

CHAPTER 136.

Published November 15.

An Act relating to the salaries of the officers therein named.

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

SECTION 1. The salaries of the governor's private secretary, the assistant secretary of state and assistant state treasurer are hereby severally fixed at the sum of twelve hundred dollars per annum. Salaries of certain officers increased.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved October 13, 1856.

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CHAPTER 137.

Published November 3, 1856.

An Act to execute the trust created by an act of Congress, entitled "An Act granting Public Lands to the State of Wisconsin, to aid in the construction of Railroads, in said state," approved June 3d, 1856, by incorporating the Wisconsin and Superior Railroad Company, and granting a portion of said lands thereto.

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

SECTION 1. Herman Haertel, Alfred Lamberson, Cyrus Cosporators. P. Hiller, Charles Kuehn, Bertine Pinckney, James H. Weed, Anson Ballard, James Duane Doty, George F. Wright, B. Frank Moore, Julius White, William Scott, John Bradley, Albert Winslow and Joseph Turner, and such other persons, if any, as shall associate with them and become stockholders, as hereafter in this act provided, are hereby created, constituted, made, appointed and declared a body corporate and politic, by the name and style ^{style.} of the Wisconsin and Superior Railroad Company; and

Corporate powers

said corporation, by and under its aforesaid corporate name and style, shall have perpetual succession, and shall have and enjoy all and singular, the rights, powers, authority, privileges, franchises and immunities, by and in this act expressly conferred, and all other such rights, powers, authority, privileges, franchises and immunities, as are necessary and proper to the full and complete possession, exercise and enjoyment of those hereby expressly conferred. Said company may, and it shall have power to purchase, hold and own wood land, for the purpose of obtaining wood to operate or fence its railroads; but such wood lands shall always be subject to assessments and taxation, and shall never be considered as a part of the property hereinafter exempt from taxation and assessment; said company may also, and it shall have power at pleasure to sell, lease and convey such wood land, or any portion of them. Said company shall also have power to purchase, take, hold, sell, lease and convey all such estates, real, personal or mixed, other than the aforementioned wood lands, as may be necessary or proper to have, hold, use or possess, for, in or about the construction or equipment, renewal, repair, maintaining or operating its railroads; said company may also take, hold, or occupy all such lands, as may be given or granted to it by this state or by the government of the United States, or both, for the purpose of aiding in the construction of any of its railroads. And after such last mentioned lands are so as above given or granted to said company, it may, subject to the terms, conditions, impositions, restrictions and limitations, contained in such gift or grant, sell and convey the same, and may otherwise do with said lands as is hereinafter provided. All other estates, property and effects which said company may purchase or acquire by gift or grant, other than that which is above in this section mentioned, shall always be subject to taxation and assessment, notwithstanding the exemptions hereinafter contained. Said company shall have power to make, have and use a common seal, and alter, break and renew the same at pleasure, and by and under its aforesaid corporate name and style, said company shall be capable of contracting and being contracted with, for and as to the purposes in this act contained, of suing and being sued, of pleading and being impleaded, defending and being defended, answering and being answered unto, in law or in equity, in all courts and places whatsoever, as fully and

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completely as natural persons, except that it shall never set up the plea of usury to any contract to which it shall be a party in any court whatever.

Sec. 2. The company, by this act created, is hereby further authorized and empowered to survey, locate, construct and complete, perpetually to have, use and enjoy, maintain and operate a railroad, with one or more tracks or lines, over the routes following; that is to say: Beginning at the city of Fend du Lac, which is situated on Lake Winnebago, in this state, and running from thence by way of Route the town or city of Oshkosh and townships number twenty-one, north of range number seventeen east, and east of the south-east corner of section number twenty, in said last named township, northerly to the state line on the St. Louis river, or to such other point on the state line within the meaning of the act of congress, entitled "an act granting public lands to the state of Wisconsin, to aid in the construction of railroads in said state," approved June 3d, 1856," as the said company shall determine.

Sec. 3. The company hereby created, shall have the perpetual right, power and authority to transport, take and carry property and persons upon said roads by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to receive and store any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turn-outs, side-tracks, and connecting tracks, as it shall think necessary, and also construct, erect, maintain and use all such depots, station-houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders, and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have the power and authority to operate its said roads or either of them, in connection with any and all other railroads, which may cross, come up to or connect with the said roads or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided*, That the said company, in making any such contracts as last aforesaid, shall give no preference to one company over any other such company or companies last above mentioned: but all such companies shall be

put upon the same equal terms, and whenever and so often as any such business connection contract shall be made or entered into, the same shall be in writing, duly signed and sealed with the seals of the companies parties thereto, in triplicate, and when so executed and sealed, one copy thereof shall be filed with the secretary of state, whose duty it shall be to mark thereon the time of its reception, and to carefully preserve and keep the same in his office open to the inspection of all persons. And the copy so filed with the secretary of state is hereby declared a public record. No such contract shall have any force or effect in law unless such copy is filed with the secretary of state as aforesaid. Either of the companies being a party to any such contract, may be compelled by a mandamus, to file with the secretary of state a triplicate copy thereof, as aforesaid.

