
CITY OF ELMIRA.

Being Chapter 366 of the Laws of 1890.

Approved by the Governor, May 20, 1890. Passed, three fifths being present.

The people of the state of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. There shall be established in the city of Elmira a police relief fund which shall consist of five per centum of all excise moneys received and paid into the treasury of said city.

SEC. 2. The board of police of the city of Elmira shall be the trustees of the police relief fund hereby created, and the chamberlain of said city shall be the treasurer thereof. It shall be the duty of the city chamberlain on the first of each month to credit to the police relief fund five per centum of all excise moneys paid in the city treasury during the preceding month, and he shall keep the account of said funds separate and distinct from all other city funds.

SEC. 3. The police relief fund shall be used and expended in the discretion of the board of police for the following purposes and for no others : First, to pay for the care and maintenance of members of the police force of said city, disabled by sickness or injury while in the discharge of duty, and to pay

for injury to their uniforms and equipments sustained while in the discharge of duty. Second, to pay the widow, child or children of any member of the police force of said city who shall have been killed while in the actual performance of police duty, or who shall have died from the effects of any injury received while in the actual performance of such duty, such sum in gross or annual pension as to the board of police shall seem right and proper under the circumstances of the case. Third, to pay annual pensions to such member or members of the police force as in the discretion of the board of police shall be entitled thereto by reason of meritorious service.

SEC. 4. The board of police shall have the power to invest the police relief fund or any part thereof in such manner as to them shall seem proper for the purpose of carrying into effect the provisions of this act. Nothing herein contained, however, shall be deemed to impose upon said board of police the duty of granting an annual pension to any member of the police force or the family of any such member, unless the amount of the police relief fund shall be such as to warrant the granting of such pension.

SEC. 5. No money shall be appropriated from the police relief fund for the purposes in this act specified, or shall any part of said fund be invested in any manner except by a concurring vote of at least three members of the board of police present at a regular or regularly called meeting thereof.

SEC. 6. This act shall take effect immediately.

AN ACT

TO SECURE THE

Registration of Plumbers

AND THE SUPERVISION OF THE

Plumbing, Drainage and Ventilation of Buildings

IN THE

CITY OF ELMIRA.

Being Chapter 32 of the Laws of 1891.

AN ACT

TO

Secure the registration of Plumbers and the Supervision of the Plumbing and Drainage and Ventilation of Buildings in the City of Elmira. Being Chapter 32 of the Laws of 1891.

AN ACT to secure the registration of plumbers and the supervision of the plumbing and drainage and ventilation of buildings in the city of Elmira.

Approved by the Governor February 24, 1891.
Passed, three-fifths being present.

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

SECTION 1. On or before the first day of March, eighteen hundred and ninety-one, every master plumber carrying on his trade in the city of Elmira, shall, under such rules and regulations as the board of health of the said city shall prescribe, register his name and address at the office of the board of health ; and after the said date it shall not be lawful for any person to carry on the trade of plumbing in said city unless his name and address be registered as above provided.

SEC. 2. A list of the registered plumbers of the city of Elmira shall be published in the same manner in the public papers as other publications made by the said city, at least once in each year.

SEC. 3. The draining and plumbing and ventilation of all buildings, both public and private, hereafter erected in the city of Elmira, shall be executed in accordance with plans previously approved in writ-

ing by the said board of health. Suitable drawings and descriptions of the said plumbing and drainage and means for ventilation shall in each case be submitted and placed on file in the office of the board of health. The said board of health is also authorized to receive and place on file drawings and descriptions of the plumbing and drainage of the buildings erected prior to the passage of this act.

SEC. 4. Any court of record in said city, or any judge or justice thereof, shall have power at any time after the service of notice of the violation of any provisions of this act, and upon the affidavit of the president of the board of health, and any member thereof, or of the health officers of said city, to restrain, by injunction order, the further progress of any violation named in this act, or of any work upon or about the building or premises upon which the said violation exists; and no undertaking shall be required as a condition to the granting or issuing of such injunction, or by reason thereof.

SEC. 5. The board of health of the city of Elmira shall have power to adopt such rules and regulations for the registration of plumbers and the filing of plans for drainage and ventilation in the city of Elmira as such board shall deem proper.

SEC. 6. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor.

SEC. 7. This act shall take effect immediately.

A N A C T
IN RELATION TO THE
A N C H O R A G E
IN THE
City of Elmira,

Being Chapter 227 of the Laws of 1892.

Approved by the Governor, April 5, 1892. Passed, three-fifths being present.

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

SECTION 1. The Anchorage, a corporation created under the laws of this state for the promotion of Christian work and the improvement of the spiritual and moral condition of women who shall come under its care, and having its location in the city of Elmira, may make by-laws not inconsistent with law, providing for its custody, with or without confinement in its buildings in such city of women committed to it in pursuance of its act; for the proper care and maintenance, the disciplinary and reformatory treatment and probationary release on parole of such women while so in its custody; and for such administration of its affairs, as to its trustees may seem desirable, by an executive committee to be composed of at least five of its trustees.

SEC. 2. The by-laws of such corporation may be submitted to the state board of charities for approval. The state board of charities may make and annex to a copy of such by-laws its certificate in writing dated the day when made to the effect that it approves such by-laws and that one or more members of such board within thirty days before the date of such certificate personally inspected the

buildings and management of such corporation and that such board is satisfied that such corporation is properly prepared to and will for at least one year thereafter receive into its custody and properly care for women committed to it in pursuance of this act.

SEC. 3. Such copy of the by-laws of said corporation and certificate of the state board of charities annexed thereto may, within one year after the date of such certificate, be filed and recorded in the clerk's office of the county of Chemung and a copy of such by-laws and certificate duly certified by the clerk of Chemung county may be filed and recorded in the clerk's office of each of the counties of Steuben, Schuyler, Tompkins and Tioga.

SEC. 4. If the state board of charities shall make such certificate and any women shall be committed to the Anchorage in pursuance of this act, one or more of the members of such board shall so long as any women so committed shall remain in the custody thereof, annually within sixty days before the expiration of each year after the date of such certificate, personally inspect the buildings and management of such corporation; and such board shall after such inspection make a certificate in writing dated as of the day upon which it is made either substantially to the same effect as the first certificate or substantially to the contrary effect; and the certificate so made shall be filed by such board in each county clerk's office in which the certificate of the last previous year shall have been filed. And after the filing of such certificate substantially contrary to such first certificate no commitments shall be made to the Anchorage by virtue of this act.

SEC. 5. During the period of one year after the date of the first certificate of the state board of charities filed in the clerk's office of Chemung county and during each year after the date of the filing of each subsequent certificate of the state board of charities substantially to the same effect as the first certificate the recorder of the city of Elmira shall commit any woman between sixteen and thirty years of age convicted by him or by the court of special sessions held by him of being a prostitute or of frequenting any house of ill fame, or of disorderly conduct or of being a disorderly person, for the first offence; and may commit any woman actually or apparently under twenty years of age, convicted by the court of special sessions held by such recorder of any misdemeanor, to the Anchorage to be there detained subject to its by-laws so approved by the state board of charities and filed.

SEC. 6. Any magistrate in any other county in which a certified copy of such first certificate of the state board of charities is authorized to be filed may, if a certified copy of such first certificate or of any subsequent certificate of the state board of charities to the same effect shall be filed in such county during the period of one year after the date of any such certificate, commit any woman between sixteen and thirty years of age convicted by such magistrate or by a court of special sessions held by such magistrate of prostitution or of frequenting any house of ill fame, or of disorderly conduct or of being a disorderly person for the first offence; and any woman actually or apparently under twenty-one years of age; and any woman convicted by the court of special sessions held by such magistrate of a misdemeanor, to the Anchorage to be there detained subject to the rules and regulations of the state board of charities.

SEC. 7. No person committed to the Anchorage in pursuance of this act shall be deprived of her liberty by virtue of such commitment for a longer period than such person might have been committed to a county jail upon conviction of the offence of which the conviction was had by virtue of which the commitment was made.

SEC. 8. The board of supervisors of any county from which commitments are authorized to be made to the Anchorage by virtue of this act may contract with the Anchorage for the support of women committed to the Anchorage from such county and the amount payable to the Anchorage in pursuance of such contract shall be a county charge upon such county.

SEC. 9. After the state board of charities shall have approved the by-laws of the Anchorage such by-laws shall not thereafter be changed except with the approval of such board. If the state board of charities shall at any time make a certificate substantially contrary to the effect of such first certificate made by it such board of charities shall immediately thereupon cause each woman then in the custody of the Anchorage by virtue of this act to be taken before a magistrate or a court of special sessions of the town, city or village from which such woman was committed and such magistrate or court may thereupon discharge such woman from such commitment or may recommit such woman to the county jail of the county for a period which together with the period since the date of the first commitment shall not exceed the total period for which such woman might have been committed to jail upon her original conviction by virtue of which her commitment to the Anchorage was made.

SEC. 10. The executive committee of said Anchorage shall have power to cause to be detained therein, under such proper rules and regulations as the board of trustees shall provide, any female so committed thereto according to the terms of said sentence and commitment, and to cause the rearrest in any county of this state, and return to said Anchorage, of any person who may have escaped therefrom or been conditionally discharged therefrom, as herein provided, and in such case or such rearrest and return, to detain her as aforesaid from the time of such return, for a time equal to the unexpired portion of her time at the time of her escape or conditional discharge.

SEC. 11. The executive committee shall employ suitable persons to convey from the place of conviction to the said Anchorage, all women duly committed thereto, and said persons shall have the power and authority of deputy sheriffs. All expenses of such conveying shall be paid by the treasurer of the board of such Anchorage.

SEC. 12. In any case of the escape of any inmate from said Anchorage, any person duly employed by said executive committee to convey to said Anchorage women committed thereto, shall have power to arrest such escaped inmate in any county in this state without a warrant, and forthwith to convey her to said Anchorage; and any magistrate shall have power to cause any such escaped inmate to be arrested and held in custody until she can be removed to said Anchorage, as in case of her first commitment thereto.

SEC. 13. Any person committed to the Anchorage may be discharged therefrom conditionally or otherwise in the discretion of the executive com-

mittee, whenever in the judgment of said committee there is satisfactory evidence of the reformation of such person, provided that in no case of sentence for a certain definite period shall commutation or abridgement of sentence be made for more than one-third of the period specified in the warrant of commitment without the concurrence in writing of the committing magistrate, or of his successor in office.

SEC. 14. Any person having been conditionally discharged from said Anchorage may be arrested and returned thereto upon the warrant of the executive committee of said Anchorage, issued by order of said committee, signed and attested by the chairman of said committee, which warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to any person employed by said executive committee to convey to said Anchorage persons committed thereto, and when so signed, attested and delivered may be executed by such person in any county of this state.

SEC. 15. It shall be the duty of every justice of the peace, police justice or other magistrate or court committing any woman under authority given by this act immediately to notify the superintendent of said Anchorage of such conviction, and to cause a record to be kept of the name, age, birthplace, occupation, previous commitment if any, and for what offenses (and last place of residence of such woman or women) so committed by them together with the particulars of the offense charged. A copy of said record shall be transmitted with the warrant of commitment to the superintendent of said Anchorage, who shall enter and keep in a book of record all these and such other

facts as are by law required concerning inmates of poor-houses.

SEC. 16. Any court or magistrate authorized to commit any female to said Anchorage shall before so committing her inquire into and for the purpose of the case determine the age of such female at the time of such commitment, and her age as so determined shall be stated in the warrant; and when the year only is stated, it shall be considered as expiring on the day on which the warrant is dated and the statement of age of such female so made in said warrant of commitment shall be conclusive evidence as to the age of said female in any action to recover damages for her detention or imprisonment under said warrant, and shall be presumptive evidence of the age of such female in any other inquiry, action or proceeding relating to such detention.

SEC. 17. Whenever any person committed to such institution by a magistrate court or justice of the peace, as provided in this act, shall by reason of insubordination or other improper conduct prove, in the judgment of the executive committee of said institution, to be an improper subject for care in said Anchorage, it shall be the duty of the executive committee of said Anchorage thereupon to cause the return of such female to the county from which she was committed in the custody of one of the persons employed by said executive committee to convey to said Anchorage women committed thereto, who shall deliver her into the custody of the sheriff of such county to be by said sheriff taken before the court or magistrate which committed her to said Anchorage, or some other court or magistrate having equal jurisdiction in such county to be by such court or magistrate resentenced

for the offense for which she was committed to said Anchorage, and dealt with in all respects as though she had not been committed to said Anchorage, and in such case all costs and expenses incurred and paid by said board of trustees on account of such female so returned shall be a county charge upon such county to be levied and collected as other taxes in said county and paid over to said board of trustees and credited to the account to which such expenses were charged.

SEC. 18. In case any woman committed to said Anchorage at the time of such commitment shall be the mother of a nursing child in her care under one year of age, or be pregnant with child which shall be born after such commitment, such child may accompany its mother and remain in said Anchorage until such time as in the opinion of the board of trustees such child can properly be removed therefrom and suitably provided elsewhere.

SEC. 19. For the safe management and discipline of said Anchorage the superintendent thereof is hereby given and is required to exercise, in regard to women committed to said Anchorage, the same power as jail keepers and constables have in regard to persons committed or held in custody of said officers.

SEC. 20. Nothing herein contained shall interfere with the right of the freedom of worship of any inmate confined within said institution, as provided by the constitution of the state of New York.

SEC. 21. This act shall take effect immediately.

AN ACT

TO ESTABLISH A

Supreme Court Library

IN THE

City of Elmira.

Being Chapter 231 of the Laws of 1895.

AN ACT
TO ESTABLISH A
Supreme Court Library
IN THE
City of Elmira,
Being Chapter 231 of the Laws of 1895.

Became a law April 4, 1895, with the approval of the Governor. Passed, three-fifths being present.

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

SECTION 1. There shall be a law library located in the city of Elmira, in the county of Chemung, which shall be called "The Supreme Court Library at Elmira."

SEC. 2. The said library shall be under the care and management of a board of trustees, which board shall consist of three members who shall be appointed by the governor from among the members of the Chemung County bar, who shall have practiced law for at least ten years. After the passage and approval of this act the governor shall appoint one member of said board who shall serve until the thirty-first of December, eighteen hundred and ninety-seven, one member who shall serve until the thirty-first day of December, eighteen hundred and ninety-six, and one member who shall serve until the thirty-first day of December, eighteen hundred and ninety-five. At the expiration of such terms the governor shall appoint successors to said trustees, who shall serve for three

years. The said trustees shall also serve until their successors are appointed. All appropriations made for said library shall be paid to said trustees, to be by them or a majority of them disbursed in the purchase of books for said library. The said trustees may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover for such penalties, and may maintain actions for injuries to said library. They may procure proper furniture for said library; hire suitable rooms; provide fuel and lights; and defray all the incidental expenses of the care and management of said library, including the insurance thereof. The amounts required therefor shall be paid by the treasurer of the county of Chemung upon the certificate of the resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court of the district, out of the moneys raised in said county for court expenses, which sums, as well as the salary of the librarian hereafter specified, shall be a county charge upon said county of Chemung.

