

An Act to incorporate the Southern Wisconsin Rail Road Company.

Chap 238

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

SECTION 1. Prosper Cravath, John M. Stewart, John W. Blackstone, Joel C. Squires, William R. Biddlecome, John Moore, Joseph B. Doe, James H. Earnest, and Ensign H. Bennett, are hereby created a body corporate by the name of the "Southern Wisconsin Rail Road Company," and by that name shall be and are hereby made capable in law to purchase, hold, enjoy, retain to them and their successors, lands, tenements, and hereditaments, so far as may be necessary for the purpose of constructing a rail road hereinafter set forth, and the same to sell, grant, rent, or in any manner dispose of; to contract and be contracted with, to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended; and also to make, have, and use a common seal, the same to alter, break, or renew at their pleasure, and if one or more of the persons named in this section shall die, refuse, or neglect to execute the powers and discharge the duties hereby created, it shall be the duty of the remaining persons hereinbefore named, or a majority of them, to appoint a suitable person or persons to fill such vacancy or vacancies so often as the same shall occur.

Created a body corporate.

SEC. 2. The said corporation are hereby authorized and empowered to construct and erect a rail road from Milton in the county of Rock by the way of the village of Janesville in the said county of Rock in this state, through the counties of Green, Lafayette, and Grant, to some point on the Mississippi river to be selected by the said corporation as they shall see fit.

Route of road.

SEC. 3. The capital stock of said corporation shall be one million five hundred thousand dollars, and shall be divided into shares of one hundred dollars each.

Capital stock.

SEC. 4. The above named persons or a majority of them are hereby authorized to open books for receiving subscriptions to the capital stock of said corporation, and shall prescribe the form of such subscription, which books shall be opened within one year from the passage of this act, at such place or places as they may deem expedient by giving two weeks' notice in some newspaper published in the counties of Rock and Green, and in such other places as they may see fit, of the time and place of opening said books.

May receive subscriptions.

SEC. 5. So soon as seventy thousand dollars or more of the capital stock of said corporation shall be subscribed,

the above named corporators or a majority of them shall give notice to the stockholders in such manner as they may determine, of a time and place for holding a meeting of the said stockholders to choose directors for the said corporation, and the said stockholders may at such meeting proceed to elect nine directors from the said stockholders, by ballot, each share of stock entitling the owner thereof to one vote, and the corporators mentioned in the first section of this act, or such of them as are present at the said meeting, shall be inspectors of such election, and shall certify in writing what persons are elected directors, and shall appoint the time and place of holding the first meeting of the board of directors, at which meeting a majority shall form a quorum competent to transact the business of the said company, and thereafter an election of directors shall be held annually, at such time and place as the stockholders shall at their first meeting determine, and if the said stockholders shall fail to appoint the time and place for said election, then the board of directors may fix the time and place of said meeting, and shall give thirty days' notice to the stockholders of such meeting, and in case no election is had on the day appointed, the directors last elected shall hold until an election has been held, and others elected in their stead.

Board of directors.

SEC. 6. The affairs of said corporation shall be managed by a board of not less than nine and not more than fifteen directors, who shall be chosen annually by ballot as 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 are elected; they shall have power to make and establish such by-laws, rules, and regulations not inconsistent with the constitution and laws of this state, as may be necessary for the well ordering of the affairs of said company.

Each share of stock entitled to one vote.

SEC. 7. None but stockholders shall be elected directors, and at every election and in all cases where stockholders shall be called upon to vote, each share of stock shall be entitled to one vote, and in all cases of elections of directors the stockholders having the highest number of votes shall be declared elected.

SEC. 8. 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 said 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; and they shall have full power to fix the compensation of all officers or agents, 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 of every person or persons failing to pay any installment so required at a reasonable period not less than sixty 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 construction and management of the works and the 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: *Provided*, That no installment called in at any one time shall exceed twelve dollars per share, and that no installment shall be called for by the directors without at least thirty days' notice thereof in the newspapers hereinbefore named.

Sec. 9. 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 and countersigned by the secretary, and sealed with the common seal, subject, however, to all payments due or to become due thereon, which stock shall be transferable in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided for in the by-laws of said company.

Sec. 10. 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 doings 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 of the capital stock, on like notice as that required for annual meetings, specifying moreover the object of such 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.

Sec. 11. The said company shall have power to locate and construct a single or double track rail road from Milton in the county of Rock by way of the village of Janes-

ville in said county of Rock, through the counties of Green, Lafayette, and Grant, to the Mississippi river, and shall have power to transport, take, and carry property and persons upon the same by power and force of steam, of animals, or of any mechanical or other power, or by 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 such ware houses, toll houses, machine shops, carriages, cars, and other works and appendages, as may be necessary for the convenience of the company, for the use of said rail road, and also to connect said rail road and operate the same with other rail roads and branch rail roads in the state of Wisconsin, and consolidate the capital stock of the said company with the capital stock of any rail road company with which the roads of the said companies shall intersect, and shall have full power to place the road of this company and its capital stock so consolidated, under the direction of a joint board of directors, of not less than nine nor more than fifteen, to be chosen on such terms as the directors of the companies consolidating their capital stock, shall agree upon.

May connect
with other roads

How charter for-
sited.

SEC. 12. If said corporation shall not within two years from the passage of this act commence the construction of said rail road, then the rights, privileges, and powers of said corporation under this act, shall be void.

May enter upon
lands.