May construct road over any highway, &c. SEC. 4. The company hereby created shall also have the right, power and authority to construct its said roads upon and along, across, under or over any public highway, or along, across, under or over any public highway or any private way or road, street, plankroad or railroad, if the same shall be necessary, but the said company shall restore such highway, private-way, or road, street, plank-road or railroad, to its former state or condition, so as not to impair the usefulness of the same so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroads, over any streams of water, or water course, at such point or points of crossing the same as they may locate the said railroads, with all necessary abutments, piers, or other structures or foundations.

May enter on any land for certain purposes. SEC. 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose of exploring, surveying, locating and determining the route of said railroads, and when the said routes or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for the last aforesaid company, and it shall have the right, power and authority, by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time to enter upon, take, possess, occupy and use any land along, and including the line of said

route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority at any time to enter upon, take, possess and occupy and use any other lands beyond said limits of two hundred feet, which the directors shall, by resolution adopted by them, (a copy of which shall be recorded, at the expense of said company, in the office of the register of deeds in the county in which such lands are located,) declare to be necessary for the use of said company for the purposes of erecting depot buildings, station houses, machine shops, freight houses, ware houses, engine houses, or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road, or for making drains or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel, stone, timber, or other material for embankments, structures or superstructures, necessary to the construction, repair or renewal of said roads. Said company shall, however, at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value, (unless the owner thereof and said company shall agree as to the same), shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited as provided in this act, an estate in and to all and every such lands in fee simple, absolute, forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that the same, or any part or portion of the aforesigned property, shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered, by deed or other proper instrument in writing, to lease or sell the same, or any part thereof.

**Transporta-
tion.**

SEC. 6. On the completion of said road, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand and receive such sum or sums of money for the transportation of persons and of property, and for the storage of property, as it shall from time to time deem reasonable.

Same.

SEC. 7. Said company hereby created, shall also have full power and authority to transport persons and property in boats, vessels, barges, and other water crafts, on any of the navigable waters which its said railroad or roads may run to or connect with; and to receive and collect reasonable compensation for the same, and for that purpose may build or purchase, own and use such boats, vessels, barges and other water crafts, as it may require.

**Construction
of road and
when to be
completed.**

SEC. 8. The company hereby created, shall commence the construction of its railroad, at the aforesaid city of Fond du Lac, and shall complete the same to township number twenty-one, north of range seventeen east, before it shall construct and operate such railroad from said township northerly. And so soon as said portion of the road herein last referred to shall be completed, the same shall henceforth, from the time of such completion, be operated by the company hereby created. And the said company shall fully complete and equip the entire length of said railroad, on or before the 3d day of Jane, 1866.

**Shall be enti-
tled to land
grant.**

SEC. 9. The company hereby created, shall be entitled to, and invested with the title to the lands, and all and singular the rights, privileges, and immunitites granted or conferred, or intended to be granted or conferred by the act of congress, approved June 3d, A. D. 1856, entitled "an act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said state," to the extent of the whole of the lands granted by said act of congress, for the purpose of aiding in the construction of a railroad from Fond du Lac, on Lake Winnebago, northerly to the state line. Said company shall also be subject to all the restrictions, impositions, duties and obligations contained in the said act of congress, so far as the same are applicable to the company hereby created, or to the road hereby authorized to be constructed: *Provided*, That the title to the lands in this section, mentioned and contemplated, shall not vest in said company sooner or faster than the said lands might be sold, as provided and declared in the aforesaid act of congress; but so soon and so fast the title to said lands shall vest in said company,

Proviso.

and the said lands are hereby granted in consideration of the company so hereby created, complying with the terms of the grant hereby made, and of the aforesaid act of congress.

Sec. 10. The governor of this state, on the request of the president of the company hereby created shall, without delay, from time to time, upon the completion of any and every twenty continuous miles of the railroad or railroads, in this act first authorized to be constructed, certify the fact of such completion to the secretary of the interior, in accordance with the provisions of the aforesaid act of congress.

Sec. 11. If when the line or lines of road authorized to be constructed by and under the provisions of this act, is or are located and definitely fixed by resolution, adopted by the board of directors of the company hereby created, it shall appear that the United States have sold the whole, or any, or what part of any odd numbered section, granted by the aforesaid act of congress, for the purpose of aiding in the construction a railroad from Fond du Lac, on Lake Winnebago, northerly to the state line, or that a right of pre-emption has attached to the same, as is mentioned or contemplated by the aforesaid act of congress, then the governor aforesaid shall, without delay, appoint such persons agents, as to him shall seem proper, or as shall, by said company, by resolution adopted by its board of directors, be designated to him, and whose duty it shall be to select other lands in lieu of those so sold by the United States, or to which the right of pre-emption was attached according to the true intent and meaning of aforesaid act of congress; and such agents shall, at the expense of the company hereby created, select such other lands according to their appointment, and as is provided by the first section of the aforesaid act of congress. And said agents shall certify their selections to the governor, from time to time, and with all convenient speed; and the governor shall thereupon, without delay, make known to the secretary of the interior the selections then made; and so far as the selections shall be approved by the secretary of the interior, said selections shall be made, and like proceeding had from time to time, as is in this section provided, until the whole amount of land is selected and approved, as is mentioned or contemplated by the first section of the aforesaid act of congress.