·SEC. 3. The librarian of the Supreme Court Library at Elmira shall be appointed by said board, and shall hold office during the pleasure of said board. The salary of said librarian shall be paid quarterly on the first days of January, April, July and October in each year and the amount thereof shall be fixed in the month of October in each year for the following year by said board, but such salary shall not exceed five hundred dollars in any year, and the same shall be paid by the treasurer of the county of Chemung out of the moneys raised in said county for court expenses, upon the certificate of the resident justice of the supreme court if there be one, and if not, upon the certificate of any

justice of the supreme court in the district. Said librarian shall be subject to the directions of said board and shall be governed by such rules as it shall from time to time make.

SEC. 4. The sum of three thousand dollars is hereby appropriated to be expended in the purchase of books under the direction and supervision of said trustees, or a majority of them, which sum shall be paid by the treasurer of the state from the general fund upon the warrant of the comptroller. The warrant of the comptroller shall not, however, be issued for the above mentioned sum until an equal amount shall be raised either by private subscription or by resolution of the board of supervisors of Chemung county for the same purpose. The certificate of the aforesaid board of the fact shall be evidence to the comptroller that the said sum has been raised.

SEC. 5. This act shall take effect immediately.

AN ACT

IN RELATION TO THE

Public Schools

IN THE

City of Elmira.

Accepted by the City, and Known as Chapter 370
of the Laws of 1895.

A N A C T
IN RELATION TO THE
PUBLIC SCHOOLS

IN THE
City of Elmira,

**Accepted by the City, And Known as Chapter 370 of the
Laws of 1895.**

Became a law April 22, 1895, with the approval of the Governor. Passed, three-fifths being present.

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

SECTION 1. The territory embraced within the corporate bounds of the city of Elmira shall constitute one school district, to be called, "the school district of the city of Elmira," and the boundaries of said school district and of said city shall always coincide; but no change in the boundaries of said city shall take effect as respects said school district until the close of the school year in which such change is made. In case any extension of the boundaries of said city shall divide a school district so as to bring within said boundaries any school lands or buildings belonging to such divided district, the trustee or trustees of said district residing without such extended boundaries, or if there be no such trustee at the time of such extension then such trustee or trustees as may thereafter be elected by the inhabitants of said district residing without said boundaries, and the board of education of said city shall, if they can agree, make such regulations, arrangements or disposition of, or respecting such school lands or buildings as they may

deem just and proper, and for that purpose may provide for the joint or common use of said lands or buildings; or may sell the same or any part thereof and make an equitable division of the proceeds of such sale; or the said board or said trustee or trustees may have and retain the exclusive property in and use of said lands or buildings upon making proper compensation to the party surrendering its interest therein; and in case the said trustee or trustees should so hold and use the said lands or buildings, the same shall for school purposes, form and be a part of said school district, and so long as said land or buildings are so held or so used, they shall be exempt from all taxation within said city. In case said trustee or trustees and said board of education shall fail to agree in whole or in part upon such regulation, agreements or disposition of said lands or buildings, the matters of difference between them respecting the same shall be submitted to the school commissioner of Chemung county, who shall decide the same subject to appeal upon the matters decided, or any of them, to the superintendent of public instruction in the manner prescribed in section one of title fourteen of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety four, entitled the consolidated school law.

SEC. 2. The said school district of the city of Elmira shall remain and continue separate and distinct for the purposes and to the extent in this act specified. The commissioner districts shall continue as at present, subject only to such changes as shall be made in making the boundaries of said school district and city correspond, and such changes as the board of education of said city may find necessary at any time to make, provided that no

change shall be made which shall reduce the population of a commissioner district to less than three thousand inhabitants.

SEC. 3. The present nine school commissioners of the said school district and their successors to be chosen as hereinafter provided are hereby continued as heretofore constituted, a corporate body in relation to all the powers and duties conferred or imposed by law, and styled, "The board of education of the City of Elmira," and are hereby invested with all the powers and charged with all the duties conferred upon them by this act. A majority of commissioners shall constitute a quorum.

SEC. 4. On the second Tuesday of October, eighteen hundred and ninety-five, and biennially thereafter, there shall be elected in the manner hereinafter provided in each of said commissioner districts, the number of which is an odd number, one school commissioner, who shall be a resident of such district. On the second Tuesday of October, eighteen hundred and ninety-six, and biennially thereafter, there shall be elected in the manner hereinafter provided in each of said commissioner districts, the number of which is an even number, one school commissioner, who shall be a resident of such district. Each commissioner so elected shall hold his office from the day of his election until the second Tuesday of October of the second year thereafter and until his successor be chosen and qualified to act. Each election of a school commissioner herein provided for shall take place and be had at such place or places as the board of education of said city shall designate within the district electing such commissioner, and the polls therefor and thereat shall be and continue open from one o'clock in the afternoon until seven o'clock in the after-

noon of that day. The said board of education shall cause to be published in a newspaper of said city daily for the period of three days last prior to the day of such election, notice of such election and the places and hours of holding the same. At a meeting of said board of education the president thereof shall designate a commissioner or commissioners of such board other than the district commissioner of the district electing such commissioner to preside at such election. In case any other designated commissioner shall, on account of his sickness or other insurmountable cause, be unable to attend and preside at such election, he shall cause notice of such inability, immediately upon the occurring thereof, to be given to the president of such board, who shall immediately thereupon designate and notify in writing another commissioner of such board other than the commissioner of the electing district to preside at such election, such commissioner designated shall attend and preside over such election. In case, for any cause, there are at the time of holding an election for school commissioners not enough commissioners other than the commissioner of the electing district able to preside at the polls, the president shall appoint the superintendent of schools or secretary of the said board of education or other person who shall be a resident of said city and a qualified voter at a school election thereof but not a resident of the commissioner district within which said election shall be held, to preside at one of the polls with the same powers as a commissioner, and the said superintendent or secretary or such other person so appointed shall preside over such election. In case the person so appointed to preside over any such election shall on account of sickness, or other insurmountable cause, be unable to attend and preside at such election, and he shall

not be able to give to the president of such board, the notice above required, said person shall forthwith designate and notify in writing some other person, who shall be a resident of said city and a qualified voter at a school election therein, but not a resident of the commissioner district within which said election shall be held, and the person so appointed shall preside over such election. Such presiding officer shall, at the opening thereof, designate two persons who shall be residents of and qualified voters in such commissioner district, who shall act as inspectors of such election, and whose duties shall be to have at the opening thereof the ballot box provided by the presiding officer wholly empty of ballots and papers, to keep a true poll-list of the name and residence of each person offering to vote and of each person challenged and voting, and of each person challenged and not voting thereat, and to aid the presiding officer in counting the ballots and ascertaining the result of the election. At any time before or during such election each of the candidates may name one elector of said district as a watcher at the poll of such election district, and the person or persons so named as watchers, and each of them, shall be entitled to be present in the room occupied by the inspectors of election and the presiding officer, and in a position and place from which he or they may conveniently, fully and comfortably watch the reception and deposit of every ballot cast at such election, and the full and final canvass of the ballots cast and the signing of the proper certificates. In the canvass of the said ballots, upon the demand of a watcher therefor, any ballot may be presented to him for inspection, but no ballot shall at any time be taken by a watcher from the hands of the inspectors. The voting shall be wholly by ballot, which shall be of white book paper, cut three inches in width, and four inches in

length, designated as follows: For school commissioner of district number — (the number of the electing district being inserted in the blank after number), which may be printed or written, and the name of the candidate shall be printed or written near the middle of the ballot and below the designation. The ballot, when cast, shall be so folded that no printing or writing shall be exposed to view. The vote or ballot of any person offered at such election shall, upon challenge by any lawful voter thereat, be rejected, unless he be sworn as to his qualifications as such voter; and the presiding officer shall administer an oath to such person and to any other person offering to vote as he may deem advisable, to the effect that he will true answers make to such questions as shall be put to him touching his qualifications as a voter and his right to vote at such election, and such presiding officer shall thereafter examine him as to such qualifications and his right to vote. If he shall swear to the necessary qualifications of a voter, his vote shall then be received and deposited. If the person sworn and examined intentionally swears falsely as to his qualifications as a voter, he shall be deemed guilty of perjury, and shall, on conviction, be punished as now prescribed by law for the crime of perjury. The presiding officer shall provide a ballot box for the reception of ballots. Each ballot shall, by the person offering the same, be delivered to the presiding officer, who shall at once, unless it be challenged or he deem it advisable to administer the oath under the provisions hereinbefore made, deposit the same in the ballot box. At the close of the polls at such election the presiding officer and the inspectors in each election district shall immediately make a true and correct count of the ballots cast within such district, which count shall thereupon be publicly declared by said presiding

officer, who, with such inspectors, shall make and file with the clerk of the city of Elmira, within twenty-four hours next succeeding the close of such election, their certificate of the whole number of votes cast thereat, and the number received by each candidate, together with the poll list of the election in such district, certified by them to be correct and accurate. The person receiving the greater or greatest number of votes in each commissioner district shall be duly elected as commissioner from such district. Every presiding officer or inspector of such election who shall intentionally omit, neglect or refuse to do any act required by this section, or who shall intentionally do any act forbidden herein, shall be guilty of a misdemeanor. The board of education may, if they, at any election of school commissioners, deem it necessary designate more than one polling place in any commissioner district and divide the district with respect to such polling place or places. No person not a resident of the commissioner district for which an election of commissioner shall be held shall be eligible to vote at such election; and in case the board of education shall designate more than one polling place in any commissioner district and divide the district with respect to such polling place or polling places as hereinbefore provided, no person shall vote except at the polling place therein, which shall be within the subdivided district as prescribed by said board of education within which subdivided district said person shall reside.

(Thus amended, chapter 710, Laws of 1896.)

SEC. 5. On the Monday next preceding the second Tuesday of October, eighteen hundred and ninety-five, and annually thereafter, on the Monday next preceding the second Tuesday of October, the

common council of said city shall appoint two school commissioners for said school district to succeed the two commissioners appointed by the common council, whose term of office shall at that time expire. The persons so appointed shall hold their office from the time of their appointment, respectively, until the Monday next preceding the second Tuesday of October of the second year thereafter, and until their respective successors be appointed and qualified to act. Within ten days after receiving notice of his election or appointment, the person so elected or appointed shall take the oath of office prescribed by the constitution of the state, and file the same with the clerk of the city.

SEC. 6. All vacancies which may occur in said board of education, from any other cause than the expiration of their term of office, of the class known as commissioners at large, or commissioners appointed by the common council of the city of Elmira, shall be filled by the common council in the same manner that the original appointments are made, and vacancies occurring in like manner in the class known as district commissioners shall be filled by said board of education. The commissioners so appointed shall hold their offices for the unexpired term of those whose places they are chosen to fill. Any member of the board of education may resign his office by giving five days' previous notice in writing to the mayor of the city, who may, if he deems the reason sufficient, accept the same.

SEC. 7. Any member of the board of education may, for neglect of duty, immoral conduct or official misconduct, be removed from office by the common council of the city, by a vote of two-thirds present at any regularly called meeting thereof : but, before final action thereon, a written copy of the charges

preferred against said member shall be served upon him, and he shall be allowed an opportunity to explain or refute them.

SEC. 8. Annually at the first stated meeting of the board of education held after the annual election and appointment of school commissioners as hereinbefore provided, they shall elect one of their number president of the board, and whenever he shall be absent or unable to act, they shall elect a president pro tempore. The school commissioners shall receive no compensation for their services.

SEC. 9. The board of education shall meet for the transaction of business as often as once in each month, and may adjourn for a shorter time. Special meetings may be called by the president, or in his absence or inability to act, by any member of the board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence or business, at least twenty-four hours before the hour for such special meeting.

SEC. 10. The board of education shall appoint a secretary and librarian, who shall hold their offices during the pleasure of the board, and whose compensation shall be fixed by said board; and the same person may hold the office of superintendent, secretary and librarian. The secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The librarian shall have charge of the library or libraries of the district, and may appoint such assistants as may be necessary, from time to time, and such assistants may be removed at any time by the board of education.

SEC. 11. The record of the board of education, or a transcript thereof, certified by the secretary, shall be received in all courts as prima facie evidence of the facts therein set forth ; and such record, the books, accounts, vouchers and papers of the said board shall at all times be subject to the inspection of the common council of the city, or any committee thereof.

SEC. 12. The common council of the city of Elmira shall have power, and it shall be their duty to raise, from time to time, by tax, to be levied upon all the real and personal estate in said school district, which shall be liable to taxation for town or county charges, such sums as may be determined upon, and certified by the board of education, to be necessary and proper, for any and all the following purposes, for the current year :

1. To purchase, lease or improve sites for school-houses.
2. To build, purchase, lease, alter and repair school houses, outhouses, and appurtenances thereto belonging.
3. To purchase, exchange, improve and repair school apparatus.
4. To procure fuel, and defray the necessary expenses of keeping the schoolhouses in order, exclusive of repairs, including insurance.
5. To defray the contingent expenses of the public schools and the district library or libraries, including salary of librarian and superintendent.
6. To defray the contingent expenses of the

board of education, including the salary of the secretary thereof.

7. To pay teachers' wages, after the application of the public money appropriated by law for that purpose.

8. To pay charges or expenses incurred by law, or necessary to carry this act into effect, or to refund loans contracted by law, and to pay the interest thereon, or to pay such sums as shall be required to fulfill any contract duly made under the provisions of this act.

SEC. 13. The aforesaid tax, to be levied and collected by virtue of this act, shall be levied and collected in the same manner by the city chamberlain, and at the same time that other city taxes are, and the powers, duties and liabilities of the city chamberlain and his sureties shall be the same in reference to the collection of this tax as for other city taxes, and his jurisdiction shall extend, under this act, to all territory embraced in the said school district. If, for any cause, the other city taxes shall not be levied and collected at the time required by the city charter for such levy and collection, this section shall not be so construed as to prevent the levying and collecting of the school tax at that time.

SEC. 14. The money raised for the purpose of school sites, and the building, repairing and furnishing of schoolhouses, shall be known as "the special school fund," and all other moneys as the "general school fund," and it shall be the duty of the board of education to keep accurate accounts of its receipts and expenditures, distinguishing between those of a general and those of a special character: and it

shall not be lawful to expend any portion of the money raised for the use of one of said funds, for the purposes of the other of said funds, except by permission of the common council.

SEC. 15. All moneys raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said school district, shall be paid to the chamberlain of said city, who, together with the sureties upon his official bond, shall be accountable therefor, in the same manner as for other funds of said city, and the common council in fixing the amount of the chamberlain's sureties, shall include the moneys received by virtue of this act. The said city chamberlain shall be liable to the same penalties for official misconduct in relation to said money as for any similar misconduct in relation to other moneys of said city.