SEC. 13. It shall 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 road, doing thereto no unnecessary damage, and when the said route shall be determined by the 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 land not exceeding one hundred and thirty feet 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 such as shall be ascertained in the manner hereinafter directed and provided in such cases respectively, and said company are further authorized, by their officers, engineers, agents, and servants, to enter upon lands adjacent to the rail road, beyond the limits of one hundred and thirty feet 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 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 deposit earth, gravel, and stone taken from cuts, and to obtain earth, gravel, stone, 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 agreeably to the provisions hereinafter provided; and when such damage shall have been paid for or tendered, the title of the land occupied by such fixtures, excavations and embankments, shall vest in fee simple in said company.

Sec. 14. 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 therefor, ^{How damages settled.} 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 that case it shall be lawful for any judge of the supreme court of this state, on application of the said company and at the cost and charge of said company, to appoint three disinterested persons residing in the counties through which the said road runs, whose duty it shall be to view and examine the lands so taken, 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 road or works appertaining thereto, taking into consideration the advantages as well as disadvantages of the same by means of the construction and operation of said road to said owner or owners; and it shall be the duty of the said company to give three weeks' notice of their application to the judge of the supreme court for the appointment of the said commissioners, to be published for three successive weeks in a newspaper published at the capital of this state, and also in a newspaper, if there shall be any published in each of the counties through which said road may be located, and the affidavit of the publisher or printer shall be legal evidence of such publication; and the persons so appointed, before entering upon the discharge of such duties, shall take before some justice of the peace or other person competent by law to administer oaths, faithfully and according to the best of their abilities to exam-

ine 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 the benefits and advantages which such owner or owners shall derive from the construction of such rail road; whereupon such commissioners shall proceed to examine the premises, and estimate the value of such land and the amount of damage if any, over and above the benefits and advantages which may accrue to such owner or owners as aforesaid, and shall make a report in writing of such valuation, under their hands and seals, to the circuit court of the county where the land lies, and shall return the same within thirty days after their appointment, to the 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 hereafter provided, then the said clerk shall record the same at the expense of the 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 rail road, and judgment of court shall be entered accordingly: *Provided also*, That it shall not be lawful 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 owner or 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 the guardian or trustee, if there be any, or in such manner as the court may direct: *Provided also*, That upon the making and fil-

Proviso.

ing 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 contractor for making or repairing said rail road, may immediately take and use the same without awaiting the issue of any appeal brought thereon.

SEC. 15. 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 easment of the same, so long as it shall be used for the track of said rail road, depot buildings, station houses, and necessary fixtures, 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: *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.

Company entitled to easment of lands.

Proviso.]

SEC. 16. The said rail road 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 rail road 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 passageway to enable all persons traveling such public road to pass over or under such rail road without inconvenience: *Provided*, That in cases where said rail road 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 interfered with, as substantially as it was previous to the disturbance and occupancy thereof by said company.

Rail road not to interfere with highway.

Proviso.

SEC. 17. For the convenience of persons owning or

To make passage way for farms. possessing lands through which said rail road shall pass, it shall be the duty of said company when required, to make a good and sufficient passage way over or under said rail road, whenever the same may be necessary to enable the occupants of said lands to pass over or under the same with waggons, 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 said rail road in any farm, the person owning or possessing said farm shall not be entitled to require said company to make any additional causeway.

Proviso.

Public act.

SEC. 18. This act shall be construed favorably to effect the purposes hereby 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.

Penalty for injury to road.

SEC. 19. Any person who shall willfully and maliciously place any obstruction or thing upon the track of said road, or remove or damage any part thereof in such a manner that the engine or cars may be impeded or thrown off the track, shall be guilty of a misdemeanor, whether such result shall happen 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 obstructions or injury to said road, said party shall be liable to pay all such damage to said company and to any other person damaged or injured thereby, and in case any accident shall happen in consequence of placing such obstruction, or in consequence of the willful and malicious 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 agreeably to the law in such cases made and provided.

May borrow money.

SEC. 20. The said rail road company are hereby authorized and fully empowered in their corporate name and capacity, to borrow any sum or sums of money from any 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, drafts, bonds, or other papers, and make, execute, and deliver such securities in amount and kind as may be deemed expedient by said corporation, any law on the subject of usu

ry in this state or any other state 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, and the contracts and official acts of said company are hereby declared binding in law and equity upon said corporation and all other parties to said contracts.

SEC. 21. This act shall be in force from and after its passage; and it shall be lawful for said company to purchase lands adjoining or adjacent to said rail road for the purpose of procuring earth, gravel, stone, or other materials for the construction and repair of said road or buildings and fixtures connected therewith, and whenever such lands shall be no longer needed for the purposes aforesaid, the said company are hereby authorized to sell and convey the same. May purchase lands.

SEC. 22. In case there shall be incumbrances upon the land taken as hereinbefore provided, it shall be sufficient for the said company to deposit the amount of damages assessed as herein provided, with the clerk of the circuit court of the county where the land lies, to be paid over by the said clerk to the owner of said land or his lawfully authorized agent upon the removal of the said incumbrances. Proceedings in case of incumbrance.

SEC. 23. If the said company shall consolidate their capital stock with any other rail road company, the joint board of directors may adopt such name as they may see fit, or merge the name of either company into the name of the other, and said company so formed may adopt the charter of either company by resolution, and shall after said adoption have all the powers and exercise all the rights, privileges and franchises of the charter so adopted, and shall cause to be filed with the secretary of state, under the seal of said company, a certified copy of said resolution. Joint board of directors may change name.

J. McM. SHAFTER,
Speaker of the Assembly.

E. B. DEAN, JR.
President pro tem. of the Senate.

Approved April 7, 1852.

LEONARD J. FARWELL.

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