Shall be capable of taking and holding land grant by &c.

Sec. 12. The company hereby created shall be capable in law of taking and holding any land granted by the government of the United States or of this state, to aid in the construction of railroads, which shall be conveyed to said company by this act or deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, interest, claim or demand, of, in or to any lands, or interest in lands, granted to said company, by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper. And within five years after the title of such land shall have become vested in said railroad company, so much of them as may remain unsold shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

Management.

Sec. 13. All the affairs and business of the company hereby created, shall be conducted, managed and carried on by a board of fifteen directors, who shall be stockholders of said company, and the board of directors is hereby invested with power and authority to conduct, manage, and carry on the affairs and business of said company, and also with such power and authority as will carry or promote the carrying into full and complete effect, the meaning and intent of this act. The directors, after the first board shall be chosen by the stockholders of the company, by ballot, as follows, viz.: five directors shall be chosen at the annual meeting of the stockholders, which shall be held on the first Wednesday in the month of December, in the year of our Lord one thousand eight hundred and fifty seven, and thereafter annually, on the first Wednesday in the month of December of each year five directors shall be chosen. The annual meetings of the stockholders for the election of directors, shall be held at the city of Oshkosh, in this state, unless otherwise established by the board of directors. At all meetings of the stockholders, the votes of stockholders may be cast in person or by proxy, duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock held by him, and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greatest number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be pre-

Election of
directors, &c.

scribed by the by-laws or by resolution of the company. If for any cause, an election of directors should not be had at the time when, by the provisions of this act, it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had, the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities, by reason of the irregularity or want of any such election.

Sec. 14. A majority of the board of directors shall constitute a quorum for the transaction of any business except as is in this act otherwise provided; they shall meet at such times and places, and be convened in such manner, as they shall prescribe in the by-laws; they may fill any vacancy which may occur in their own board; they shall appoint one of their own number to be president, and one vice president. The term of service of the president and vice president shall be one year, and until a new election of directors. The president when present shall preside at all meetings of the directors and stockholders, and in case of his absence the vice president shall discharge the duties of president, and in case of the absence of the president and vice president, the directors present may appoint a president pro tem., who shall discharge the duties of president during the absence of the president and vice president. The board of directors may appoint a secretary, treasurer, chief engineer, superintendent, attorneys, and such other officers and agents as they may find necessary, fix their compensation and duties, and demand adequate security for the discharge of their respective duties and trusts, and remove the same at pleasure. The directors shall have power to determine the amount of the first and all other installments, by them ordered to be paid, or assessed, from time to time, on stock subscriptions, and to sell and dispose of the unsubscribed stock of said company in such manner, and on such terms, as will best secure the speedy completion of the railroad hereby authorized to be constructed. The directors shall have power to require the payment of stock by instalments, from time to time, in such amounts as may be necessary for the operations of the company; and they shall have power, from time to time, at any time within twenty-four months after the organization of the said company hereby created, to require payment of the instalments of the

Quorum and meetings.

Officers.

Instalments, how paid.

Forfeiture.

capital stock of the said company from the stockholders, not exceeding in all twenty-five per centum upon each share of stock subscribed for and held by such stockholders, and not more than six and a quarter per cent. in each six months during any one of the first two years; and upon default in the payment of any such instalment or instalments, upon any share or shares of such stock, for ninety days after personal notice shall have been given by the board of directors to the stockholders, the said board of directors shall have power to declare such share or shares on which default may be made, forfeited to the use of the said corporation, and the stockholders who shall have held the same shall thereupon absolutely forfeit the same and all sums paid thereon to the use of the said corporation; and after the expiration of the said twenty-four months last above mentioned, the board of directors shall have power, from time to time, to require payment of instalments of the capital stock of the said corporation, at their discretion, until the stock shall have been fully paid; and upon default in the payment of any such instalment upon any share or shares of the said capital stock, whether such instalment be required after or before the expiration of the said twenty-four months last mentioned, the board of directors shall have power to enforce the collection or payment of such instalment or instalments against the stockholder or stockholders making such default, or owning such stock, and shall have the right to apply toward the payment of such instalment or instalments, any dividend or other moneys accruing to such stockholder or stockholders, in the hands of the said corporation;