SEC. 16. All money raised by virtue of this act, or received from any other source, for the use of the public schools, shall be deposited with the city chamberlain for the safe-keeping thereof to the credit of the "board of education" until drawn as hereinafter provided for, and the said chamberlain shall keep the account of funds thus deposited with him separate and distinct from any other funds which he is or may be authorized to receive.

SEC. 17. The city chamberlain shall pay out the moneys received by him by virtue of this act only upon drafts drawn by the president and countersigned by the secretary of the board of education, which draft shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable to the person or persons entitled to receive the money thereon and state on what account said draft is drawn.

SEC. 18. The board of education may cause a suit or suits to be prosecuted in the name of the common council of the city of Elmira, upon official bond of the city chamberlain of said city, for any default, delinquency or official misconduct in relation to the collection, safe-keeping and payment of any money in this act mentioned.

SEC. 19. The said board of education shall have power and it shall be their duty :

1. To organize, establish and maintain such and so many schools in said "school district" as they shall deem requisite and expedient, and to alter and discontinue the same.

2. To purchase and hire schoolhouses and rooms, lots or sites for schoolhouses, and to fence and improve them.

3. Upon such lots and sites owned by said city to build, enlarge, alter, improve and repair schoolhouses, outhouses and appurtenances as they may deem advisable ; and for the purchase of said lots and the building and enlargement of such schoolhouses upon obtaining the consent of two-thirds of the common council of said city by a vote thereof duly taken and recorded, to issue the bonds of the city of Elmira to an amount outstanding at any one time, not exceeding two hundred and fifty thousand dollars, payable within twenty-five years from the issue thereof, with interest thereon at not exceeding six per cent, which bonds shall be signed by the mayor of said city and the president of said board, and shall have affixed thereto the respective seals, attested by the respective clerks of said city and said board, and may have attached thereto coupons or warrants for the payment of interest, which may

be made payable semi-annually, but such bonds shall not be sold for less than par value, with accrued interest, from the date thereof.

4. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages, and to provide fuel for the schools, pay the necessary insurance on buildings and school property, and to defray the contingent expenses of the school library.

5. To have the custody and safe-keeping of the schoolhouses and all school property belonging to said school district, and to see that the ordinances of the common council in relation thereto be observed.

6. To contract with, examine, license and employ all teachers in said schools, and at their pleasure remove them.

7. To pay the wages of such teachers and the superintendent out of the money appropriated and provided by law for the support of common schools in said school district, or by this act.

8. To defray the contingent expenses of the said board of education, the salary of the secretary thereof and the librarian.

9. To have in all respects the superintendence, supervision and management of the public schools of said district, and from time to time adopt, alter, modify and repeal, as they may deem expedient rules and regulations for their organization, government and instruction, or the reception of pupils and their transfer from one class to another, or from one school to another, and generally for their good order, prosperity and utility.

10. Whenever in the opinion of the board of education it may be advisable to sell any of the schoolhouses, lots or sites, or any of the school property now or hereafter belonging to the corporation, to report the same to the common council.

11. To prepare and report to the common council such ordinances and regulations as may be necessary and proper for the protection, safe-keeping care and preservation of schoolhouses, lots, and all property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations ; and annually, on or before the day for the last regular meeting of the common council in March to determine and certify to the common council the sums in their opinion necessary or proper to be raised under the twelfth section of this act for the year commencing on the first day of August thereafter, specifying the amount required for each of the purposes therein mentioned.

12. From time to time to adopt, amend or repeal such by-laws, rules and regulations respecting the meetings of said board and the transaction of its affairs as may be deemed proper.

SEC. 20. Upon the reception of the report of the board of education by the common council of the city Elmira in relation to the amount of money necessary for school purposes, as directed to be made in preceding section, the common council shall proceed to consider the same, and approve, increase or diminish any or all of said estimates ; provided, however, that the aggregate amount shall not fall below a sum sufficient to defray all the necessary expenses for the support of the public schools in the school district of Elmira, for the succeeding year.

After having fixed the amount to be expended for each and all the purposes mentioned in the last preceding section, the same shall be certified to the board of education, who shall, during such fiscal year, limit the expenditures for such purpose, so that the same shall not exceed the appropriation.

SEC. 21. Between the first and fifteenth days of August in each year the board of education shall make and transmit to the State superintendent of public instruction a report of the condition of the schools under their supervision in such form and embracing such statistics as the said superintendent and the laws of the State require.

SEC. 22. The academy which now is, and any academy or high school which may hereafter be connected with the public school system of said school district shall be subject to the visitation of the regents, and shall be entitled to participate in the distribution of the income of the literature and other funds in the same manner and upon the same conditions as other academies of the State and the regents of the university of the State of New York shall pay annually to the board of education of Elmira, the distributive share of the said funds to which the said academy shall be entitled.

SEC. 23. The schools provided for under this act shall be free to pupils between the ages of five and twenty-one years, who are actual residents of said school district. The board of education shall decide all questions of residence arising under this section. The said board may allow the children of non-residents to attend the schools of said district, and shall prescribe the rates for the tuition of such non-residents, and also for all pupils over twenty-one years of age.

SEC. 24. The said board of education shall be trustees of the school libraries of said school district, and all the provisions of law which are now in force, or hereafter may be passed, relative to school libraries, shall apply to said board of education in the same manner as if they were trustees of a school district. They shall be vested with the same discretion as to the disposition of moneys appropriated by the laws of this State for the purchase of libraries which is therein conferred on the inhabitants of school districts, and they shall have power to purchase, exchange, repair or dispose of any books or other property of said libraries, or cause it to be done, and apply the proceeds to the purchase of other books or apparatus ; also to provide suitable rooms and furniture for said libraries.

SEC. 25. The title of the schoolhouses, sites, furniture, books and all other school property belonging to the said school district, shall be vested in the city of Elmira ; and the same, while used and appropriated for school purposes, shall not be levied on or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever ; and the said city, in its corporate capacity, shall be competent to make, hold and dispose of any real or personal estate transferred to it by grant, gift, bequest or devise, for the use of the schools of said school district, whether the same be transferred in terms to said city by its proper style, or by any other designation, or to any person or persons, or corporation, for the use of said schools.

SEC. 26. The common council may, upon the recommendation of the board of education, sell any of the property, including existing sites, held by virtue of this act, upon such terms as they shall deem most advantageous ; and the proceeds of all

such sales shall be paid to the chamberlain of the city, and shall be by said board of education expended in the purchase, repair or improvement of schoolhouses, sites or appurtenances, furniture or apparatus.

SEC. 27. It shall be the duty of said board of education, at least fifteen days previous to each annual election for commissioners, to prepare and report to the common council a true and correct statement of the receipts and disbursements under the provisions of this act during the preceding year, in which account shall be stated under appropriate heads ;

1. Money raised by the common council under the twelfth section of this act.

2. The school moneys received by the chamberlain of the city from the county treasurer.

3. The moneys received by the chamberlain of the city under the twelfth section of this act.

4. All other moneys received by the said city chamberlain, subject to the order of the board of education, specifying the sources from which they shall have been derived.

5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure : and the common council shall, ten days before such election, cause the same to be published in one or more of the newspapers of said city.

SEC. 28. The common council shall have power, and it shall be their duty, to pass such ordinances and regulations as the board of education may re-

port as necessary for the protection, preservation, safekeeping and care of schoolhouses, lots, libraries, and property belonging to or connected with the schools of said school district, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate said city ; and all such penalties, and all others by this act imposed, shall be collected in the same manner that the penalties for violations of the city ordinances are by law collected ; and when collected, shall be paid to the chamberlain of the city to the credit of the board of education, and shall be subject to their order in the same manner as other moneys raised pursuant to the provisions of this act.

SEC. 29. It shall be the duty of the city clerk, with due diligence, after the appointment of commissioners by the common council and after receiving notice of election in the districts, personally or in writing to notify the persons chosen of their appointment or election ; and any person, who, without sufficient cause, shall refuse to serve therein shall forfeit the sum of ten dollars, and every person so elected or appointed and not having refused to accept, who shall neglect to discharge the duties of such office shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of said board of education forthwith to prosecute for all forfeitures and penalties under this act when voluntary payment is refused, and when received, to apply the same to the purposes of education in said district. All officers mentioned in this act shall be deemed public officers within the intent and meaning of section two of article one of chapter six hundred and eighty-one of the laws of eighteen hundred and ninety-two, and as such subject to the conditions therein prescribed.

SEC. 30. The superintendent of the public schools of said school district may be, ex-officiò, secretary of the board of education. He shall be under the direction of the board of education and they shall prescribe his general duties. In addition to such other duties as may be devolved upon him by the board, in the visitation and superintendence of the schools, he shall examine the qualifications of teachers and grant certificates in such manner and form as may be prescribed by the State superintendent or by the board of education, and which may at any time, be revoked by said board of education. He shall be paid a salary out of the general fund, to be fixed by the board of education, and may be removed from office by the vote of a majority of all the members of the said board, who may, by a like majority, appoint his successor.

SEC. 31. All the acts and parts of acts conflicting or inconsistent with the provisions of this act are hereby repealed so far as they affect this act.

SEC. 32. This act shall take effect immediately.

General Legislative Acts

AND

Constitutional Provisions

APPLICABLE TO

The City of Elmira.

THE

General Municipal Law.

Being Chapter 685 of the Laws of 1892 as
subsequently amended.

The General Municipal Law.

Being Chapter 17 of the General Laws: chapter 685 of the Laws of 1892, as subsequently amended.

SECTION 1. Short Title and Use of Terms.

SEC. 2. Limitation of Indebtedness.

SEC. 3. Investigation of Expenditures of Towns and Villages.

SEC. 4. Temporary Loans.

SEC. 5. Funded Debt.

SEC. 6. Payment of Municipal Bonds.

SEC. 7. Funding of Bonded Debts.

SEC. 8. Issuance of Municipal Bonds.

SEC. 9. Registry of Municipal Bonds.

SEC. 10. Conversion of Coupon into Registered Bonds.

SEC. 11. Defects not Invalidating Municipal Bonds.

SEC. 12. Municipal Taxes of Railroads Payable to County Treasurer.

SEC. 13. Abolition of Office of Railroad Commissioners.

SEC. 14. Appointment of Railroad Commissioners.

SEC. 15. Oath and Undertaking of Commissioners.

SEC. 16. Exchange or Sale of Railroad Stock and Bonds.

SEC. 17. Annual Reports of Commissioners and Payment of Bonds.

SEC. 18. Accounts and Loans by Commissioners.

SEC. 19. Reissue of Lost or Destroyed Bonds.

SEC. 20. Payment of Judgments against Municipal Corporations.

SEC. 21. Liability for Damages by Mobs and Riots.

SEC. 22. Condemnation of Real Property.

SEC. 23. Insurance of Property.

SEC. 24. Free Public Libraries.

SEC. 25. Acquisition of Lands for erection of Monuments.

SEC. 26. Leases of Public Buildings to Grand Army Posts.

SEC. 27. Discrimination against Non-Residents.

SEC. 28. Laws Repealed.

SEC. 29. When to Take Effect.

1. SHORT TITLE AND USE OF TERMS. This chapter shall be known as the general municipal law.

The term, municipal corporation, as used in this chapter, includes only a county, town, city and village. The term, governing board, includes the board of supervisors of a county, the town board of a town, the common council of a city, and the board of trustees of a village. L. 1892, c. 685, § 1.

(Note.—The definition of a municipal corporation differs from that given in § 3 of the general corporation law (corporations § 3.) There is no statement in either place as to whether this definition refers to unincorporated villages. Under this section this chapter does not apply to school districts and other territorial divisions which were covered by some of the previous laws. See also County Laws, § 2.)

91 Hun. 331.

2. LIMITATION OF INDEBTEDNESS. No county containing a city of more than one hundred thousand inhabitants, not any such city shall contract any debt, the amount of which, exclusive or its outstanding debt shall exceed a sum equal to five per centum of the aggregate valuation of the real property within its bounds, as assessed for state and county purposes upon the then last corrected assessment roll, nor shall it contract any such debt if the amount thereof inclusive of its outstanding debts shall exceed a sum equal to ten per centum of such valuation. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes of amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issuing of bonds to provide for the supply of water, but the term of

the bonds issued to provide for the supply of water shall not exceed twenty years, and the sinking fund shall be created on the issuing of said bonds for their redemption by raising annually a sum which will produce an amount equal to the amount of the principal of said sum and interest of said bonds at their maturity. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to the provisions of this chapter. Id., § 2 as am'd L. 1893, c. 349.

(Note.—Revised from L. 1853, c. 603, § 3. (See Birdseye's R. S. 1st ed., p. 301.) The second and third sentences were added by the amendment of 1893. Art. VIII, § 10, of the Constitution of 1894, applies to all cities and counties and in part supercedes this section. See Constitution, § 114.)

9 Hun. 159.

3. INVESTIGATION OF EXPENDITURES OF TOWNS AND VILLAGES. If twenty-five freeholders in any town or village shall present to a justice of the supreme court of the judicial district in which such town or village is situated, an affidavit, stating that they are freeholders and have paid taxes on real property within such town or village within one year, that they have reason to believe that the moneys of such town or village are being unlawfully or corruptly expended, and the grounds of their belief, such justice, upon ten days' notice to the supervisor, and the officers of the town disbursing the funds to which such moneys belong, or the trustees and treasurer of the village, shall make a summary investigation into the financial affairs of such town or village, and the accounts of such officers, and, in his discretion may appoint experts to make such investigation, and may cause

the result thereof to be published in such manner as he may deem proper.

The costs incurred in such investigation shall be taxed by the justice, and paid, upon his order, by the officers whose expenditures are investigated, if the facts in such affidavit be substantially proved, and otherwise, by the freeholders making such affidavit. If such justice shall be satisfied that any of the moneys of such town or village are being unlawfully or corruptly expended, or are being appropriated for purposes to which they are not properly applicable, or are improvidentially squandered or wasted, he shall forthwith grant an order restraining such unlawful or corrupt expenditure, or such other improper use of such moneys. *Id.*, § 3.

(Note.—Revised from L. 1879, c. 307, §§ 1, 2. (See Birdseye's R. S., 1st ed., pp. 3026, 3027.) The former law applied specifically to incorporated villages, and the words, "and the grounds of their belief" are new. The former law made disobedience to any of the orders of the justice a contempt, and gave him power to punish disobedience of his restraining order by fine or imprisonment, or both.)
20 Abb. N. C. 131.

4. TEMPORARY LOANS. Moneys shall not be borrowed by a municipal corporation on temporary loan, except in anticipation of the taxes of the current fiscal year, and for the purposes for which such taxes are levied, and shall not be in excess of the amount of such taxes. Such loans shall always be made payable within eight months, and in no case shall interest run on any such loan after such taxes are paid into the treasury of the corporation. L. 1892, c. 685, § 4.

