

Chap. 94.

An Act to incorporate the Milwaukee and Fond du Lac Railroad Company.

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

SECTION 1. That Alexander Mitchell, Duncan C. Reed, Edward D. Holton, Levi Blossom, Hans Crocker, Moses Kneeland, Walter P. Flanders, George H. Walker, Daniel Wells, Jr., F. W. Alerding, F. A. Rounthall, Cicero Comstock, J. A. Lapham, Jacob A. Hoover, of the county of Milwaukee; Hildo Opitz, William Wightman and Paul A. Weil, of the county of Washington; and Mason C. Darling, E. W. Davis, John Bannister, E. W. Drury, Edward Pier, O. F. Potter, Alexander W. Stow and Edward H. Smith, of the county of Fond du Lac, be, and they are hereby appointed Commissioners, under the directions of a majority of whom, subscriptions may be received to the capital stock of the Milwaukee and Fond du Lac railroad company, hereby incorporated, and they may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, first giving thirty days' notice of the times and places of taking such subscriptions, by publishing the same weekly in a public newspaper printed in the county of Milwaukee, and also in one printed in the county of Fond du Lac.

Commissioners
to receive sub-
scriptions.

SEC. 2. The capital stock of said company shall be eight hundred thousand dollars in shares of one hundred dollars each, and as soon as five hundred shares of stock shall be subscribed, and five dollars on each share actually paid in, the subscribers of such stock, with such other persons as shall associate with them for that purpose, their successors and assigns, shall be and they are hereby declared and created a body corporate and politic, by the name and style of the "Milwaukee and Fond du Lac railroad company," with perpetual succession, and by that name shall have all the privileges, franchises and immunities incident to a corporation; they shall be capable in law of purchasing, holding, selling, leasing and conveying estate, either real, personal or mixed, as far as the same may be necessary for the purposes hereinafter mentioned, and no further; and in their corporate name may sue and be sued, may have a common seal, which they may alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do, for the well being of the said corporation.

Corporate pow-
ers.

SEC. 3. The said Commissioners, or a majority of them, after the said five hundred shares of stock shall have been subscribed, as aforesaid, shall give at least thirty days' notice in the newspapers hereinbefore mentioned, of the time and place by them appointed for the subscribers or stockholders to meet

Notice of Rec-
tion to be given.

for the purpose of electing thirteen directors, and annually thereafter the said stockholders shall meet on the second Wednesday in January, for the purpose of electing directors as aforesaid, upon like previous notice to be given as aforesaid: Provided, that previous to the first election, the Commissioners hereinbefore named shall elect one of their number President; and they shall perform all the duties, and be invested with all the powers of directors: And provided, that if from any cause ^{Proviso.} an election shall not be held at the regular time specified therefor, the same may be held at any other time, on notice as aforesaid; that until such election, the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: And provided, also, that in case of vacancy from the death or resignation of any director his place may be filled by the board of directors.

SEC. 4. The affairs of the said corporation shall be managed by a board of thirteen directors, who shall be chosen annually by ballot, on the days hereinbefore prescribed, by the stockholders of the said company, the votes to be delivered in person or by proxy duly authorized, which directors shall appoint one of their own number to be President, and shall respectively serve for one year, or until other directors be elected, they shall have power to make and establish such by-laws, rules, orders and regulations, not inconsistent with the constitution and laws of the United States or of the State of Wisconsin, as may be necessary for the well ordering of the affairs of said company. ^{Election of Directors.}

SEC. 5. None but stockholders shall be elected directors, and at every election, and in all cases upon which stockholders shall be called upon to vote, each share of stock shall be entitled to one vote, and in all cases of election [s] for directors, the thirteen stockholders having the greatest number of votes shall be declared duly elected.

SEC. 6. The said directors shall meet at such times and places, and be convened in such manner as they may hereafter decide upon. A majority of the directors shall be a quorum for the transaction of business, who in the absence of the President shall appoint a President, pro tem; the said directors shall appoint a Secretary, Treasurer and such Engineers and other officers as they may find necessary; they shall have power to fix the compensation of all officers, and may demand adequate security for the performance of their respective trusts; they shall decide the time and manner and proportions in which the said stockholders shall pay the money due on their respective shares, and forfeit to the use of the company the share or shares ^{Powers of Directors.}

of every person or persons failing to pay any instalment so required, at a reasonable period, not less than thirty days after the time by them appointed for the payment thereof; they shall have full power to regulate tolls, to make such covenants, contracts and agreements, with any person, co-partnership, or body politic, whatsoever, as the execution and management of the works and convenience and interest of the company may require, and in general to superintend and direct all the operations, receipts, disbursements and other proceedings of the company: **Provide,** That no instalment called in at any one time shall exceed ten dollars per share, and that no instalment shall be called by the directors without at least thirty days' notice thereof in the newspapers hereinbefore mentioned.