Provided, however, That no person shall be personally liable for the payment of any instalment or instalments required on any share or shares of such capital stock, which such person may have held, and which shall be required as aforesaid by the said board of directors, after such person shall have transferred such share or shares to any other person or persons, and no stockholder shall be entitled to vote at any election for directors of the said corporation upon any share of such capital stock upon which any instalment shall remain unpaid; nor shall any share of such capital stock be declared forfeited for a default in the payment of any instalment required after the expiration of the said twenty-four months, and after the payment of the said twenty-five per centum on each share. The directors shall have power to establish and

regulate tolls and charges not inconsistent with the provisions of this act, for the transportation of freight and passengers, and for the storage of freight, and to collect all such tolls and charges ; and to make such covenants and agreements with any person or persons, co-partnership or corporation whatever, as the construction and management of the road and convenience and interests of the said company may require. The directors shall have power and authority to make and establish such by-laws as they may think proper, respecting the property, concerns, affairs, business, stock and government of the corporation created by this act, and the powers and duties of its officers, and committees ; and its officers and committees may exercise all the powers which may be prescribed by such by-laws ; and the directors may make such other rules, regulations and orders as they may think proper ; but no such by-laws, rules, regulations or orders shall be inconsistent with this act, or with the constitution or laws of this state ; and the directors shall have power in general to superintend and direct all the operations, receipts, disbursements and all other affairs of said company.

Sec. 15. The first board of directors shall be the following ^{First directors.} named persons, that is to say : Herman Haertel, Alfred Lamberson, Cyrus P. Hiller, Charles Kuehn, Anson Ballard, James Duane Doty, George F. Wright, Bertine Pinckney, James H. Weed, B. Frank Moore, Julius White, William Scott, John Bradley, Albert Winslow and Joseph Turner. At the first meeting of the board of directors aforesaid, they shall first choose the president of said company and a secretary, after which they shall ballot for their respective terms of office as directors, as follows : the president shall cause to be prepared fifteen pieces of paper, of as nearly the same size as may be, upon five of which shall be written "*Term of one year;*" and upon five ^{Terms of office} more shall be written "*Term of two years;*" and upon the remaining five shall be written "*Term of three years;*" the said pieces of paper shall be then folded as nearly alike as conveniently can be done ; after which the same shall be put into a box and well shaken. Each of the said directors, or in case of the absence of any director, the secretary in his name shall then draw from the said box one of the said pieces of paper, and the secretary shall make a record of the said drawing, noting the term by each director drawn, and those who shall draw the ballots

having thereon the words "*Term of one year,*" shall hold their offices as directors until the first Wednesday in the month of December, in the year of our Lord one thousand eight hundred and fifty-seven, and until their successors are duly elected. Those who shall draw the ballot having thereon the words "*Term of two years,*" shall hold their offices as directors until the first Wednesday in the month of December, in the year next succeeding the year last aforesaid. Those who shall draw the ballots having thereon the words "*Term of three years,*" shall hold their offices as directors until the first Wednesday in the month of December, in the year of our Lord one thousand eight hundred and fifty-nine, and until their successors are duly elected.

Special meetings.

SEC. 16. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one fourth of the capital stock, on twenty days notice given to the stockholders, specifying the object of the meeting.

May borrow money.

SEC. 17. The company hereby created is hereby authorized and fully empowered, in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any party of whom such money may be obtained; and to make, execute and deliver, in or out of this state, all necessary writings, notes, bills, bonds, mortgages, and all other papers or securities, in amount or kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities they may incur, in the construction, repair, equipment, or operating of said road, or in any of the transactions of the said company, authorized by this act; and the said company is hereby authorized, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company, and the directors of the said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and the time or times, or place or places, when and where the principal and interest of the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest which said bonds shall bear, and the manner and form in which the same and the interest

coupons annexed to them shall be executed, and to secure the payment of any or all of said bonds, the said company is hereby authorized and empowered, in its corporate capacity, to make, execute and deliver a mortgage or mortgages, or deed or deeds of trust, upon the whole or any part of its railroad, constructed or authorized to be constructed, and upon the lands in this act granted to said corporation, and upon any other or all of its estate, real, personal or mixed, in possession or expectancy, and the said company is also hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee, full and ample powers to enter into and upon, and to take possession of, have, use, and enjoy, or to sell and dispose of the whole or any part of said railroad or estate, real, personal, or mixed, together with the functions apertaining to such railroad, and all corporate and other franchises, rights and privileges of the said railroad company, or to take up or remove any of the fixtures connected with said railroad, and the directors of said company are authorized and empowered to prescribe all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized and empowered to provide for the annual payment to such trustee or receiver as they shall appoint, a certain sum to create a sinking fund, Sinking fund, with which to pay off and discharge, at or before maturity, any or all of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot, or in any other suitable manner, the bond or bonds to the payment of which said sinking fund, or any part of it, shall be applied; and the said company, is hereby fully authorized and empowered, by its agents, or brokers, or otherwise, either in or out of this state, to sell, loan, pledge, hypothecate, or otherwise to dispose of any or all of the aforesaid bonds, hereby authorized to be issued, at par, or at any price greater or less than par, and for such sum or sums as they shall think proper; and the said company and its directors, officers and agents, are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers herein conferred upon them respectively.

