

running through this state, on the route or at the terminus of any road or roads which may be necessary for the purpose of said company, and by this act authorized to be made; and also to own pieces or parcels of land at necessary or proper places on the route of any such road or roads, for the purposes of erecting thereon their furnaces, mills, warehouses, workshops and other buildings, and also lay out and lease and sell lots to workmen or other persons.

SECTION 7. The stock of said company shall be deemed personal property, transferable on the books of the company in such manner as the directors shall regulate by law. Stock deemed personal property.

SECTION 8. The president and directors of said company may enact and establish such by-laws, rules and regulations for the government of themselves and all officers and persons in the employ of said company, as shall not be inconsistent with the provisions of this act, the constitution and laws of the United States, and the state of Wisconsin. By-laws, &c.

SECTION 9. That for the convenience of the laborers and others, said company may sell goods, wares and merchandise at their place or places of business: *provided*, they pay the same tax or license which individual merchants or dealers in like articles are required by law to pay. May sell goods.

Approved March 30, 1864.

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## CHAPTER 227.

[Published April 13, 1864.]

AN ACT to incorporate the Berlin and Lake Superior railroad company.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. J. L. Davis, J. R. Goodrich, John Plankinton, Levi Hubbell, Lester Sexton, John Nazro, W. K. Wilson, of Milwaukee, George W. Mitchell, Wm. W. Taggart, of Ripon, M. L. Kimball, G. D. Waring, John D. Porter, T. W. Hamilton, of Green Lake county, E. Corporators.

Name and pow-  
ers.

W. Daniels, A. B. Ayers, Nathaniel Gill, John H. Thomas, John A. Williams, Benjamin F. Frisbee, N. H. Havens, N. W. Milliken, J. M. Cover, Ebenezer Williams and David Thomas, of Waushara county, E. W. Robinson, A. R. Gray, A. Precourt, J. H. Morgan, Miner Strope, Thomas McDill, A. G. Ellis, William Avery, J. R. Kingsbury, Andrew Warren and George W. Green, of Portage county, S. S. Vaughan, of La Pointe county, and E. C. Clark, of Douglas county, (*and they*) and their successors and associates, to be determined as hereinafter provided, are hereby made, constituted, appointed and declared to be a body politic and corporate, by the name and style of the "Berlin and Lake Superior railroad company," and by that name shall have perpetual succession, and shall have and enjoy all the privileges, franchises and immunities incident to a corporation. They shall be capable in law of purchasing, holding, selling, leasing and conveying estates, either real, personal or mixed, and may take and hold such estate by gift, grant, purchase, devise or lease. They may make, have and use a common seal, and alter, break or renew the same at pleasure; and by that name they may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, contract and be contracted with, and, generally, perform and do all the acts and things which to any corporation it shall lawfully appertain to do and perform.

Capital stock.

Opening of  
books of sub-  
scription.

SECTION 2. The capital stock of said company shall be divided into such number of shares, of one hundred dollars each, as the directors, or a majority of them, shall from time to time determine, not exceeding the entire cost of their road, including stocking and equipment thereof; and the commissioners shall cause books to be opened at such times and places as they may designate, to receive subscriptions to the capital stock of said company, under the direction of some one or more of them, or under the direction of such person or persons as they may designate, and shall require five dollars on each share of stock subscribed to be paid at the time of subscribing.

First directors.

SECTION 3. That as soon as five hundred shares of the capital stock of said company shall be subscribed, and five dollars on each share actually paid in, the said commissioners shall close the books of subscription,

and receive no more subscriptions until after the election of directors by the stockholders; and they shall immediately give not less than thirty days' notice in a newspaper in some county into which said road runs, of an election of fifteen directors by the stockholders, at some time and place to be designated by them, and the directors thus elected shall hold their offices until the next annual meeting of the stockholders for the election of directors, and until other directors are elected.

Notice of meeting of directors, &c.

SECTION 4. All the affairs of said company shall be managed by a board of fifteen directors, who shall be stockholders, and the board of directors is hereby invested with all the powers of the corporation. They shall be chosen annually by ballot at the annual meeting of the stockholders, which shall be held at such time and place as the directors shall from time to time prescribe, and the same notice of every such election shall be given as is herein required to be given of the first election of directors. The directors shall be elected by the stockholders, and at such election, and at all meetings of the stockholders, the votes shall be delivered in person or by proxy, duly authorized, and every stockholder shall be entitled to one vote for each share of stock by him held; 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. The elections shall be conducted in such manner as shall be prescribed by the by-laws 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 any other time, on thirty days' notice given as aforesaid, and until after such election be had, the directors of the preceding year shall continue to act, and the corporation hereby created shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election.

Board of directors.

To be chosen annually.

Failure to elect, not a loss of franchises.

SECTION 5. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places, and be convened in such manner as they shall decide upon. They shall appoint one of their number to be president, who shall serve for one year, or until other

Quorum, and meetings.