Provide.

SEC. 7. The directors chosen as aforesaid, shall issue a certificate to each stockholder for the number of shares he or she may subscribe for or hold in said corporation, signed by the President, countersigned by the Secretary, and sealed with the common seal, subject, however, to all payments due, or to grow due thereon, which stock shall be transferable in person, or by attorney, executors, administrators, guardian or trustees under such regulations as may be provided for in the by-laws of the company

**Stock transfers
ble.**

SEC. 8. At each annual meeting of the stockholders for the purpose of electing directors, the directors of the preceding year shall exhibit to them a complete statement of the affairs and proceedings of the company for such year; and special meetings of the stockholders may be called by order of the directors, or by stockholders holding one-fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying moreover, the object of the meeting; but no business shall be transacted at such special meeting unless a majority in value of the stockholders shall attend in person or by proxy.

**Special meet-
ings.**

SEC. 9. The said company shall have power to locate and construct a single or double track railroad from such eligible point in the city of Milwaukee via Iron Ridge in the county of Dodge, to such eligible point in the town of Fond du Lac, in Fond du Lac county, as shall be determined on by a vote of the stockholders holding a majority of the stock of said company, at a special meeting called for the purpose of fixing the location or termination of said road, and shall have power to transport, take and carry property and persons upon the same, by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them; and they shall also have power to make, construct and erect all such side tracks, turn outs, and connecting tracks, and also all such

**Location and
construction.**

warehouses, toll-houses, machine shops, carriages, cars and other works and appendages, as may be necessary for the convenience of the company to the use of the said railroad, and also to connect said railroad and operate the same with other railroads and branch railroads in the State of Wisconsin.

SEC. 10. If said corporation shall not within three years from the passage of this act commence the construction of said railroad, then the rights, privileges, and power of said corporation under this act shall be null and void.

SEC. 11. It shall and may be lawful for said company, their officers, engineers and agents, to enter upon any land for the purpose of exploring, surveying and locating the route of said railroad, doing thereto no unnecessary damage, and when the said route shall be determined by said company, it shall be lawful for them, their agents, officers, engineers, contractors and servants, at any time, to enter upon, take possession of, and use such lands, not exceeding five rods in width, along the line of said route, subject, however, to the payment of such compensation as the company may have agreed to pay therefor, or shall be ascertained in the manner hereinafter directed and provided in such cases respectively; and said company are further authorized by their officers, engineers and agents to enter upon lands adjacent to the railroad beyond the limits of five rods, in the manner provided in this act, when necessary for the purpose of erecting depot buildings, station houses and necessary fixtures for the operation and for the business of said road, and for the purpose of making drains and giving a proper direction to water courses, across or along said road, when the same are necessary beyond the limits of said road, and to remove all substances and things which might endanger, obstruct or interfere with the free use of said road, and to deposite earth and gravel taken from deep cuts, and to obtain earth, gravel and other materials, for embankments and structures necessary to the construction and repairs of said road, doing, however, no unnecessary damage, and all lands so acquired, and all damage which shall be done to any lands or property under the provisions of this section shall be ascertained, and paid for in the manner and agreeable to the provision hereinafter provided, and when such damages shall have been paid for or tendered, the title to the land occupied by such building, fixtures, excavations and embankments, shall vest in fee simple in said company.

Occupation of
Lands.

SEC. 12. When the said corporation cannot agree with the owner or owners of such required land for the purchase thereof, or as to the compensation to be paid to the owner or owners

of any land taken for the purpose aforesaid, or when by reason of the legal incapacity, or absence of any such owner or owners, no such agreement or purchase can be made, then, and in any such case, it shall be lawful for the Judge of the circuit court of the county in which such lands are situated, on application of either party, and at the cost and charge of such corporation, to appoint three disinterested persons residing in said county, whose duty it shall be to view and examine, or survey said lands, with the buildings and improvements, if any thereon, and to estimate the value of the land so taken or required by the said company, and all damages which the owner or owners thereof shall sustain or may have sustained, by reason of the taking of the same for the construction and use of said railroad or works appertaining thereto, taking into consideration the advantages as well as the disadvantages of the same, to the said owner or owners, and the persons so appointed, before entering upon the discharge of such duties, shall take an oath before some Justice of the Peace, or other person competent to administer oaths, faithfully and according to the best of their abilities, to examine the land so taken or required by said company, and impartially to estimate and appraise the value of the same and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and using thereof by the said company, over and above all benefits and advantages which such owner or owners shall derive from the construction of such railroad, whereupon such commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damages, if any, over and above the benefits and advantages which may accrue to such owners as aforesaid, and shall make a report of such valuation in writing, under their hands and seals, to said Judge, and shall return the same within thirty days after their appointment, to the

Appraisers to
be appointed.