Sect. 18. The company hereby created shall, for all and every the lands and property which it shall appropriate, take, possess, occupy or use, pay the full and actual cash, Shall pay for lands, &c., taken.

value thereof at the time it shall appropriate, take, occupy, possess or use such lands and property, and such value shall be ascertained, fixed, or determined by mutual agreement between the said company and the owners of such land and property respectively; or by and through the medium and appraisement and determination or award of commissioners appointed as hereinafter provided. And the locating of the line of the railroad of said company, or such part thereof as may be, in parcels, from time to time located by resolution adopted by the board of directors of said company, is hereby declared to be an appropriation, occupancy, taking, possessing or using said lands and property by said company, as authorized in this act, along, adjacent, opposite and including the line, or so much of the line of said railroad, so as aforesaid located or adopted for the purpose of fixing a time at which the value of said lands and the property shall be fixed, estimated, determined and paid by said company.

**Appraising
commissioners
appointment
and duty.**

Sec. 19. It shall be lawful for, and it is hereby made the duty of the judges of the circuit court respectively, through which the line of the railroad or roads of the company hereby created shall be located, each of said judges, in and for his own circuit, on the application of said company, and at its cost and charge, to appoint as appraising commissioners under this act, three disinterested persons of sound mind, known integrity and approved judgment, and actual residents of the circuit of such judge. After such commissioners shall have been appointed, as aforesaid, others may and shall, from time to time, be appointed by the same officers who made the first appointment, as need or occasion may require, in either of the following cases: 1st, when any one of the persons theretofore appointed shall cease to be a resident of the circuit for which he was appointed: 2d, when such person shall decline to act or to further act as such commissioner: 3d, To fill vacancy when such person shall neglect or fail to act, or to further act, as such commissioner, for the space of eight days after being requested so to act by the chief engineer or attorney of said company: 4th, when such person shall resign his said appointment: 5th, when such person shall die or be imprisoned, become insane, or shall, from other cause, become incapacitated, or unable to in proper manner discharge the duties imposed by this act upon such appointee. Before any such first appointment, as aforesaid, shall be made, said company shall give notice to all,

whom it shall or may concern, that an application by said company will be made at a time, place, and before a circuit judge, in such notice named, for the appointment of three appraising commissioners, as provided in this act. Notice to parties of application for appointment.

Such notice shall be published for three successive weeks prior to the time set for hearing such application, in one or more newspapers printed in each, or so many of the counties within the circuit for which the appointment is to be made, if there be in such circuit any such newspaper printed; and if there be none, then, and in every such case, Publication of notice, &c.

such notice shall be so as aforesaid published in two or more newspapers printed at the capital of the state; and the affidavit of the publisher or printer of each such newspaper of the fact of such publication shall be sufficient legal evidence of such publication.

The judge named in the notice may continue or adjourn the hearing of such application for such length of time as he shall think fit, not exceeding in the whole thirty days. Oath of commissioners.

Each person appointed, as in this section provided, before entering upon the discharge of the duties devolving upon him, shall make an oath or affirmation in writing, in substance that he will, in all respects to the best of his ability, execute the trust reposed in him, and discharge the duty imposed upon him, as in this act contained. After said commissioners are sworn, or affirmed, as aforesaid, it shall be and is hereby made their duty, upon the application of said company, or of any land owner in this section mentioned, to view and examine all and every the lands and property which, by the provisions of this act, said company is authorized and empowered to appropriate, take, and occupy, possess or use, by making payment therefor. And after such view and examination, said commissioners, or a majority of them, shall determine the value of all and every such lands and property, and in such determination or determinations said commissioners shall designate the sum to be paid by said company to the owners of such lands and property respectively, in accordance with the provisions in this act contained: and when so done, the same shall be by said commissioners, or a majority of them, reported in writing, under their hands, to the circuit court of the county where such lands and property are situate. Such reports shall, from time to time, be made and deposited with the clerk of the circuit court of the proper county, who shall file and carefully preserve the same in his office. Such reports shall be so

To view land
and make
report.

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as aforesaid deposited within thirty days after the appraisements and determinations shall be completed in any county.

In case no appeal is taken within thirty days.