(Note.—Revised from L. 1853, c. 603, § 4. (See Birdseye's R. S. 1st ed., p. 301.) All of the first

sentence after the words, "Fiscal year," and in the second sentence, after the words "months" is new.)

5. FUNDED DEBT.—A funded debt shall not be contracted by a municipal corporation, except for a specific object, expressly stated in the ordinance or resolution proposing it; nor unless such ordinance or resolution shall be passed by a two-third vote of all the members elected to the board or council adopting it, or submitted to, and approved by the electors of the town or county, or tax payers of the village or city when required by law. Such ordinance or resolution shall provide for raising annually, by tax, a sum sufficient to pay the interest and the principal, as the same shall become due. Id., § 5.

(Note.—Revised from L. 1853, c. 603, § 5. (See Birdseye's R. S. 1st ed. p., 301.) The words "or resolution" are new. The former law required a two-thirds vote of the board or council and an approval by a majority of the tax-payers, at a special election, and a ratification of such law by the legislature, and a provision for a tax to pay the interest, and at least a five per cent sinking fund.)

6. PAYMENT OF MUNICIPAL BONDS. Where the bonds of a municipal corporation have been lawfully issued, and the payment of the principal or interest thereof shall not have been otherwise paid or provided for, the same shall be a charge upon such corporation and shall be levied and assessed, collected and paid the same as other debts and charges. When for any reason any portion of the principal or interest due upon such bonds shall not have been paid, the same shall be assessed, levied and collected at the first assessment and collection of taxes by such corporation after such omission.

Id. § 6.

(Note.—Revised from L. 1870, c. 300, § 1. (See Birdseye's R. S. 1st ed., p. 302.) The former law provided for a special method of collection in villages. L. 1874, c. 410, which provided for a sinking fund to pay off town and village bonds, has not been re-enacted.)

64 N. Y. 112.

7. FUNDED AND BONDED DEBTS. The bonded indebtedness of a municipal corporation, including interest due or unpaid, or any part thereof, may be paid up or retired by the issue of new substituted bonds for like amounts by the board of supervisors, or supervisor, board, council or officers having in charge the payment of such bonds. Such new bonds shall only be issued when the existing bonds can be retired by the substitution of the new bonds therefor, or can be paid up by money realized by the sale of such new bonds. Where such bonded indebtedness shall become due within two years from the issue of such new bonds, such new bonds may be issued and sold to provide money in advance to pay up such existing bonds when they become due. Such new bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue; shall be made payable not less than one nor more than thirty years from their date; shall bear date and draw interest from the date of the payment of the existing bonds, or the receipt of the money to pay the same, at not exceeding the rate of five per centum, per annum, payable quarterly, semi-annually or annually; and an amount equal to not less than two per centum of the whole amount of such new bonds shall be payable each year after the issue thereof. Such new bonds shall be sold and negotiated at the best price

obtainable, not less than their par value ; shall be valid and binding on the municipal corporation issuing them ; and until payable shall be exempt from taxation for town, county, municipal or state purposes. All bonds and coupons retired or paid shall be immediately canceled. A certificate shall be issued by the officer, board or body issuing such new bonds, stating the amount of existing bonds, and of the new bonds so issued, which shall be forthwith filed in the office of the county clerk. Except as provided in this section, new bonds shall not be issued in pursuance thereof, for bonds of a municipal corporation adjudged invalid by the final judgment of a competent court. A majority of the tax-payers of a town, voting at a general town meeting, or a special town meeting duly called, may authorize the issue in pursuance of this section of new bonds for such invalid bonds, and each new bond so issued shall contain substantially the following recital : " The issue of this bond is duly authorized by a vote of the tax-payers of the said town ;" which shall be conclusive evidence of such fact. The payment, adjustment or compromise of a part of the bonded indebtedness of a municipal corporation shall not be deemed an admission of the validity or a recognition of any part of the bonded indebtedness of such municipal corporation not paid, adjusted or compromised.

Id., §7, as am'd L. 1893, cs. 122, 466.

(Note.—Revised from L. 1878, c. 75, §§ 1, 2 ; L. 1878, c. 317 ; L. 1880, c. 12 ; L. 1886, c. 316 ; L. 1881, c. 522, §§ 1-3 ; L. 1883, c. 453, and L. 1892, c. 330. (See Birdseye's R. S., 1st ed., pp. 303, 305, 306, 319.) The last three sentences, beginning with " except as provided," were added by the amendments of 1893, and are taken from L. 1886, c. 316, §1, as amended in 1892, c. 330, but with some material changes. This section in the main follows L.

1881, c. 522, §§ 1, 2, as amended. L. 1881, c. 522, §3, provided that the bonds issued under that act should be exempt from town, county, municipal or state tax until their due date. L. 1878, c. 75, as amended, provided for refunding the bonds of school districts, etc.)

101 N. Y., 490; 49 N. Y. St. R. 337; 66 id. 53; 85 Hun., 114; 26 id., 161.

8. ISSUANCE OF MUNICIPAL BONDS. Each bond issued by a municipal corporation shall be signed by each officer issuing the same, with the designation of his office; and the interest coupons attached thereto, if any, shall be signed by one of their number. Each such bond shall state the place of payment and, if no coupons are attached thereto, the name of the payee. Id. § 8.

(Note.—See L. 1869, c. 907, § 4 and amendments. (See Birdseye's R. S., 1st ed., p. 310.) This section is in large part new. 86 N. Y., 317; 89 id., 578; 92 id., 662; 69 id., 491; 106 id., 104; 114 id., 518; 119 id., 212; 124 id., 583; 125 id., 194; 133 id., 152; 134 id., 333; 136 id., 281; 137 id., 170; 179; 55 Hun., 44; 56 id., 477; 62 id., 190; 210; 72 id., 616; 87 id., 605; 30 N. Y. St. R., 706; 31 id., 312; 32 id., 37; 26 id., 326; 35 id., 1, 83; 44 id., 618; 34 id., 981; 37 id., 98; 39 id., 873; 40 id., 839, 845; 44 id., 521; 45 id., 908; 48 id., 279; 49 id., 341, 687; 50 id., 377, 381; 54 id., 388; 55 id., 277; 63 Barb., 103.)

9. REGISTRY OF MUNICIPAL BONDS. Each municipal corporation shall keep in the office of its clerk suitable books, in which shall be entered a full description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and maturity of all bonds issued by any of its officers, and, if such statement is not already entered, of all bonds converted from coupon into registered bonds. A bond to which no coupons are attached may be registered, at the request of the payee, in

the books so kept in the office of such clerk, and a certificate of such registry shall be endorsed upon the bond by such clerk, and attested by his seal, if he has one. The clerk shall be entitled to a fee of twenty-five cents for each bond so registered. The principal and interest of a registered municipal bond shall be payable only to the payee, his legal representatives, successors or assigns, and shall be transferrable only upon presentation to such clerk, with a written assignment duly acknowledged or approved. The name of the assignee shall be entered upon such bond so transferred and the books so kept in the office of the clerk. It shall be the duty of the clerk or other officer having charge of the office where such registry is kept, to transmit a statement of such indebtedness to the clerk of the board of supervisors of the county in which such office is situated, annually, on or before the first day of November. *Id.*, § 9 as am'd L. 1895, c. 350.

(Note.—See L. 1885, c. 426, § 2 and L. 1869, c. 907, § § 4, 8 and amendments. (See Birdsye's R. S. 1st ed., pp. 308, 310, 312.) This section is in the main new. The former law provided for the conversion and registry of coupon bonds.

26 *Hun.* 326 ; 35 *id.* 1, 83 ; 44 *id.* 618 ; 86 *N. Y.* 317 ; 89 *id.* 578 ; 92 *id.* 662 ; 69 *id.* 491 ; 106 *id.* 104 ; 63 *Barb.* 105 ; 114 *N. Y.* 518 ; 119 *id.* 212 ; 124 *id.* 553 ; 125 *id.* 194 ; 133 *id.* 152 ; 134 *id.* 333 ; 136 *id.* 281 ; 137 *id.* 170, 179 ; 55 *Hun.* 44 ; 56 *id.* 477 ; 62 *id.* 190, 210 ; 72 *id.* 616 ; 87 *id.* 605 ; 30 *N. Y. St. R.* 706 ; 31 *id.* 312 ; 32 *id.* 37 ; 34 *id.* 981 ; 37 *id.* 98 ; 39 *id.* 873 ; 40 *id.* 839, 845 ; 44 *id.* 521 ; 45 *id.* 908 ; 48 *id.* 279 ; 49 *id.* 341, 687 ; 50 *id.* 377, 381 ; 54 *id.* 388, 55 *id.* 277.

10. CONVERSION OF COUPON INTO REGISTERED BONDS. When the owner of coupon bonds of a municipal corporation shall present any such bonds to the officers who issued the same, or their succes-

sors, with a written request for their conversion into registered bonds, such officer shall cut off and destroy the coupons and stamp, print or write upon each of the bonds a statement, properly dated, of the amount and value of such coupons, and that the interest, at the rate and on the date, as was provided by the coupons, as well as the principal, is to be paid to such owner, his legal representatives, successors or assigns, at a place therein stated, which shall be the place stated in the coupons, unless changed with the written consent of the owner; and thereupon such bonds may be registered in the office of the clerk of the municipal corporation. This section shall not apply where provision is otherwise made by law or local ordinance, for the conversion or exchange of coupons for registered bonds. L. 1892, c. 685, § 10.

Note.—Revised from L. 1885, c. 426, §§ 1, 3, 4. (See Birdseye's R. S. 1st ed. p. 308. Under the former law, the registration books were to be provided at the expense of the owners of the bonds who requested such registration.)

11. DEFECTS NOT INVALIDATING MUNICIPAL BONDS. When the bonds of a municipal corporation have been issued and sold by the proper authorities, and the time for their maturity shall be for a longer period than provided by the law under which they were issued, a variance of not exceeding sixty days shall not effect their validity. *id.*, § 11.

(Note.—Revised from L. 1877, c. 320 § 1. (See Birdseye's R. S. 1st ed., p. 303.) Without material change.

26 Hun. 326, *aff'd.* 92 N. Y. 662

12. MUNICIPAL TAXES OF RAILROADS PAYABLE TO THE COUNTY TREASURER. If a town, village or

city has outstanding unpaid bonds, issued, or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school district and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds, when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge. If such bonds cannot be purchased at or below par, such treasurer shall invest such money in the bonds of the United States, of the State of New York, or of any town or village or city of such state issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated for an order compelling such treasurer to execute the provisions of this section. The county treasurer of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall when directed by the board of supervisors or county judge of the county, execute and file in the office of the county clerk, an undertaking, with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state under the head of "railroad sinking fund," the name and character of all such investments made by him or his predecessors, and the condition of such fund. *Id.* 12, as am'd L. 1893, c. 466.

(Note.—Revised from L. 1869, c 907, § § 4, 12 and L. 1879, c. 92. (See Birdseye's R. S. 1st ed., pp. 310, 314.) Without material change except that the last sentence formerly applied to the treasurer of the municipal corporation.

26 Hun, 326 ; 35 id. 183 ; 44 id 618 ; 86 N. Y. 317 ; 89 id., 578 ; 92 id. 662 ; 69 id. 491 ; 106 id. 104 ; 63 Barb. 105 ; 114 N. Y. 518 ; 119 id. 212 ; 124 id. 583 ; 125 id. 194 ; 133 id. 152 ; 134 id. 333 ; 136 id. 281 ; 137 id. 170, 179 ; 55 Hun, 44 ; 56 id. 477 ; 62 id. 190, 210 ; 72 id. 616 ; 87 id. 605 ; 30 N. Y. St. R. 706 ; 31 id. 312 ; 32 id. 37 ; 34 id. 981 ; 37 id. 98 ; 39 id. 873 ; 40 id. 839, 845 ; 44 id. 521 ; 45 id. 908 ; 48 id. 279 ; 49 id. 341, 687 ; 50 id. 377, 381 ; 54 id. 388 ; 55 id. 277.

13. ABOLITION OF OFFICE OF RAILROAD COMMISSIONERS. The board of supervisors of any county may, upon the application of the auditing board of any municipal corporation therein, by resolution, abolish the office of railroad commissioners of such municipal corporation, and direct the manner of the transfer of their duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town, and upon his compliance with such directions, such transferee shall be vested with all the powers conferred upon such railroad commissioners and subject to all the duties imposed upon them. Id., § 13.

(Note.—New in form. See § § 53-58, post.)

14. APPOINTMENT OF RAILROAD COMMISSIONERS. The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, when this chapter shall take effect, and in which the duties imposed upon such commissioners are not fully performed, shall continue to appoint and commission, upon the application of twenty freeholders within such corporation, three persons, who shall be freeholders

and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum. *Id.*, § 14.

(Note.—Revised from L. 1869, c. 907, § 3. See also §§ 1, 2. (See Birdseye's R. S., 1st ed., p. 310.) Without material change.)

76 N. Y., 182 ; 35 Hun., 83 ; 17 *id.*, 574 ; 44 *id.*, 617 ; 63 Barb., 105.

15. OATH AND UNDERTAKING OF COMMISSIONERS. Before entering upon their duties such commissioners shall take the constitutional oath of office, and make and file with the county clerk of their county their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands. *Id.*, § 15.

(Note.—Revised from L. 1873, c. 720, § 1. (See Birdseye's R. S., 1st ed., p. 316.) Under the former law no railroad commissioner could be a supervisor. Formerly a bond was required in such penalty and with such sureties as the board of town auditors might prescribe.)

16. EXCHANGE OR SALE OF RAILROAD STOCK AND BONDS. The commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for not less than the par value of the stocks or bonds so held by them. If they cannot make such exchange they may sell such stocks or bonds at not less than par; but they may, on the application and with the approval of the governing board of the municipal corporation owning such stock and bonds, exchange, sell or dispose of such stock or bonds at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all the costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses

as the governing board of the municipal corporation, entitled to the same, may direct. The provisions of this section shall apply to all such commissioners or officers of a municipal corporation elected or appointed or acting under the provisions of any special act and the authority hereby conferred shall not be limited by the provisions of any such special act. L. 1892, c. 685, § 16, as amended L. 1893, c. 490.

(Note.—Revised from L. 1875, c. 421. (See Birds-eye's R. S., 1st ed., pp. 304, 305.) The last sentence was added by the amendment of 1893. In the next to the last sentence the application of the surplus funds was to be made as directed by the common council of a city, or the trustees of a village, or the voters of a town.) 65 N. Y. St. R., 441.

17. ANNUAL REPORT OF COMMISSIONERS AND PAYMENT OF BONDS. The commissioners of a municipal corporation, having in charge the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable. When collected, such moneys with the unpaid sums

on hand, shall be forthwith paid over to such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such commissioners to the governing board of the municipal corporation, at least five days before the annual town meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or canceled. *Id.*, § 17, as amended L. 1893, c. 466.