Clerk to file re-
port.

Proviso.

Clerk of the circuit court of the county in which they reside ; and it shall be the duty of the said Clerk to file the same, and in case no appeal shall be made within thirty days after the filing of said reports, as hereinafter provided, then the said Clerk shall record the same at the expense of said company, and judgment of the said court shall be entered thereon, on motion of either party, at any term of said court : Provided, that either party may appeal to said court within thirty days after said report shall have been filed in the Clerk's office, and such appeal shall be tried in the same manner as other issues are tried in said court, and the jury empannelled to try the same shall find the value of the land so taken or required by said company, and the damages which the owner or owners thereof shall have sustained or may sustain by the taking of the same, over and above

the benefits which will accrue to such owner or owners from the construction of such railroad, and judgment of court shall be entered accordingly: Provided also, That it shall not be lawful Provide. for [the] said commissioners, or said court, to proceed in the assessment of damages, or in the valuation of any lands or materials, as aforesaid, in the absence of the owner or owners thereof, his, her, or their agents or attorneys, unless it shall be shown to them by competent testimony, that the said owner or owners have had at least five days notice of the time and place at which such assessment or valuation was to be made, or that the said owners are absent from the State of Wisconsin, and if the said owner or owners shall be minors, or *non compos mentis* or absent from the State, the service of notice may be made on their guardian or trustee, if any there be, or in such manner as the court may direct: Provided also, That upon the making Provide. and filing of any report, as aforesaid, and payment or legal tender of the amount of any valuation or appraisal specified therein to the owner or owners of any such lands, his, her, or their legal representatives, the said company, their agents, or the contractors for making or repairing said railroad, may immediately take and use the same, without awaiting the issue or any appeal brought thereon.

SEC. 13. Whenever any judgment shall have been entered, as hereinbefore provided, for the value of any lands, or for any damages for the taking and using of the same, and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such lands, his, her, or their legal representatives, the said company shall be entitled to the estate and interest in the same, as fully as if it had been conveyed in fee simple, and if such valuation be not received when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: Provide. Provided, That the cost of any proceedings and judgments specified in the last preceding section shall be taxed by the court and paid by said company, except in cases where upon appeal, the verdict of the jury shall be for the same, or a less sum, than that reported by the said commissioners. Perfection of title.

SEC. 14. The said railroad shall be so constructed, as not to impede or obstruct the free use and passage of any public road or roads, which may cross the same, and in all places where such railroad may cross, or in any way interfere with any public road, it shall be the duty of said company to make or cause to be made, a sufficient causeway, or passage-way, to enable all persons traveling such public road, to pass over or under such rail road without inconvenience: Provided, That in

Of obstructions
by the Company

cases where said railroad may cross or come in contact with any public or private road so as to occupy any part of such road, it shall be lawful for said company to construct said rail road across or upon such road, after altering and putting the same in as good condition as before, and for that purpose the said company shall previous to occupying any part of such road, construct a new road in part, or in whole, as may be necessary, on ground adjacent to such road, and in every respect complete such newly constructed road or part of a road so interferred with, in as good condition as the same was previous to the disturbance and occupancy thereof by said company.

Proviso.

SEC. 15. For the convenience of persons owning or possessing lands through which said railroad shall pass, it shall be the duty of said company whenever required, to make a good and sufficient passage-way over or under said railroad, whenever the same may be necessary to enable the occupants of said lands, to pass over or under the same with wagons, carts and implements of husbandry, as occasion may require: Provided, That said company shall in no case be required to make more than one such passage-way for each farm, and when any public road shall cross such railroad, in any farm, the person owning or possessing such farm, shall not be entitled to require said company to make any additional causeway.

Penalty.

SEC. 16. On the completion of said railroad, or of any portion of the track, not less than five miles, it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property, as they shall from time to time think reasonable.

Penalty.