In case no appeal shall be taken or made within thirty days after the depositing of any such report as aforesaid, then the clerk of such circuit court shall record the same at the expense of said company; and said court shall enter judgment or judgments therein according to such report, on motion of said company, or on motion of any such property owner as aforesaid therein named, at any term of said court. Said commissioners shall have power, under the provisions of this section, to do the things required of them in every case when the said company cannot agree with the owner or owners of such land and property as is in this section before referred to, as to [the] value thereof, or when by reason of the legal incapacity, non-residence of, or absence from such circuit, of any such owner or owners, no such agreement can without delay be made. Said company, or such owner or owners as aforesaid, may appeal from the decision of said commissioners, in each and every case, to the circuit court wherein is deposited any such report, within thirty days after the filing or depositing thereof; and the matters of fact determined by said commissioners shall be determined upon such appeal by a jury, and the jury for such purpose empaneled shall be sworn to, and shall render a true verdict according to the evidence of the value of the land and property in controversy between said company and the owner or owners thereof, as provided in this act. Upon the verdict thus rendered the like proceeding shall be had as to setting the same aside, granting a new trial, or rendering judgment thereon, as is the practice by law in civil cases between party and party. In case the verdict of the jury shall be for a less sum than that determined upon or fixed by said commissioners, the court shall render judgment for costs against the owner or owners. If such verdict be for a sum greater than that determined upon or fixed by said commissioners, in all cases where the appeal has been taken by the claimant, the court shall render judgment against said company for the sum found, by the verdict and for the costs. And upon such judgments executions may be awarded and issue, as in ordinary actions of assumpsit.

Commissioners must give

The aforesaid commissioners shall, in no case, proceed to determine or fix the value of the lands and property

aforesaid, in the advance of the said company, or of the notice before said owner or owners of such lands and property, unless determining value of lands. there has been previously thereto at least five days notice given to such owner or owners, his or their agent or attorney, and to the attorney or agent of said company, of the time and place at which such proceedings were to be had, or unless such owner or owners is or are absent from such circuit, and having no agent or attorney known to said company, or any of said commissioners, residing in this state; or unless said owner or owners shall be minors or *non compos mentis*. Such notice, as aforesaid, may be made upon the guardian or trustee of any minor, and from Notice—how given. the guardian, trustee or committee of any person *non compos mentis*, if within this state, and such service shall be valid and effectual, and shall be binding upon the owner or owners in like manner as though such minor or *non compos mentis* person were of full age and of sound mind. In all cases where notice cannot be given or served as aforesaid, said commissioners, at the expense of said company, shall cause to be published for three successive weeks prior to the time of any such hearing, in a newspaper printed in the county where the lands and property are situate, if any such paper is therein printed, and if not then in a newspaper printed at the city of Oshkosh, in this state, a notice to all persons who own land in such county, (naming the same) that at a time and place therein designated, said commissioners will proceed to hear the parties in interest, and determine the value of the lands and property in said county, which, by making payment therefor, according to the provisions of this act, said company are authorized and empowered to appropriate, take, occupy, possess or use. Upon the making and filing or depositing of any such report as aforesaid and payment into court, subject to be taken by the owner or owners aforesaid, or upon the legal tender of the amount to be paid as by said commissioners determined, or fixed as aforesaid to the owner or owners aforesaid, his or their agent, attorney, guardian, trustee, committee, or legal representative, the said company, its agents, workmen, or the contractor or contractors, for the making or repairing said railroad, may immediately take and use the said lands and property without awaiting the determination of any matter to be disposed of upon any appeal made or taken as hereinbefore provided. Every person or body corporate who shall claim an interest in When company may take land.

Judgment, &c. any such lands or property as is before in this section mentioned or referred to, whether by virtue of any tax sales, tax title, incumbrances or lean, legal, equitable or otherwise, is hereby declared to be an owner, or part owner of such lands and property within the meaning of the foregoing provisions of this section. In all cases when the circuit courts of this state shall have rendered judgment against said company, as in this section provided, said company may pay to the clerk of such court, the amount of each such judgment, and such clerk shall, in writing, receipt to said company therefor, and such payment is hereby declared to be a payment unto such court; and the same shall be as good and effectual a payment as though the money were paid personally to the person or party entitled thereto.

Capital stock. SEC. 20. The capital stock of the company hereby created shall in the first instance be one and a half millions of dollars; which capital stock may be increased to a sum not exceeding six millions of dollars.

Shares. SEC. 21. The capital stock of the company hereby created, shall be, and hereby is divided into shares of one hundred dollars each.

May connect with other railroads. SEC. 22. The said company hereby created shall have full power and authority to connect their railroad with any other railroads or branch railroads in the state of Michigan, or to operate the same in connection with such other railroads or branch railroads, or to consolidate the capital stock of the company hereby created, with the capital stock of any railroad company created under or by authority of the laws of the state of Michigan, upon such terms, and under such regulations, as may be jointly agreed upon by the directors of said railroad companies.