(Note.—Revised from L. 1877, c. 349 §§ 1, 2, and L. 1881, c. 522, §§ 4, 5. (See Birdseye's R. S., 1st ed., pp. 318-320.) This section has been changed in some minor particulars and details. The former law applied, in terms, principally to the boards of supervisors.)

18. ACCOUNTS AND LOANS BY COMMISSIONERS. Such commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures with vouchers. They shall also loan on proper security or collaterals or deposit in some solvent bank, or banking institutions, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in the bonds of the state, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments, shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof. *Id.*, § 18.

(Note.—Revised from L. 1871, c. 537, § 1; L. 1882, c. 293, and L. 1877, c. 349, § 4. (See Birdseye's R. S., 1st ed., pp. 314, 318.) Under the former law commissioners were allowed to invest only "in the bonds of their respective towns.")

19. RE-ISSUE OF LOST OR DESTROYED BONDS. When any bonds lawfully issued by a municipal corporation in aid of any railroad, or in substitution for bonds so issued, shall be lost or destroyed, such commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof, by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office. *Id.*, §19.

(Note—Revised from L. 1886, c. 278, §§ 1-3. (See Birdseye's R. S. 1st. ed., p 320.) The former law applied only to the reissuing of town bonds in the aid of railroads. The indemnity was to be approved by the railroad commissioners, town supervisor and the county judge.)

20. PAYMENT OF JUDGMENTS AGAINST MUNICIPAL CORPORATION. When a final judgment for a sum of money shall be recovered against a municipal corporation, and the execution thereof shall not be stayed pursuant to law, or the time for such stay shall have expired, the treasurer or other financial

officer of such corporation having sufficient moneys in his hands belonging to the corporation not otherwise specifically appropriated, shall pay such judgment upon the production of a certified copy of the docket thereof. *Id.*, §20.

(Note—Revised from 2 R. S., p. 475, §104. (See Birdseye's R. S. 1st ed., p. 27.) See also §31, post, and COUNTY LAW. §230. Under the former law the officer failing to pay such judgment from such funds was personally liable for the amount of the judgment.)

20 Barb. 294; 14 Wend. 74; 45 N. Y. 686; 92 *id.* 570.

21. **LIABILITY FOR DAMAGES BY MOBS AND RIOTS.** A city or county shall be liable to a person whose property is destroyed or injured therein by a mob or riot, for the damages sustained thereby, if the consent or negligence of such person did not contribute to such destruction or injury, and such person shall have used all reasonable diligence to prevent such damage, shall have notified the mayor of the city, or sheriff of the county, of a threat or attempt to destroy or injure his property by a mob or riot, immediately upon acquiring such knowledge, and shall bring an action therefor within three months after such damages were sustained. A mayor or sheriff receiving notification of a threat or attempt to destroy or injure property by a mob or riot shall take all lawful means to protect such property; and if he shall neglect or refuse, the person whose property shall be destroyed or injured may elect to bring his action for damages against such officer instead of the city or county. *Id.*, §21.

Note—Revised from L. 1855, c. 428, §§ 1-3. (See Birdseye's R. S., 1st ed., p. 1993. In the first sentence the word "consent" has been substituted for the word "carelessness." The former law also provided that nothing therein contained should be con-

strued to prevent the person injured from bringing an action against each and every person "participating in such riot or mob.")

4 Abb. Pr. N. S. 203; 36 N. Y. 297; 31 id. 164; s. c. 28 How. Pr. 353; 46 Barb. 659; 47 id. 451; 50 id. 598; s. c. 33 How. Pr. 202; 2 Rob. 237; 6 Lans. 269; 10 Daly 300; 53 Hun. 196; 36 Barb. 526; 60 Hun. 387; 119 N. Y. 344.

22. CONDEMNATION OF REAL PROPERTY. A municipal corporation authorized by law to take and hold real property for the uses and purposes of the corporation, may, if it is unable to agree with the owners for the purchase thereof, acquire title to such property by condemnation. Id., §22.

New.

23. INSURANCE OF PROPERTY. Public officers having by law the care and custody of the public buildings and other property of a municipal corporation, may insure the same at the expense and for the benefit of such corporation. Id., § 23.

(Note—Revised from L. 1847, c. 294, § 1. (See Birdseye's R. S., 1st ed., p. 1561.) Without material change.

24. FREE PUBLIC LIBRARIES. Any municipal corporation may establish and maintain a free public library or museum in accordance with the library provisions of the university law, being chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-two. L. 1892, c. 685, § 24, as amended L. 1896, c. 576.

(Note—The amendment of 1896 has entirely changed this section as originally enacted.

25. ACQUISITION OF LANDS FOR ERECTION OF MONUMENTS. The governing board of a village or town, or the trustees of a monument association, may acquire not to exceed three acres of land, for the erection of a soldiers' monument, or a monument or other structure as a memorial of some distinguishing or important event in the history of the state or nation, and for laying out such lands as a public park or square, if such lands are vacant or have buildings thereon not exceeding two thousand five hundred dollars in value, and if a judge of the county, or a justice of the supreme court of the district, in which such memorial is to be erected, shall give his written approval of the acquisition of such lands for such purpose. *Id.*, § 25.

(Note—Revised from L. 1881, c. 226, § 1. (See Birdseye's R. S. 1st. ed., p. 2730.) The judge was formerly to certify "that the quantity of land proposed to be purchased or acquired, is proper and necessary for such purpose." By L. 1881, c. 226, § 2, the right to condemn the lands was given.)

26. LEASES OF PUBLIC BUILDINGS TO GRAND ARMY POSTS. A municipal corporation may lease, for not exceeding five years, to a post or posts of the Grand Army of the Republic, or other veteran organization of honorably discharged union soldiers, sailors or marines, a public building or part thereof, belonging to such municipal corporations, except school houses in actual use as such, without expense, or at a nominal rent, fixed by the board or council having charge of such buildings. *Id.*, § 26

(Note—Revised from L. 1886, c. 644, § 1 and L. 1888, c. 62. (See Birdseye's R. S., 1st. ed., p. 1266.) After the word, "marines" the words "of the late war" have been omitted.)

27. DISCRIMINATION AGAINST NON-RESIDENTS. Any restriction or regulation imposed by the governing

board of a municipal corporation upon the inhabitants of any other municipal corporation within the state, carrying on or desiring to carry on any lawful business or calling within the limits thereof, which shall not be necessary for the proper regulation of such trade, business or calling, and shall not apply to citizens of all parts of the state alike, except ordinances or regulations, in reference to traveling circuses, shows and exhibitions shall be void. Id. § 27.

Note—Revised from L. 1878, c. 212, § 1, and L. 1879, c. 417. (See Birdseye's R. S. 1st. ed., p. 2629.) The former law made it unlawful to impose such conditions, and also provided that all such ordinances should be null and void.)

28. LAWS REPEALED. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Id., §28

29. WHEN TO TAKE EFFECT. This chapter shall take effect on October, 1, 1892. Id., § 29.

PROVISIONS

OF

The General Insurance Law

Being Chap. 38 of the General Laws, and Chap.
690 of the Laws of 1892, Relating to

The Payment of Tax

By Foreign Fire Insurance Companies for the Use
and Benefit of the Fire Department.

PROVISIONS
OF
THE GENERAL INSURANCE LAW.

Being Chapter 38 of the General Laws, and Chapter 690 of the Laws
of 1892, relating to the

Payment of Tax

By Foreign Fire Insurance Companies for the Use and Benefit of the
Fire Department.

Sections 133, 134, 135, 136, Article III of the Insurance Law of the State of New York, being chapter 690 of the Laws of 1892.

Section 133. PAYMENT OF TAX BY AGENTS OF FOREIGN FIRE INSURANCE CORPORATIONS TO FIRE DEPARTMENTS. Except in the cities of New York and Buffalo there shall be paid to the treasurer of the fire department of every city or village of the state, whether incorporated or unincorporated, having a fire department, company or organization, for the use and benefit of such department, or to the treasurer of such fire department within the fire limits, as established by law, of any unincorporated village, when no treasurer of a fire department exists, then to the treasurer or other fiscal officer of such city or village, or in case of an unincorporated village, to the supervisor of the town in which such village is situated, who, for the purposes of this act, shall have the same powers as the treasurers of fire departments, on the first day of February of each year, by every person who shall act as agent for or on behalf of any foreign fire insurance corporation, association or individuals which insure property against loss or injury by fire, the sum of two dollars upon the hundred dollars, and at that rate, upon the amount of all premiums which during the year or part of a

year ending on the last preceding thirty-first day of December shall have been received by such agent or person, or received by any other person for him for any insurance effected or procured by him as such agent or broker against loss or injury by fire upon property situated within the corporate limits of such city or village, or within the fire limits of such unincorporated village. *Id.*, §133. (Note,— Revised from L. 1875, c. 465, §1; D. 1876, c. 359; L. 1886, c. 604, §5; L. 1887, c. 520 and amendments, and L. 1890, c. 406, §1. (See Birdseye's R. S., 1st ed., pp. 1640, 1642.) Without material change.

20 Barb. 68; 92 N. Y. 311; 45 N. Y. St. R. 552.

SEC. 134. UNDERTAKING OF AGENT. No person shall, as agent for any such foreign insurance corporation, association or individuals, effect any insurance upon any property situate in any city or village of this state upon which the sums specified in the preceding section are required to be paid, or as such agent procure such insurance to be effected, until he shall have executed and delivered to the officer to whom such account is to be rendered and such payments to be made, a bond to such fire department in the penal sum of five hundred dollars, with such sureties as such treasurer, supervisor or other fiscal officer shall approve, with a condition that he will annually render to such treasurer, supervisor or other fiscal officer, on the first day of February in each year, a just and true account, verified by his oath that the same is true, of all premiums, which, during the year ending on the thirty-first day of December preceding such report, shall have been received by him or any other person for him, for any insurance against loss or injury by fire upon property situated in such city or village, which shall have been effected or procured by

him to have been effected by any such corporation, association or individuals, and that he will annually, on the first day of February in each year, pay to such treasurer or supervisor or other fiscal officer two dollars upon every hundred dollars, and at that rate upon the amount of such premiums. Any such corporation, association or individual having authority to transact business in this state, on filing a bond in the penal sum of two thousand five hundred dollars with the superintendent of insurance that it will make its account and pay the sums so required to be paid, may effect such insurance in any city, town or village, wherein it has no agent. L. 1892, c. 690, §134.

(Note—Revised from L. 1875, c. 465, §2, and amendments, and L. 1890, c. 406, §2. (See Birdseye's R. S., 1st ed., p. 1640 without material change.)

SEC. 135. PENALTY FOR REFUSAL TO PAY. Every such person who shall effect any such insurance without having executed and delivered such bond, shall, for each offense, forfeit two hundred dollars, for the use and benefit of the fire department of such city or village, to be collected by and in the name of the fire department treasurer or chief fiscal officer of the city or village in which the property insured is situated. The treasurer or chief fiscal officer of any city or village having no incorporated firemen's relief or benevolent society receiving any money under the laws of this state, shall, on or before the fifteenth day of February in each year, apportion and pay over all such moneys so received to the treasurers of such of the several fire companies as are duly recognized by the common council, trustees or supervisors of such city or village.

If he shall neglect or refuse to perform any or all of the duties required by this section, he shall for-

feit the sum of two hundred dollars for every such neglect or refusal for the use and benefit of the fire department of such city or village, and the foreman of any fire company may sue for and maintain an action in the name of and for the benefit of such company for its proportion of the penalties prescribed by this section. *Id.*, §135

(Note—Revised from L. 1875, c. 465, §3 and amendments. (See Birdseye's R. S. 1st ed., p. 1641.) Under the former law the penalty applied to "every such agent, individual, association, or corporation, who shall effect any insurance," etc. Otherwise without material change

99 N Y., 429.

SEC. 136. PENALTY FOR REFUSING TO EXHIBIT FOREIGN FIRE POLICIES. Every person whose property shall be insured in violation of section 135 of this chapter, and every person having the care or charge of property so insured, or of policies of insurance placed in violation of such section, as agent or trustee for another, who shall refuse or neglect to exhibit to the officer, entitled by section 134 of this chapter to receive the per cent of premium in such section provided, all policies so placed upon such property, or shall neglect or refuse to give such officer full information as to when, by whom, and in what corporation or corporations such property shall be so insured, and the name of the agent, broker or other person connected with the effecting of such insurance, upon demand being duly made by such officer shall become liable to an action by and in the name of the fire department, organization or company of which such officer shall be the treasurer, for the sum of one hundred dollars for each such neglect or refusal

All persons acting as brokers between any such agent or any such corporation and the assured,

shall, within ten days after effecting any insurance specified in section 135, notify the officer entitled to receive the tax upon the premium upon such insurance of the fact of such insurance, together with the precise location of the property, the name of the insurer and the amount of the premium to be paid by the assured. Any broker wilfully neglecting or refusing to comply with the provisions of this section, shall be liable to a like action and like penalty brought in the like manner hereinbefore provided. Actions brought under this section must be tried in the county in which the property alleged to be so insured is situated.

All moneys received pursuant to this section shall be apportioned and paid over in the same manner as provided in the preceding section of this chapter for the apportionment and payment of moneys received pursuant to such section and under a like penalty. Id.; §136

(Note—Revised from L. 1886, c. 604, §4. (See Birdseye's R. S., 1st. ed., p. 1641) Without material change.)

. . . .

PROVISIONS

OF

The Public Health Law.

Being Chap. 25 of the General Laws, and Chap.
661 of the Laws of 1893, Relating to

Local Boards of Health.

PROVISIONS
OF
THE PUBLIC HEALTH LAW.

Being Chapter 25 of the General Laws, and Chapter 661 of the Laws
of 1893, Relating to

Local Boards of Health.

ARTICLE II.

LOCAL BOARDS OF HEALTH.

SECTION 20. Local Boards of Health.

SEC. 21. General Powers and Duties of Local
Boards of Health.

SEC. 22. Vital Statistics.

SEC. 23. Burials and Burial permits.

SEC. 24. Contagious and Infectious Diseases.

SEC. 25. Nuisances.

SEC. 26. Removal of Nuisances.

SEC. 27. Expenses of Abatement of Nuisances a
Lien upon the Premises.

SEC. 28. Manufactures in Tenement Houses and
Dwellings.

SEC. 29. Jurisdiction of Town and Village Boards.

SEC. 30. Expenses how paid.

SEC. 31. Mandamus.

SEC. 32. Exceptions and Limitations as to Cities New York, Brooklyn, Buffalo, Albany and Yonkers.

