

of, showing the portions owned or possessed by each, and to return the same to the Council within ten days after the receipt of said resolution by him, unless longer time shall be granted by said Council therefor.

SEC. 3. Upon receiving said map and return from the said Engineer, the said Council shall forthwith give notice of not less than five days, by publication is not less than two daily newspapers, if there be so many published in said city, of the time and place where they will hear all parties desiring to show cause against the said improvement. At the time and place designated in such notice, or at such subsequent time as the Council may adjourn to—but such adjournment shall not, in the aggregate, exceed seven days—the said Council shall proceed with such hearing.

SEC. 4. If no objections be made, or if, after hearing the objections thereto, the Council shall remain of the opinion that such improvement should be made, they shall elect, by ballot, three Commissioners, residents and property owners in said city, not interested, directly or indirectly, in the proposed improvement, or in the property to be affected thereby, to assess the damages and benefits to be caused by said improvement. Within two days thereafter, said Commissioners shall give notice of the time and place where they will proceed to examine the property 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

*A case was made by C. T. Jacobs 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 \$2,000, 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 Com-