Lands exempt from tax and assessments. SEC. 23. The lands granted or intended to be granted by the provisions of this act to the company hereby created, shall be, and hereby are exempt from all assessments and from all taxation, whatsoever, for the term of ten years from the taking effect of this act, unless said company shall sooner sell or convey the same. And so much of said lands as shall be sold or conveyed by said company within said ten years, shall be subject to assessment and taxation from time to time, as the same shall be as aforesaid sold or conveyed. And in consideration of the annual payment of a per centum (as provided in this section) by said company to this state, upon the gross earnings of

said road to be built by said company as aforesaid, the railroad, its appurtenances and appendages, and all the other property, estate and effects of said company, which by the provisions in this act contained, said company is authorized to acquire, purchase, hold, possess, enjoy or use, for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments. And in consideration of the grants made to, and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, on or before the first day of March in each year, pay into the treasury of this state, three per centum on the gross earnings of the railroad so constructed for the year ending on the last day of the preceding December, the first payment of such per centage to commence or be made on the first day of March next, after fifty miles of the railroad of said company shall be completed, and the payment of such per centum annually as aforesaid, shall be and is in full of all taxation and assessments whatsoever, as to the property in this section above exempt. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this state on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company. And for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the governor of this state, or any other person appointed, as by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents and employees of said company, and other persons. And if any person so examined by the governor, or other authorized person, shall knowingly and wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury. And for securing to this state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company, and upon all the other property, estate and effects of said company, whether real, personal or mixed. And the lien hereby secured to the state shall take and

Payment to
state of 3 per
cent in lieu of
taxes, &c.

Abstract of
earnings to be
furnished state
treasurer, &c.

have precedence of all demands, decrees and judgments against said company.

First board of directors and their powers.

SEC. 24. The first board of directors of the company hereby created is hereby authorized and empowered, and shall open books to, and shall receive subscriptions to the capital stock of said company to the extent of one and a half millions of dollars and no more, commencing on the sixth day of November, in this present year. And the same shall be done at the city of Oshkosh, in some convenient and public room, which shall be accessible to all persons, from day to day, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of each day, that may, as aforesaid, be occupied in making subscriptions. Such subscription books shall be kept open between the hours aforesaid, for four days, unless the said one and a half millions of dollars capital stock shall all be sooner subscribed, and at the end of said four days the said subscription books shall be closed, or, should the said one and a half millions of dollars of stock be sooner subscribed, and five per cent thereon in money actually paid in, then in that case the books shall be closed when these things have transpired. After said books are closed, they shall remain closed for thirty days.

Payment of 5 per cent at time of subscribing.

SEC. 25. All persons who shall become subscribers to the capital stock of said company, shall, at the time of subscription, pay in money five per cent., or five dollars upon each share subscribed; and all and every the five per centum aforesaid, when paid in, shall remain in the treasury of said company until paid out for the use or benefit of said company, in the due administration of its affairs, in the location, construction, equipment or operating its railroad in this act authorized to be constructed. And no person shall be permitted to subscribe more than two hundred and fifty shares within the first three and a half of the four days in the next preceding section mentioned. And in case there should be present within the said three and a half days, persons desirous of subscribing to the capital stock of said company within the aforesaid limits of two hundred and fifty shares to each person, and to sums amounting in the aggregate to more than the said one and a half millions of dollars, then and in that case, the said board of directors shall apportion said stock to the amount of one and a half million dollars, among said subscribers, *pro rata*, and according to the amounts subscribed by them respectively. All the stock subscriptions,

Capital stock, when and by whom to be subscribed.

within the three first days after the opening of the books, as is in the next preceding section, shall be subscribed by such persons as were residents of this state, on the first day of June last, and after which three days, any person may subscribe to said stock whether resident of this state or not. Subscriptions to said one and a half millions of dollars of stock may be made in person or by proxy, but no person shall have power, as proxy, to subscribe for more than two persons; and the authority of every person to subscribe as the proxy of another, shall be contained in an instrument in writing, signed by the principal; and such instruments shall be preserved by the secretary of said company, as a part of its papers.

SEC. 26. In all matters pertaining to the subscription of the aforesaid one and a half millions of stock, no less Directors, how many may act. number than twelve directors shall have power to do any &c. act except adjourn, and a majority of those present must agree to make valid any act done by them as such directors. And as to taking the said first one and a half millions of dollars of stock, the said first board of directors may make by-laws, provided that at least eight of the directors aforesaid, over their signatures, approve of the same; and that they be not inconsistent with, or repugnant to the provisions of this act. Such special by-laws shall be preserved by the secretary, and the same shall ever remain a part of the records of said company.

SEC. 27. With a view of, and for the preventing the fraudulent issue of stock, or stock certificates, it is hereby declared that no certificates of stock shall ever be made out or issued to any person who has not subscribed to the capital stock of said company, as is in this act provided, previously to any such issue, and then for the amount actually subscribed by such person: nor shall any certificate of stock be delivered to any person, until at least eight of the directors of said company shall have found that the same is for the true amount subscribed by the person named in the certificate, or his assignor, and that the same is numbered, and is of the same date and for the same amount or number of shares as appears in a book of registered stock; and which book shall be kept by said company, and such registry, said eight directors, at least, shall, over their signatures, in said book, certify to be correct. All certificates of stock, made, issued or delivered, without the provisions of this section being complied with, shall be, and are hereby declared void. The direct-

To prevent fraudulent issue of stock, &c.

ors of said first board of directors shall each have the same right to subscribe to the capital stock of the said company hereby created, as though he was not such director.