20. LOCAL BOARDS OF HEALTH. There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state. In the cities except New York, Brooklyn, Buffalo, Albany and Yonkers, the board shall consist of the mayor of the city, who shall be its president, and, at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. The board shall appoint a competent physician, not one of its members, to be the health officer of the city. In villages the board shall consist of not less than three nor more than seven persons, not trustees of the village, who shall be appointed at the first meeting of the board of trustees of such village, after the next annual election of the village; the members of said board of health shall at their first meeting divide themselves by lot into three classes, whose terms of office shall expire respectively in one, two and three years from the annual election held prior to their appointment; from and after the appointment of said board as above provided, the appointment of the successors of said members shall be made immediately after the annual elections of said village and shall continue in office until their successors are appointed unless removed therefrom; provided, however, that upon failure to appoint such board of health at such first meeting such appointment may be made at any subsequent meeting, in the event of no appointment having been made by the county judge as herein-

after provided. Every such village board shall elect a president and appoint a competent physician, not a member of the board, to be the health officer of the village. In towns, the board of health shall consist of the town board and another citizen of the town of full age, annually appointed by the town board at a meeting thereof after each annual town meeting, for the term of one year from and after such town meeting and until his successor is appointed. Such board of health shall annually appoint a competent physician to be health officer of the town. If the proper authorities shall not fill any vacancies occurring in any local board within thirty days after the happening of such vacancy, the county judge of the county shall appoint a competent person to fill the vacancy for the unexpired term, which appointment shall be immediately filed in the office of the county clerk, and a duplicate thereof filed with the clerk of the municipality for which such appointment is made. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state board of health. The term "municipality" when used in this article, means the city, village or town for which any such local board may be or is appointed

(Laws 1893, chap. 661, § 20 as amended by Laws 1894, chap. 168 ; Laws 1895, chap. 584 and Laws 1897, chap. 282, to take effect immediately. Session Laws, 1897, vol. 1, p. 148.)

21. GENERAL POWERS AND DUTIES OF LOCAL BOARDS OF HEALTH. Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof where in his judgment the protection of the public

health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation. Every such local board shall make and publish from time to time all such orders and regulations as they may deem necessary and proper for the preservation of life and health, and the execution and enforcement of the public health law in the municipality. It shall make without publication thereof, such orders and regulation for the suppression of nuisances, and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or post the same in some conspicuous place thereon. It may employ such persons as may be necessary to enable it to carry into effect its orders and regulations, and fix their compensation. It may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses, and compel them to testify, and for such purposes it shall have the the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not relating to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as cannot otherwise be subjected to its or-

ders or regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality ; and to maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing to the board of trustees of such village, stating and recommending what additions or alterations should in the judgment of such board of health be made with its reasons thereof, and thereupon such board of trustees shall immediately convene and consider such recommendations and if approved by such board of trustees, the same shall be certified to the state board of health for its approval, and if such recommendations shall be approved by the state board of health, it shall be the duty of the board of trustees of such village to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for by said village in the same manner as other village expenses are paid and said village is hereby authorized to raise such sum as may be necessary for the payment

of the expenses incurred, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board of trustees shall have the right to acquire such lands, rights of way, or other easements, by gift or purchase, or in case the same cannot be acquired by purchase the board of trustees may acquire the same by condemnation in the manner provided by law. L. 1893, chap. 661, § 21, as amended by the Laws 1895, chaps. 203 and 928.

(Note.—Revised from L. 1885, c. 270, § 3, subds. 1, 6-10, and L. 1888, c. 146. (See Birdseye's R. S. 1st. ed., pp. 1316-1319.) The second sentence seems to be new. All after the words "benefit of the municipality" in the twelfth sentence, was added by the amendments of 1895.)

84 Hun, 236 ; 87 Hun, 63 ; 105 N. Y. 46, rev'g 39 Hun, 79 ; 1 Park 481 ; 61 Hun, 231 ; 62 Id. 131 ; 35 N. Y. St. R. 413.

22. VITAL STATISTICS. Every such local board shall supervise and make complete the registration of all births, marriages and deaths occurring within the municipality, and the cause of death and the finding of coroners' juries, in accordance with the methods and forms prescribed by the state board of health, and, after registration, promptly forward the certificates of such births, marriages and deaths to the state bureau of vital statistics. Every physician or midwife attending at the birth of a child and no physician or midwife being in attendance, the parent or custodian of a child born, and every groom, officiating clergyman or magistrate at every marriage shall cause a certificate of such birth or marriage to be returned within thirty days thereafter to the local board of health or person designated by it to receive the same, which shall be at-

tested, if a birth, by the physician or midwife, if any in attendance, no physician or midwife being in attendance, by the parent or custodian of a child born, and, if a marriage, by the officiating clergyman or magistrate. The person making such certificate shall be entitled to the sum of twenty-five cents therefor, which shall be a charge upon, and paid by the municipality where such birth, marriage or death occurred. The cost of such registration, not exceeding twenty-five cents for the complete registered record of a birth, marriage or death, shall be a charge upon the municipality. The charge for a copy thereof shall be fixed by the board, not exceeding the same sum for a complete copy of a single registered record and the additional sum of twenty-five cents if certified to. Such copies shall be furnished upon request of any person, and when certified to be correct by the president or secretary of the board or local registering officer designated by it shall be presumptive evidence in all courts and places of the facts therein stated.

(L. 1893, c. 661, §22, as amended by Laws 1894, c. 679, and L. 1897, c. 138, to take effect immediately. Session Laws, 1897, vol. 1, p. 51. 84 Hun, 236; 35 N. Y. St. R. 412.)

23. BURIAL AND BURIAL PERMITS. Every such local board shall prescribe sanitary regulations for the burial and removal of corpses and shall designate the persons who shall grant permits for such burial, and permits for the transportation of any corpse which is to be carried for burial beyond the county where the death occurred. Every undertaker, sexton or other person having charge of any corpse shall procure a certificate of the death and the probable cause duly certified by the physician in attendance upon the deceased during his last illness, or by

the coroner where an inquisition is required by law, and if no physician was in attendance, and no inquest has been held or required by law, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented to the local board or to the person designated by it, and thereupon a permit for such burial or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within the state, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease. *Id.*, § 23.

Note—Revised from L. 1885, c. 270, § 3, subd. 5; L. 1888, c. 309, and L. 1886, c. 329. § 1. (See Birdseye's R. S. 1st ed., pp. 1317, 1324.) (Without material change.)

23a. PERSON WITH CONTAGIOUS DISEASE IN PUBLIC PLACE. A person, who wilfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor. Pen. Code, § 434.

24. CONTAGIOUS AND INFECTIOUS DISEASE. Every such local board of health shall guard against the introduction of contagious and infectious diseases by the exercise of proper and vigilant medical inspection and control of all persons and things arriving in the municipality from infected places, or

which from any cause are liable to communicate contagion. It shall require the isolation of all persons and things infected with or exposed to such diseases, and provide suitable places for the treatment and care of sick persons who cannot otherwise be provided for. It shall prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and, if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed. It shall report to the state board of health, promptly, the facts relating to contagious and infectious diseases, and every case of small pox or varioloid within the municipality. Health officers of villages and towns shall report in writing once a month to the state board of health all cases of such infectious and contagious diseases as may be required by the state board of health, and for such reporting the health officer shall be paid by the municipality employing him, upon the certification of the state board of health, a sum not to exceed twenty cents for each case so reported; and the health officer shall report annually on or before the first day of January in each year the number of cases of consumption which have existed in his jurisdiction during that year, and for each case thus reported he shall receive a sum not to exceed ten cents, to be paid in the same manner as the other like charges are paid. It shall provide, at stated intervals, a suitable supply of vaccine virus, of a quality and from a source approved by the state board of health, and during an actual epidemic of small-pox obtain fresh supplies of such virus at intervals not exceeding one week, and at all times provide thorough and safe vaccination for all persons in need of the same. If a pestilential, infectious or contagious disease exists in any county

almshouse or its vicinity, and the physician thereof shall certify that such disease is likely to endanger the health of its inmates the county superintendent of the poor may cause such inmates or any of them to be removed to such other suitable place in the county as the local board of health of the municipality where the almshouse is situated may designate there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance until they shall be safely returned to such almshouse or otherwise discharged. The boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, shall report promptly to the state board all cases of small-pox, typhus and yellow fever and cholera and the facts relating thereto. L. 1893, c. 661, § 24.

(Note—Revised from L. 1885, c. 270, § 3, subd. 3, and § 6. (See Birdseye's R. S., 1st ed., pp. 1317, 1320.) In the second sentence before the word, "treatment" the following words have been omitted: "reception of the same; and, if necessary, to furnish medical." The fifth sentence appears to be new.) 84 Hun. 465.

25. NUISANCES. Every such local board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examina-

tion. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state board of health or its president and secretary shall by notice to the presiding officer of any local board of health, request him to convene such local board to take certain definite proceedings concerning which the state board of health or its president and secretary shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action recommended. L. 1893, c. 661, § 25.

(Note—Revised from L. 1885, c. 270, § 3, subds. 1, 4. (See Birdseye's R. S., 1st ed., pp. 1316, 1317.) In the last sentence after the word "proceedings" the words "upon matters" are omitted, and at the end of the section the following words have been omitted: "any willful violation of any lawful instruction of said state board of health shall be a misdemeanor.")

105 N. Y. 46, rev'g 39 Hun, 79; 58 Hun, 595; 62 id. 131; 35 N. Y. St. R. 412; 41 id. 813; 54 id. 312.

26. REMOVAL OF NUISANCES. If the owner or occupant of any premises fails to comply with any order or regulation of any such local board for the suppression and removal of any nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such boards or their servants or employes may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the per-

son who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. *Id.*, § 26.

Note—Revised from L. 1885, c. 270, § 4. (See Birdseye's R. S., 1st ed., p. 1319.) The changes made in redrawing this section seem to be material. In the first sentence the former law applied to "any case of non-compliance." The former law also provided specifically for making, serving and posting. At the end of the first sentence the following words have been omitted; "and any other nuisance or matter of the description aforesaid found there existing.")

62 Hun, 131 ; 41 N. Y., St. R 813.

27. EXPENSE OF ABATEMENT OF NUISANCES A LIEN UPON THE PREMISES. If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any such local board, is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having a preference over all other liens and incumbrances whatever. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such

notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of such notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property; and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preferences as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount of such costs bears to the amount paid by the purchaser on such sale. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold. At any time within six months after recording such certificate, the owner of the premises or any lessee, mortgagee or incumbrancer thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all costs and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per cent per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee, the amount paid

shall be applied as a payment upon any rent due or which may accrue upon his lease ; if by a mortgagee or incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such. *Id.*, § 27.

(Note.—Revised from L. 1885, c. 270, last part of § 4. (See Birdseye's R. S., 1st ed., p. 1319.) The text of this section has been so much changed, it is difficult to determine how far the law itself has been modified. In the third sentence the word "incorporated" has been omitted before "village." In the fourth sentence, after the word "known", the following words have have been omitted ; "and a resident of said city, village or town." The certificate of sale was formerly to be signed by the president and countersigned by the secretary. In the sixth sentence, before the words "and if occupied," the following words have been omitted ; "and if unoccupied may immediately enter." The provisions as to lessees are new.)

62 Hun, 131 ; 41 N. Y. St. R., 813.

28. MANUFACTURES IN TENEMENT HOUSES AND DWELLINGS. No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, knee-pants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family, living therein, which shall include a husband and wife and their children, or the children of either. A family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such work-shops, the na-

ture of the work carried on and the number of persons employed therein ; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice. Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present, in any workshop, or in goods manufactured or in process of manufacture therein the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary, to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the state, having been manufactured, in whole, or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy conditions, the board may make such orders as the public health may require, and may condemn and destroy such goods. L. 1893, c. 661, §28.

(Note—Revised from L. 1892. 655, §§ 1-8. This section seems to recognize a new legal entity, and provide for licensing a "family" to carry on business. The provisions relating to affixing tags to the articles mentioned, whether made in this state or not, and the penal provisions contained in L. 1892, c. 655, have been omitted. In many other particulars the section has been materially changed.)

29. JURISDICTION OF TOWN AND VILLAGE BOARDS.
A town board of health shall not have jurisdiction

over any city or incorporated village or part of such city or village in such town if such city or village has an organized board of health. The boards of health of any town and the incorporated villages therein, or any two or more towns and the incorporated villages therein, may unite, with the written approval of the state board of health, in a combined sanitary and registration district, and appoint for such district one health officer and registering officer, whose authority in all matters of general application shall be derived from the boards of health appointing him; and in special cases not of general application arising within the jurisdiction of but one board shall be derived from such board alone. When one or more towns and the incorporated villages therein unite in one registration district, the registrar of vital statistics of such combined district will be required to make separate returns to the state board of health of village and town certificates of births, marriages and deaths.

(L. 1893, c. 661, §29, as amended by Laws of 1897, c. 169, to take effect immediately. Session Laws 1897, vol. 1, p. 66.)

30. EXPENSES, HOW PAID. All expenses incurred by any local board of health in the performance of the duties imposed upon it or its members by law, shall be a charge upon the municipality and shall be audited, levied, collected and paid in the same manner as the other charges of, or upon, the municipality are audited, levied, collected and paid. The taxable property of any village maintaining its own board of health, shall not be subject to taxation for maintaining any town board of health, or for any expenditure authorized by the town board of health, but the costs and expenditures of the town board shall be assessed

and collected exclusively on the property of the town outside of any such village. *Id.*, § 31.

Note—Revised from L. 1885, c. 270, § § 5, 7. (See Birdseye's R. S., 1st ed., page 1320.) Without material change.)

60 Hun. 422.

31. **MANDAMUS.** The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state board of health or its president or secretary, or of the local board of health, or of its president or secretary, or of any citizen of full age, resident of the municipality where the duty should be performed or the act done. *Id.*, § 31.

(Note—Revised from L. 1885, c. 270, § 8. (See Birdseye's R. S., 1st ed., p. 1321.) The mandamus could formerly be enforced only "at the instance of the state board of health, its president, secretary or any member thereof.")

32. **EXCEPTIONS AND LIMITATIONS AS TO CITIES OF NEW YORK, BROOKLYN, BUFFALO, ALBANY AND YONKERS.** This article shall not be construed to affect, alter or repeal laws now in force relating to boards of health of the cities of New York, Brooklyn, Buffalo, Albany and Yonkers, nor the sanitary codes duly adopted and now in force in such cities. *Id.*, § 32.

(Note—Revised from L. 1885, c. 270, § 3. (See Birdseye's R. S., 1st ed., p. 1316.)

AN ACT

IN

Regard to the Acceptance of

LEGISLATIVE BILLS

BY

Cities of the Second and Third Class.

Being Chapter 1 of the Laws of 1895.

AN ACT
In Regard to the Acceptance of
LEGISLATIVE BILLS
BY
Cities of the Second and Third Class.
Being Chapter 1 of the Laws of 1895.

AN ACT to provide for public notice and opportunity for a public hearing before the mayor and legislative body for any city of the second or third class concerning all special city laws relating to such city. Being chapter 1 of the laws of 1895.

