

erty to be affected by such improvement, by an advertisement in two newspapers, if there be so many published in said city, such time to be not more than three days thereafter; at the time and place named, they shall proceed to examine the land and improvements to be affected by the proposed improvement, and shall first ascertain the amount of damages to be sustained; the names of the owners of the property to be damaged, and the amount to be paid to each of such owners therefor. They shall then assess upon the property to be benefited by such improvement a sum sufficient to pay the whole amount of said damages, and the fees and expenses of the said Commissioners, and shall apportion the same among the owners of the several parcels of property to be thus benefited, in proportion to the amount of benefits to accrue to each.* In making such estimate and apportionment, they shall take all pertinent testimony that may be offered them, and may examine any witnesses that they shall deem it necessary or advisable to call, and shall have authority to administer oaths to all persons testifying before them. Within twenty-one days after their appointment, unless further time be granted by the Council, they shall make a report to said Council of the assessments and awards so made by them, with the names and amounts of the persons damaged or benefited as aforesaid.

SEC. 5. Upon receiving such report, said Council may, if in their judgment the said report is legal, and the said assessment therein contained is in accordance with law, by ordinance, levy a tax† upon the several parcels of property reported as benefited by said improvement, for the amounts severally charged against each in said report, which tax shall be a lien upon the several parcels of property severally, and shall not be removed until said tax is paid. Immediately upon levying such tax the City Marshal shall serve a notice in writing upon each owner of the land so taxed, or his lawful agent; or in case such owner or agent cannot be found, to post such notice in a conspicuous

*A case was made by C. T. Jacobos and carried to the Supreme Court, September term, 1871, which set aside the report of the Commissioners, on the ground that they had not awarded the damages or assessed the benefits in the manner required by the Act. That Court very justly characterized the law as ambiguous; but taking the whole Act together, they held that it is necessary to first award to the parties whose property is taken for the street, or damaged by its opening, the amount of the damage, irrespective of any benefit that may accrue to them, and that the benefit must be separately assessed. In other words, that all the damages must be first ascertained and added together, then the benefits to each piece of property in the district affected ascertained, and all the benefits added together, and then the assessment that each is to pay will be that proportion of the total damage that the benefit in his particular piece of property bears to the whole of the benefits. To illustrate: If the total of the value of the land taken to open the street is \$10,000, and the property on both sides will be benefited \$2000, and A's particular lot will be benefited \$500, then A pays 500-2,000, or 1-40th of the \$10,000. The last Commission adopted the method of taking each piece of property separately, and if the damage exceeded the benefits, allowed the difference; and this method was adjudged to be erroneous by the Supreme Court.—COMPILER.

†At the September (1871) term of the County Court of Alameda Co., Judge Nye rendered a decision in the matter of the application of Geo. C. Potter, to compel the City Council to pass an ordinance levying a tax for the purpose of widening Broadway, as recommended by Commissioners duly appointed under the law. The Court held that the acts of the Council, after the appointment of Commissioners, were ministerial, and that the parties to whom damages might be awarded could compel the Council by *mandamus* to pass an ordinance levying the tax recommended. A writ was accordingly issued and served, but from other reasons, the parties in interest did not insist upon its enforcement.—COMPILER.