Appeals and change of venue.

Sec. 28. In all cases of appeal from the determination of the appraising commissioners, as provided in this act, a change of venue shall be allowed and rendered by the court to which such appeals shall be made, or by the judge thereof, in case any credible person shall make and file with the clerk of such court, an affidavit, in which the affiant states that he knows, or verily believes, that the appellant or appellee cannot, before the judge of such court, or before a jury of the county where such appeal shall be pending, obtain a fair trial. Such change of venue shall be to some county in this state where the cause stated in the affidavit for such change does not exist, and which will best accommodate the parties litigant and their witnesses. On the trial or hearing of cases appealed from the determination of the appraising commissioners, as in this act provided, exceptions may be taken to the decision of the court or judge, and like proceedings had to and upon final judgment rendered in such cases as in ordinary civil cases wherein an issue of fact is joined. In case the company hereby created shall locate

In case of locating road near any other road to pay certain damages.

the line of its railroad in this act authorized to be constructed, so near the whole or a considerable part of the line of railroad of any other railroad company now organized, and which line or part of line is now, by such other company, surveyed and definitely located, but in no part constructed, as to destroy or materially affect or injure the business of such other company, over or upon such line or part of line thus encroached upon by the company hereby created, the said company shall pay to such other company the sum that is really worth to make such survey and location, of the whole or part of line of road as is above in this section mentioned, and also the sum that it is really worth to make such proper maps, profiles, drawings, diagrams and estimates, as such other company now hath, as to or concerning such whole or part of line as is above in this section mentioned; and in case the company hereby created and such other company shall not be able to agree as to the sum of money which ought to be paid according to the provisions of this section, then and in every such case, the said companies shall each choose an experienced engineer, and the two thus selected, if they

can, shall choose a third person, and if they cannot, then such third person shall be selected or appointed by the governor; all of whom shall be in no way interested in either company. And they, or a majority of them, after an examination of the matters confided to them, under and by virtue of this section, and a full hearing of the said companies and their testimony, (they having previously given at least thirty days notice of the time and place of hearing to each of said companies,) shall determine the sum to be paid in accordance with the provisions of this section. Such determination shall be reduced to writing in the form of an award, signed in triplicate, by said engineers, or a major part of them; and one of such copies shall be filed with the Secretary of State, and the other two shall be delivered to said companies, one to each, by some of said engineers. And such determination, by said engineers as aforesaid, shall be final and conclusive upon the said companies, unless the company dissatisfied therewith shall appeal therefrom to the circuit court of some county in which some portion of such whole or part of line of road as aforesaid, is or may be, within thirty days after the delivering to such dissatisfied company of a copy of such determination as aforesaid; and such appeals may be taken, and if taken, the like proceedings shall be had, so far as is possible and consistent with the provisions of this section, and as is in this act provided, for and upon appeals in other cases.

SEC. 29. All property which the company hereby created, is authorized to appropriate, take, possess, hold or use, by making payment therefor, as is in this act provided, is hereby declared to be taken for public use, so soon as the company shall so appropriate, take, possess, hold or use the same.

SEC. 30. The company hereby created shall fence its To fence road. railroads in parcels, as it shall from time to time operate the same, within one year from the time it shall commence the operating any and every such parcel, until the whole of said railroads are in a good, proper, substantial and workmanlike manner, fenced throughout the entire extent of the lines thereof.

SEC. 31. Notwithstanding the use of language in a general or unrestricted sense in this act, it is hereby expressly declared, that the proceeds or avails of the lands granted by the aforesaid act of congress, to this state, and by this state, in and by this act, granted to the company hereby

Persons to determine and make award.

Property deemed taken for public use.

Proceeds of lands, how disposed of.

created, shall be exclusively appropriated to the construction of the railroad in this act authorized to be constructed.

Shall transport U. S. troops, mails, &c. free. SEC. 32. The railroad constructed by the application of funds derived from the lands in this act granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over the said road or roads, under the direction of the post office department as provided in said act of congress.

Objects cannot be attained under general laws. SEC. 33. It is hereby declared that in the judgment of the legislature of this state, the objects of the corporation hereby created cannot be attained under general laws.

Public act. SEC. 34. This act is hereby declared to be a public act, and the same immediately after the passage thereof shall be printed by the state printer, and thus published shall take effect and be in full force.

Approved Oct. 11th, 1856.

CHAPTER 138.

Published November 15.

An Act to appropriate the sum of money therein named to the Superintendent of Public Instruction.

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

Appropriation to superintendent public instruction for clerk hire. SECTION 1. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of six hundred dollars annually to the superintendent of public instruction for the purpose of defraying the expenses of clerk hire in the office of said superintendent of public instruction ; said sum to be drawn quarterly by said superintendent, and to be disbursed by him for the purpose herein named ; *Provided*, That said sum of six hundred dollars shall be in full for the annual payment of all clerk hire of said department.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved October 13, 1856.