Became a law January 28, 1895, with the approval of the Governor. Passed, three-fifths being present.

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

SECTION 1. Whenever a certified copy of any bill for a special city law shall be transmitted to the mayor of any city of the second or third class, pursuant to the provisions of section two of article twelve of the constitution, the said mayor shall forthwith upon receipt thereof fix a day for a public hearing in such city concerning such bill before the mayor and the legislative body thereof and shall give public notice of the time and place of such hearing by publishing said notice for three successive days in a daily newspaper published in said city and designated by him. The mayor shall also cause a copy of said notice to be served upon each member of the legislative body either personally or by mail at least two days before the day fixed therein for such public hearing. Said notice shall

also contain the title of the bill and any explanatory statement concerning the same which the mayor shall deem advisable.

SEC. 2. The mayor and the legislative body shall attend at the time and place appointed for such hearing, and shall afford an opportunity for a public hearing concerning such bill.

SEC. 3. After such hearing, and within fifteen days after the transmission to him of a certified copy of such bill, the said mayor shall return the same to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the certificate thereon of the mayor and the presiding officer of the legislative body stating whether the city has or has not accepted the same, and such bill shall not be deemed to have been accepted by such city, unless the mayor and a majority of the legislative body shall concur in such acceptance. The mayor shall also append to said certified copy of such bill a further certificate stating that the public notice herein provided for has been given, that a meeting of the legislative body has been held pursuant thereto, and that an opportunity for a public hearing concerning such bill has been afforded, pursuant to the provisions of this act, and such certificate shall be conclusive evidence thereof.

SEC. 4. The clerk of the house in which such bill originated shall endorse upon the original bill to be presented to the governor, and upon the certified copy thereof to be transmitted to the mayor, the date of such transmission. The said clerk, if the certified copy of said bill is returned to the house in which the bill originated, or the governor, if said certified copy is returned to him, shall in-

dorse the date of such return upon the said original bill and also upon said certified copy thereof. In every case in which a bill for a special city law has been accepted by the city or cities to which it relates, the certified copy or copies thereof transmitted to the mayor or mayors of said city or cities and returned by him or them, with the certificates indorsed thereon or appended thereto, shall be attached to the original bill and presented therewith to the governor.

SEC. 5. The amount necessary to be expended in any such city in complying with the requirements of this act shall be a public charge and shall be paid out of any fund or appropriation applicable thereto, and if, in any such city, there is no fund or appropriation applicable to such payment in the year eighteen hundred and ninety-five, then and in that case the board or body in such city charged with the duty of estimating the amounts required to pay the expenses of conducting the public business of said city shall, within thirty days after the passage of this act, meet and estimate the amount necessary to be expended by the mayor of said city under the provisions of this act during the year eighteen hundred and ninety-five, and the amount so estimated shall be added to and become a part of the final estimate of the amounts required to pay the expense of conducting the public business of said city during said year, and shall be collected by tax upon the estates, real and personal, subject to taxation in said city.

SEC. 6. This act shall take effect immediately.

The Civil Service Law.

Known as Chapter 354, Laws of 1883, as Sub-
sequently Amended.

THE CIVIL SERVICE LAW.

Known as Chapter 354, Laws of 1883, as Subsequently Amended.

1. COMMISSIONERS : SALARY, ETC. The governor is authorized to appoint, by and with the advice and consent of the senate, three persons, not more than two of whom shall be adherents of the same party, as civil service commissioners, and said three commissioners shall constitute the New York civil service commission. They shall hold no other official place under the state of New York. The governor may remove any commissioner, and any vacancy in the position of commissioner shall be so filled by the governor, by and with the advice and consent of the senate, as to conform to said conditions for the first selection of commissioners. The three commissioners shall each receive a salary of two thousand dollars a year. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner. L. 1883, c. 354, § 1.

123 N. Y. 173.

2. POWERS AND DUTIES ; RULES ; CONTROL OF EXAMINATIONS ; INVESTIGATIONS ; REPORT. It shall be the duty of said commission :

First—To aid the governor, as he may request, in preparing suitable rules for carrying this act into effect ; and when said rules have been promulgated, it shall be the duty of all officers of the state of New York, in the departments and offices to which any such rules may relate, to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Second—And among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows :

1. For open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character and, so far as may be, shall relate to those matters which shall fairly test the relative capacity and fitness of the persons examined to discharge the duties of that service into which they seek to be appointed.

2. All the officers, places and employments so arranged or to be arranged in classes, shall be filled by selections from among those graded highest as the result of such competitive examinations.

3. There shall be a period of probation before any absolute appointment or employment aforesaid.

4. Promotions from the lower grade to the higher shall be on the basis of merit and competition.

5. No person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service, and no person shall be removed or otherwise prejudice for refusing to do so.

6. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

7. There shall be non-competitive examinations when competition may not be found to be practicable.

8. Notice shall be given in writing by the appointing power to said commission of the person selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons thereof shall be stated in the annual reports of the commission.

Third—Said commission shall, subject to the rules that may be made by the governor, make regulation for, and have control of such examinations and, through its members or the examiners, it shall supervise and preserve the records of the same ; and the said commission shall keep minutes of its own proceedings.

Fourth—Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act, and in the course of such investigations, each commissioner and their secretary shall have power to administer oaths.

Fifth—Said commission shall make an annual report to the governor for transmission to the legislature, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestion it may

approve for the more effectual accomplishment of the purposes of this act. Id. § 2.

17 Abb. N. C. 64 ; 69 N. Y. St. R. 278 ; 89 Hun. 298.

3. EMPLOYEES OF COMMISSION ; BOARDS OF EXAMINERS ; SALARIES ; ROOMS FOR EXAMINATIONS. Said commission is authorized to employ a chief examiner, a part of whose duty it shall be under its direction to act with the examining boards so far as practicable, whether at Albany or elsewhere, and to secure accuracy, uniformity and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of thirty-six hundred dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The commission is authorized to employ a secretary, who may be one of its own number, who shall receive a compensation of one thousand dollars per annum, and who shall also be paid his necessary traveling expenses incurred in the discharge of his duty, and also a person to act as stenographer and copyist who shall be entitled to receive a compensation of one thousand dollars a year, or in its discretion may from time to time employ stenographers and copyists at the expense not to exceed in the aggregate the sum of one thousand dollars a year. The commission may appoint a messenger, to act also as a clerk, at a salary not exceeding nine hundred dollars a year, and may dismiss him at pleasure. The commission may at Albany, and in any other part of the state where examinations are to take place, designate and select a suitable number of persons in the official service of the state of New York, after consulting the head of the department or office in which such person serves, or in its discretion, persons not in the official service, to be

members of boards of examiners, and may at any time substitute any other person in or out of such service in place of any one so selected. Any person not at the time in the official service of the state, or of any political division thereof serving as a member of the board of examiners shall be entitled to compensation for every day actually and necessarily spent in the discharge of his duty as examiner at the rate of five dollars a day, but the aggregate compensation of any such examiner shall not exceed one hundred dollars in any year. It shall be the duty of the officers of the state of New York, or of any political division thereof, at any place outside of the city of Albany where examinations are directed by said rules or by said boards to be held, to allow the reasonable use of the public buildings, and to light and heat the same, for holding such examinations, and in all proper ways to facilitate the same. *Id.*, § 3, as am'd L. 1884, c. 357.

(Note—By L. 1884, c. 357, § 8, inspectors of election and poll clerks were exempt from provisions of L. 1883, c. 354, or its amendments, and commissioners and mayors of cities were to so provide in their regulations under said act. In the annual appropriation acts (L. 1896, c. 948), it is provided that orderlies and watchmen in the public buildings, so designated on the books of the superintendent of public buildings, prior to March 1, 1886, shall be citizens of the state and honorably discharged Union army soldiers or sailors of the late war and shall not be subject to civil service examinations.)

4. ROOMS AT ALBANY ; STATIONERY, ETC. ; EXPENSES, HOW PAID. It shall be the duty of the trustees of public buildings designated by chapter three hundred and forty-nine of the laws of eighteen hundred and eighty-three to cause suitable and convenient rooms and accommodations to be assign-

ed or provided, and to be furnished and heated and lighted at the city of Albany for carrying on the work of said commission and said examinations, and said commission may order the necessary stationery, postage stamps, and official seal and other articles to be supplied, and the necessary printing to be done for its official use. And the cost and expense thereof and the several salaries, compensations and necessary expenses of the commission, upon the same being stated in detail and verified by affidavit as the comptroller may direct shall be paid monthly from any money in the treasury not otherwise appropriated. L. 1883, c. 354, § 4, as am'd L. 1884, c. 357.

5. CORRUPT CONDUCT TOWARD PERSONS EXAMINED. Any commissioner, examiner, copyist, or messenger herein mentioned, or any person who shall wilfully and corruptly, by himself or in co-operation with one or more persons, defeat, deceive or obstruct any person in respect to his or her right of examination according to any rules or regulations prescribed pursuant to the provisions of this act, or who shall wilfully, corruptly, and falsely mark, grade, or estimate, or report upon the examination or proper standing of any person examined pursuant to the provisions of this act, or aid in so doing, or who shall wilfully and corruptly make any false representations concerning the same, or concerning the person examined, or who shall wilfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, shall for each offense be deemed guilty of a misdemeanor. *Id.*, § 5, as am'd L. 1884, c. 410, § 1, 33 N. Y. St. R. 84.

6. CLASSIFICATION OF PUBLIC EMPLOYEES. Within four months after the expiration of the present

session of the legislature, it shall be the duty of the governor to cause to be arranged in classes of the several clerks and persons employed or being in the public service, for the purposes of the examination herein provided for, and he shall include in one or more of such classes, so far as practicable, all subordinate places, clerks and officers in the public service of the state. *Id.*, § 6, 91 Hun., 118.

7. ADMISSION TO OR PROMOTIONS IN CLASSES. No officer or clerk shall be appointed, and no person shall be admitted to or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted, from such examination, in conformity herewith. No elective officer, and no person employed as a laborer or workman, shall be required to be classified hereunder; nor, unless by the direction of the senate, shall any person who has been nominated for confirmation by the senate be required to be classified or to pass an examination. It shall be the duty of each state officer or board of state officers appointing or employing any officer, clerk or other person, in the public service of the state in either of said classes, forthwith on such appointment or employment, to report to the civil service commission the name of such appointee or employe, the title or character of his office or employment, and the date of the commencement of service by virtue thereof; and, forthwith, on the termination of such service to report to said commission the fact and date of such termination. It shall be the duty of said commission to keep in its office a complete record open to public inspection at all reasonable hours, of all officers, clerks and other persons in the public service of the state, in either of said classes, appointed or employed therein in pursuance of law and the

rules and regulations made in pursuance of law, showing in each case the title or character of the office or employment, and the date of the commencement of service by virtue thereof ; and also a complete record, so far as practicable, in like manner, of all officers, clerks or other persons in the public service of the state, in either of said classes, appointed or employed therein in violation of the law, or of the rules and regulations made in pursuance of law. It shall be the duty of said commission to certify to the comptroller the name of every officer, clerk or other person in the public service of the state, in either of said classes, appointed or employed therein in pursuance of law and of the rules and regulations made in pursuance of law, stating in each case the title or character of the office or employment, and the date of the commencement of service by virtue thereof ; and, in like manner, to certify to the comptroller, the name of each officer, clerk or other person, in the public service of the state, in either of the said classes, appointed or employed therein in violation of law or of the rules and regulations made in pursuance of law ; and to certify to the comptroller, in like manner, every change occurring in any such office or employment forthwith, on the occurrence of the change. It shall be unlawful for the comptroller to draw his warrant for the payment of any salary or compensation to any officer, clerk, or other person in the public service of the state, in either of said classes, who is not so certified as having been appointed or employed in pursuance of law and the rules and regulations made in pursuance of law. Any officer, clerk or other person entitled to be certified by said commission to the comptroller as having been appointed or employed in pursuance of law and of the rules and regulations made in pursuance of law, and refused such certificate may maintain a proceeding by

mandamus to compel the commission to issue such certificate. In each city of the state in which rules and regulations have been adopted under the provisions of this act, any officer of such city whose duty it is to sign or countersign warrants, shall not draw, sign, or issue, or authorize the drawing, signing, or issuing, of any warrant on the treasurer or other disbursing officer of such city for the payment of salary to any person in its service whose appointment has not been made in pursuance of this act, and the rules in force thereunder. Any sums paid contrary to the provisions of this section may be recovered from any officer signing or countersigning warrants for the payment of the same, and from the sureties of his official bond, in an action in the supreme court of the state, maintained by a citizen resident therein, who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid a tax therein. All moneys recovered in any action brought under the provisions of this section must, when collected, be paid into the treasury of the city. *Id.*, § 7, as am'd L. 1894, cs. 354 and 681.

10 Misc., 764 ; 33 N. Y. St. R., 84 ; 66 *id.*, 75 ; 148 N. Y., 360.

8. The mayor of each city in this state shall appoint and employ suitable persons to prescribe, amend and enforce regulations for appointments to and promotions in the civil service of such city, and for classifications and examinations therein ; and for the registration and selection of laborers for employment therein, not inconsistent with the constitution and the provisions of this act. The regulations so to be prescribed shall, among other things, provide and declare as in the second section of this act is provided and declared in reference to regulations for admission to the civil service of the state. With-

in two months after the passage of this act, it shall be the duty of each of said mayors in and by such regulations to cause to be arranged in classes the several clerks and persons employed or being in the public service of the city of which he is mayor, and there shall be included in one or more of such classes, so far as practicable, for the purposes of the examination herein provided for, all subordinate clerks and officers in the public service of the said city to whom his power under this act extends. After the termination of three months from the passage of this act no officer or clerk shall be appointed, and no person shall be admitted to or be promoted in either of the said classes now existing or that may be arranged hereunder pursuant to said rules, until he has passed the examination, or is shown to be exempt from such examination, in conformity with such regulations. Such regulations herein prescribed and established, and all regulations now existing for the appointment and promotion of the civil service of said city and any subsequent modification thereof, shall take effect only upon the approval of the mayor and the New York civil service commission. Officers elected by the people, and the head or heads of any department of the city government, and persons employed in who seek to enter the public service as principals or teachers under the educational departments of any city, and any subordinate officer who, by virtue of his office, has personal custody of public moneys or public securities, for the safekeeping of which the head of an office is under official bonds, shall not be subject to the regulations prescribed pursuant to this section, nor shall any regulations contravene any existing statute relating to entrance to said service. It shall be the duty of all those in the official service of any such city to conform to and comply with any regulations made pursuant to this act, and to aid and

facilitate in all reasonable and proper ways the enforcement of all regulations and the holding of all examinations which may be required under the authority conferred by this section. But the authority by this section conferred shall not be so exercised as to take from any policeman or fireman any right or benefit conferred by law, or existing under any lawful regulation of the department in which he serves. And all examinations herein authorized shall be public, and all regulations shall be published, and, with all the proceedings and papers connected with said examinations, shall be at all time subject to the inspection of said commission and its agents; and said commission shall set forth in its reports the character and practical effects of such examinations, together with its views as to the improvement and extension of the same, and also copies of all regulations made under the authority hereby conferred.