SEC. 17. If any person shall willfully and knowingly break, injure or destroy the railroad to be so constructed by said company, or any part thereof, or any work, building or machinery attached to, or in use upon the same, belonging to said company, such person or persons so offending, shall each of them, for every such offence, forfeit and pay a sum not exceeding three times the amount of damages caused by such offence, which may be recovered in the name of the said company, by action of debt, in any court having competent jurisdiction in the county wherein the offence shall be committed, and shall also be subject to indictment, and upon conviction of such offence, shall be punished by fine and imprisonment, or either, at the discretion of the court.

SEC. 18. The property of every individual invested in said corporation shall be liable to be taken in execution for the payment of his or her debts, in such manner as is or may be provided by law: Provided, That all debts due said company shall be first paid.

SEC. 19. This act shall be favorably construed to effect the purpose thereby intended; and the same is hereby declared to be a public act, and copies thereof printed by authority of the State of Wisconsin, shall be received as evidence thereof.

SEC. 20. Any person who shall wilfully and maliciously place any obstruction or thing upon the track of said road, or shall remove or damage any part thereof, in such a manner that the engines or cars may be immeded or thrown off the track, shall be deemed guilty of a misdemeanor, whether such accident shall take place or not, and shall be punished for every such offence, by imprisonment in the state prison for a term of not less than one, nor more than five years, at the discretion of the court; and in case any damage shall result from the placing such obstruction or injury to said road, said party shall be liable to pay all such damage to said company, and to any other person damaged thereby, and in case any accident shall happen in consequence of placing such obstruction, or in consequence of breaking or injuring said road, whereby death may be produced, the party so offending shall be adjudged guilty of murder in the first degree, and shall be punished agreeable to the law in such cases made and provided.

Penalties for wilful obstructions.

SEC. 21. The said rail road company are hereby authorised and fully empowered in their corporate name and capacity to borrow any sum, or sums of money from any person or persons, corporations or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any person or party of whom such money may be obtained, and make and execute in their corporate name all necessary writings, notes, bonds or other papers and make and execute and deliver such securities in amount and kind as may be deemed expedient by said corporation, any law on the subject of usury in this state or any other state where such transactions may be made to the contrary notwithstanding; and the powers of said corporation, for the purposes aforesaid, and for all purposes necessary to carrying out the object of said company, namely: the construction of a railroad from the city of Milwaukee to Fond du Lac, with a branch of said road to Taychedah, are hereby ratified and confirmed, and the contracts and official acts of said company, declared binding in law and equity, upon said corporation and upon all other parties to such contracts.

Company may borrow money.

SEC. 22. It shall be lawful for said company to purchase lands adjoining or adjacent to the railroad for the purpose of procuring earth, gravel, or other materials for embankments and structures necessary to the construction or repairs of said road, and whenever such lands shall be no longer needed for the pur-

Power to purchase lands.

poses aforesaid the said company are hereby authorised to sell and convey the same.

Extension of terminus.

SEC. 23. The said company are hereby authorised and empowered to extend, lay out, and continue the railroad at any time within five years from the passage of this act from the village of Fond du Lac in the county of Fond du Lac on the west side of Lake Winnebago and Fox River to Green Bay in the county of Brown: and whenever the said company shall decide to extend said railroad as aforesaid, they may increase the capital stock to two millions of dollars, which shall be subscribed in shares of like amount as the original stock and for that purpose may open anew their books or new books for the subscription of such additional stock and may appoint such agents to attend to the same as may be necessary for carrying out fully the provisions of this act.

Guarantee.

SEC. 24. The said company shall enjoy all the powers in locating, continuing and constructing said railroad, buildings and fixtures from Fond du Lac to Green Bay, as is provided for upon that portion of the road from Milwaukee to Fond du Lac and all powers, regulations, and restrictions and all authority granted to, and liabilities of said company shall not in any manner be abridged, extended, or altered by the increase of capital stock and extension of the road as aforesaid, except such alterations, extension and increase as is duly authorised.

Resumption.

SEC. 25. In case of a violation by the company of any of the provisions of this act, the Legislature of the State of Wisconsin may resume all and singular the rights and privileges hereby granted to said company.

SEC. 26. This act shall be in force from and after its passage.

FREDERICK W. HORN,
Speaker of the Assembly.

SAMUEL W. BEALL,
Lt. Governor and President of the senate.

Approved February 21st, 1851.

NELSON DEWEY.

Chap. 95. An Act to provide for the time of holding county courts in the county of Marathon.

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

SECTION 1. The term of the county court for the county of Marathon, shall commence on the first Monday in February, May, August and November of each year.