Thus amended by Chapter 186, Laws of 1898.

9. RECOMMENDATIONS FOR OFFICE. No recommendation of any person who shall apply for office or place under the provisions of this act, which may be given by any senator or member of assembly, or officer confirmed by the senate, or judge of any court, except as to the character or residence of the applicant shall be received or considered by any person concerned in making any examination or appointment under this act. *Id.*, § 9.

10. POLITICAL ASSESSMENTS PROHIBITED. No officer, agent, clerk or employee under the government of the State of New York or any political division thereof shall directly or indirectly use his authority or official influence to compel or induce any other officer, clerk, agent or employee under

said government, or any political division thereof, to pay or promise to pay any political assessment. Every said officer, agent or clerk, who may have charge or control in any building, office or room occupied for any purpose of said government, or any said division thereof, is hereby authorized to prohibit the entry of any person, and he shall not consent that any person enter the same for the purpose of therein making, collecting, receiving or giving notice of any political assessment; and no person shall enter or remain in any said office building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting, nor shall any person therein give notice of, demand, collect, or receive any such assessment; and no person shall prepare or make out, or take any part in preparing or making out, any political assessment, subscription or contribution with the intent that the same shall be sent or presented to or collected of any officer, agent or employee subject to the provisions of this act, under the government of the State of New York, or that of any political division thereof, and no person shall knowingly send or present any political assessment, subscription or contribution to or request its payment of any said officer, agent or employee. *Id.*, § 11, as am'd L. 1884, c. 357, § 3.

11. PUNISHMENT FOR VIOLATION. Any person who shall be guilty of violating any provision of the last section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court. *Id.*, § 12, as am'd L. 1884, c. 357, § 4.

12. POLITICAL OPINIONS, ETC. No recommendation or question under the authority of this act shall relate to the political opinions or affiliations of any person whatever. *Id.*, § 13.

13. No recommendation or question under the authority of this act shall relate to the political opinions or affiliations of any person whatever ; and if a person holding a position subject to competitive examination in the civil service of the state or city shall be removed or reduced the reasons therefor shall be stated in writing and filed with the head of the department or other appointing officer, and the person so removed or reduced shall have an opportunity to make an explanation.

Thus amended by Chapter 186, Laws of 1898.

14. QUORUM OF BOARD ; INQUIRIES TO BE MADE. A majority of the members of said board shall constitute a quorum. but a less number may adjourn from day to day. Said commission, when organized, shall immediately inquire into the methods of appointments, removal, terms of service, duties, compensation and numbers of all clerks, employes or subordinate officers of any nature whatsoever, either of this state or cities or counties therein, having a population exceeding fifty thousand inhabitants, who are not, by existing laws, appointed by the governor of the state or by the mayor of any city, or elected by the people ; and whether the action of political parties or the public acts of official servants are in any wise affected, and if so to what degree, by the present methods of such appointments, tenure of office, removals and compensations, and whether the public interest would or would not be advanced by prescribing competitive tests or standards of appointment for any or all of such subordinate public servants, in addition to those

who are hereinbefore included, and if so, the nature and extent of such tests or standards ; and whether any abuses exist in connection with the existing practices touching said appointments, tenures, compensations or removals that require reform, or that may be abated by legislation or otherwise. Said commission may also further extend its inquiries so far as to enable it to report whether any, and if so, what legislation is expedient, relative to the methods and amounts of compensation of all county officers and their subordinates in this state. L. 1883, c. 354, § 15.

15. PROCURING ATTENDANCE OF WITNESSES, ETC. ; FEES ; DUTY OF STATE AND OTHER OFFICERS. Said commission shall have like power to secure, by its subpoena, the attendance and testimony of witnesses, and the production of books and papers pertinent to the investigations and inquiries hereby authorized, to that prescribed in and by chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two, for the commission thereby constituted in the execution of its duties as in said act last mentioned ; and witnesses and officers to subpoena and secure the attendance of witnesses before said commission shall be entitled to the same fees as are allowed witnesses in civil suits in courts of record. Such fees need not be prepaid, but the comptroller shall draw his warrant for the payment of the amount thereof when the same shall have been certified to, by the president of the commission, and duly proved by affidavit or otherwise to the satisfaction of the said comptroller ; and all state, county, town, municipal and other officers and their deputies, clerks, subordinates and employees shall afford the said board all reasonable facilities in conducting the inquiries specified in this act and give inspection to said board of all books,

papers and documents belonging or in any wise appertaining to their respective offices, and also shall produce said books and papers, and shall attend and testify when required to do so by said commission. Id., § 16, as am'd L. 1884, c. 357, § 5.

16. OATH OF COMMISSIONERS ; SALARIES, ETC., HOW PAID ; APPROPRIATION. Said commissioners hereinbefore named, or in case of vacancy from among their number by declination, resignation or otherwise, a successor commissioner to be appointed by the governor, shall qualify by filing with the secretary of state an oath to perform faithfully the duties of such commissioner. Each commissioner shall receive the compensation hereinbefore provided, together with his actual traveling expenses in the discharge of his duties as such commissioner. The said salaries and expenses, together with the other necessary expenses of said board, to be approved by the comptroller and thereafter paid out of the treasury of this state ; and the sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated for the purposes stated in this act. Id., § 17.

L. 1884, c. 410, § § 1, 2, amend the preceding act of 1883.

17. PREVIOUS REGULATIONS AND APPOINTMENTS OF MAYORS CONFIRMED. When before the passage of this act the mayor of any city herein mentioned has prescribed regulations pursuant to the power given him by the act hereby amended, such regulations shall be deemed to be established and prescribed and to be operative as if established, prescribed, and approved under the provisions of the said act as hereby amended ; and the examiners who before the passage of this act have by the

mayor of any such city been appointed or designated under the provisions of the said act, shall be deemed to be appointed, and to have all the powers and duties which they would have if appointed under the provisions of the said act as hereby amended. L. 1884, c. 410, § 3.

18. In grateful recognition of the services, sacrifices and sufferings of persons who served in the army or navy of the United States, in the late civil war, and have been honorably discharged therefrom, they shall be certified as such by the commissioners or board of officers, authorized to report names for appointment or promotion to the appointing officer or other appointing power, and when such honorably discharged soldiers and sailors of the late civil war are applicants, they shall be preferred for such appointment and promotion, and competitive examinations shall not be deemed practicable or necessary in cases where the compensation or other emolument of the office does not exceed four dollars per day, but the examination shall be such as is calculated only to ascertain the merits and fitness of the applicant for the position for which he applies, and if found fitted to fill such position, the applicant's name shall be placed on the eligible list and he shall be certified therefrom. In all examinations for positions where the compensation exceeds four dollars a day, such honorably discharged soldiers and sailors of the late civil war shall be appointed without regard to their standing on any list from which such appointment or promotion shall be made, and shall be preferred for appointment to positions in the civil service of the state and of the cities, counties, towns, and villages affected by this act, and the several acts hereby amended over all other persons, though graded lower than others so examined and reported, provided their qualifications and fit-

ness shall have been ascertained as provided under this act, and the several acts hereby amended, and the person thus preferred shall not be disqualified from holding any position in said civil service on account of his age, nor by reason of any physical disability, provided such age or disability does not render him incompetent to perform the duties of the position applied for. In all cases where the office or position applied for is a city, village, town or county office or position, the applicant shall have been a resident of the county in which the office or position is located for at least one year. *Id.*, § 4, as am'd L. 1886, c. 29, § 1 ; L. 1894, c. 717, and L. 1895, c. 344, § 1.

10 Misc. 764 ; 90 Hun, 151 ; 67 N. Y. St. R. 264 ; 69 *id.* 277, 278, 736 ; 63 *id.* 358, 260, 263, 264 ; 89 Hun. 164, 165 ; 148 N. Y. 219.

Note—L. 1895, c. 344, § 2, makes any violation of the provisions of the first section of that act a misdemeanor and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars by any court having competent jurisdiction.

§ 3 repeals all inconsistent laws or parts of laws.

19. **WHEN TWO OR MORE SOLDIERS OR SAILORS QUALIFIED.** Whenever a competitive examination for appointment to a position in the civil service of the state, or the cities affected by this act, and the several acts hereby amended, that more than one such honorably discharged soldier or sailor is qualified to fill the same, the commissioners, board or officer authorized to report names for appointment shall certify to the appointing officer, or the appointing power, all of such honorably discharged soldiers or sailors whose qualifications and fitness have been ascertained as aforesaid, specifying their respective grades in such examination ; provided,

however, that when more than three of such honorably discharged soldiers or sailors shall be so found duly qualified for appointment to such positions, there shall be certified for such appointment not more than two names in excess of the number of places to be filled, and in all cases the appointment shall be made from among those not exceeding three in number, being so certified who are graded highest, as the result of such examination. L. 1884, c. 410, § 5, added by L. 1886, c. 29, § 2.

20. PREFERENCE TO HONORABLY DISCHARGED SOLDIERS AND SAILORS. In every public department and upon all public works of the state of New York, and of the cities, counties, towns and villages thereof, and also in non-competitive examinations under the civil service rules, laws or regulations of the same, wherever they apply, honorably discharged Union soldiers, sailors and marines shall be preferred for appointment, employment and promotion; age, loss of limb or other physical impairment which does not, in fact, incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity necessary to discharge the duties of the position involved. And no person holding a position by appointment or employment in the state of New York or of the several cities, counties, towns or villages thereof and receiving a salary or per diem pay from the state or from any of the several cities, counties, towns or villages thereof, who is an honorably discharged soldier, sailor or marine, having served as such in the Union army or navy during the war of the rebellion and who shall not have served in the Confederate army or navy, shall be removed from such position or employment except for incompetency or misconduct shown, after a hearing upon due notice, upon the charge made, and with the right to such em-

ploye or appointee to a review by a writ of certiorari ; a refusal to allow the preference provided for in this act to any honorably discharged Union soldier, sailor or marine, or a reduction of his compensation intended to bring about a resignation, shall be deemed a misdemeanor, and such honorably discharged soldier, sailor or marine shall have a right of action therefor in any court of competent jurisdiction for damages, and also a remedy by mandamus for righting the wrong. The burden of proving incompetency or misconduct shall be upon the party alleging the same. But the provisions of this act shall not be construed to apply to the position of private secretary or deputy of an official or department or to any other person holding a strictly confidential position. L. 1884, c. 312, § 1, as am'd L. 1887, c. 464 ; L. 1894, c. 716, § 1, and L. 1896, c. 821, § 1.

(Note—L. 1894, c. 716, § 2, and L. 1896, c. 821, § 2, repeal all acts inconsistent with the above.)

131 N. Y., 128, 191, 133 id. 203 ; 142 id. 113 ; 55 Hun. 149, 285 ; 60 id. 98, 507 ; 65 id. 169 ; 84 id. 417 ; 30 N. Y. St. R. 615 ; 38 id. 401, 780 ; 39 id. 526 ; 42 id. 712, 867 ; 43 id. 527 ; 44 id. 525 ; 47 id. 370 ; 58 id. 633 ; 65 id. 586 ; 69 id. 736 ; 148 N. Y. 156.

21. PENALTY FOR FAILURE TO COMPLY WITH TERMS OF ACT. All officials or other persons having power of appointment to or employment in the public service as set forth in the first section of this act, are charged with a faithful compliance with its terms, both in letter and spirit, and a failure therein shall be a misdemeanor. Id., § 2, as am'd L. 1887, c. 464.

142 N. Y. 113 ; 55 Hun. 149 ; 65 id. 169 ; 38 N. Y. St. R. 401, 780.

22. REMOVAL OF DISCHARGED SOLDIERS, FIREMEN, ETC., FOR CAUSE ONLY, PROVISO. No person holding a position by appointment in any city or county of this state or who may hereafter be appointed, receiving a salary from such city or county (unless he has been appointed for a definite term), who is an honorably discharged soldier, sailor or marine, having served as such in the Union army or navy during the war of the rebellion, or the Mexican war and who shall not have served in the Confederate army or navy, or who shall have served the time required by law in the volunteer fire department of any city, town or village in the state, or who shall have been a member thereof at the time of the disbandment of said volunteer department, shall be removed from such position except for cause shown after a hearing had ; but this provision shall not be construed to apply to the position of private secretary or chief clerk or deputy of any official or department, or to any other person holding a confidential relation to the appointing officer. L. 1888, c. 199, § 1, as am'd L. 1890, c. 67, and L. 1892, c. 577.

23 Civ. Pro. 334 ; 131 N. Y. 191 ; 59 Hun. 586 ; 60 id. 507 ; 69 id. 291 ; 7 Misc. 260 ; 11 id. 291 ; 30 N. Y. St. R. 705 ; 36 id. 918 ; 37 id., 51, 181 ; 38 id. 780 ; 39 id. 527 ; 42 id. 866 ; 44 id. 504 ; 53 id. 235 ; 57 id. 465 ; 70 id. 524 ; 1 App. Div. 598 ; 88 Hun. 173 ; 5 App. Div. 168.

§ 2 repeals all inconsistent acts.

Appointments by Capitol Commissioner ; see Public Buildings. § § 6, 7.

Appointments in Prisons ; see Prisons, § § 30, 212, 214.

Assessment of Employes ; see Election Law, §§ 248, 249.

Report of civil service commission ; see Legislative law, § 76.

Constitutional Provisions ; See Constitution, § 71.

Director of Pathological Institute ; See Insanity Law, § 16.

PROVISIONS

OF THE

CONSTITUTION

OF THE

STATE OF NEW YORK

APPLICABLE TO

Cities of the State.

PROVISIONS
OF THE
Constitution of the State of New York.
Applicable to
CITIES OF THE STATE.

Section 8 of Article III of the Constitution of the
State of New York—PERSONS DISQUALIFIED
FOR BEING MEMBERS.

SECTION 8. No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Section 10 of Article VIII. of the Constitution of
the State of New York—COUNTIES, ETC., NOT
TO GIVE OR LOAN MONEY OR CREDIT, LIMITA-
TION OF INDEBTEDNESS.

SEC. 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of any association or corporation ; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such

county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for the state or county taxes prior to the incurring of such indebtedness ; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water ; but the term of the bonds issued to provide the supply of water shall not exceed twenty years and a sinking fund shall be created on the issuing of said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any

debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Section 2 of Article XII of the Constitution of the State of New York—CLASSIFICATION OF CITIES, ETC.

SEC. 2. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first-class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the

provisions of this section. After any bill for a special city law, relating to a city has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill ; but the Legislature may provide for the concurrence of the Legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon, such a bill, if it relates to more than one city, shall be transmitted of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words, "accepted by the city," or "cities," as the case may be ; in every such law which is passed without such

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