President.

directors are elected. The president when present, shall preside at all meetings of the directors and stockholders, and in case of his absence, the directors present may appoint a president *pro tem*. The board of directors shall appoint a secretary, treasurer and such engineers, superintendents, agents and such other officers as they may find necessary, fix their compensation and duties, and demand adequate security for the discharge of their respective duties and trusts, and fill any vacancy which may occur in their own board.

**Other officers.:** The directors shall have power to reopen the books for subscriptions to the capital stock of the company, or open new books under their own direction, or the direction of any one or more of them, or under the direction of such person or persons as they may designate, to determine the amount of installments to be paid from time to time on such subscriptions, and to forfeit to the use of the company the share or shares of any person failing to pay any installments, as also all previous payments thereon, and also in their discretion, on the request of any stockholder, to cancel his stock and to refund to such stockholder the amount paid by him, or any part of it. The directors shall have power to regulate tolls and charges for the transportation of freight and passengers, not in conflict with or repugnant to the laws of this state, and to make such covenants, contracts and agreements with any person or persons, co-partnership or corporation whatever, as the construction of their railroad or its management and the convenience and interests of the company may require; to make any contract or agreement which they may think proper with any other railroad company, leasing to such company for a limited time, the whole or any part of the railroad of this company, and powers are hereby conferred on such company in this behalf; to make and establish such by-laws, rules, regulations and orders, not inconsistent with the constitution and laws of this state, as they may think proper for the well ordering of the affairs of said company, and the same from time to time alter, amend or repeal, and, in general, to superintend and direct all the operations, receipts, disbursements and all other affairs of said company.

**Opening of books of subscription, &c.**

**Tariff of prices.**

**By-laws, &c.**

**Stock deemed personal property.**

SECTION 6. All shares of stock in this company owned by any person, shall be deemed personal property, and

shall be transferable in such manner and form, at such place and under such regulations as shall be prescribed by the by-laws of said company.

SECTION 7. Special meetings of the stockholders may be called by order of the board of directors, or by the stockholders holding one-half of the capital stock, on like notice as that required for annual meetings of the stockholders, specifying the object of the meeting.

SECTION 8. The said company shall have power to locate and construct a railroad, with one or more rail-ways or tracks, from Berlin, in Green Lake county, via Pine River and Saxville, in Waushara county, and Stevens Point, in Portage county, to some point on Lake Superior; and said company shall have power to transport, take and carry property and persons upon said road by the power and force of steam, of animals or any mechanical or other power, or of any combination of them, and to make and construct all such turn-outs, side tracks and connecting tracks as they shall think will promote the interests of the company, and to erect, construct and use all such depots, station houses, warehouses, car houses and shops, engine houses and shops, and all other fixtures useful for the accommodation of said company and its road, and those using it; to manufacture or purchase and own all necessary engines, tenders, cars and other conveniences for running said railroad.

SECTION 9. The said company are 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 to make, execute and deliver in or out of the state, all necessary writings, notes, bonds, mortgages or other papers and 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 that it may incur in the construction, repair, equipment or running of said road; and to make, execute, sell and deliver at private or public sale, in or out of this state, bonds in such sums and in such amounts, payable at such times, secured by a mortgage or mortgages upon the whole or any part of the railroad of said company, with its equipments, fixtures and appurtenances; and the powers of the said corporation for the purposes aforesaid, and for all purposes necessary to carry out

the objects of said company, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporations and upon all other parties to such contracts.

Right of way.

SECTION 10. The said company shall have the right and authority to construct their said railroad upon and along, across, under or over any public or private highway, road, street, plankroad or railroad, if the same be necessary, but said company shall restore such highway, road, street, plankroad or railroad to its former state, as near as may be, or so as not to impair the usefulness of the same; and the said company shall have the right and authority to erect and maintain all the necessary bridges for the use of their said railroad over any stream of water or water-course, at such points of crossing the same as they shall locate the said road, with all necessary abutments, piers or other foundations, providing suitable draws and openings for the passage of boats, vessels and rafts, (*and*) in all cases where such streams are navigable.

May survey road, and use lands on line of same.

SECTION 11. 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 their route of said railroad, doing thereto no unnecessary damage; and when the route of said road shall be determined by said company, it shall be lawful for them, their agents, officers, engineers, contractors, employees and servants, at any time to enter upon, take possession of and use any such land, not exceeding one hundred feet in width, along the line of said road, and also such lands adjacent to the line of said road beyond the said limits of one hundred feet, as the chief engineer of said company shall in writing, to be signed by him, decide and declare to be necessary for the use of said company, for the purpose erecting depot buildings, station houses or other fixtures and grounds about the same, for the operation and business of said road, or for making drains and giving a proper direction to water-courses, or of diverting or changing the channel of water-courses across or along said road, 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 making deep cuts or excavations, or for the purpose of depositing earth, gravel

or stone, or for the purpose of obtaining earth, gravel, timber, stone or other materials for embankments, structures or superstructures necessary to the construction or repair of said road; subject, however, to the payment of such compensation as the company may have agreed to pay therefor, or as shall be ascertained in the manner hereinafter provided; and when such compensation shall have been paid or tendered, the title to such land shall vest in said company in fee simple, and the said [company] shall have the right to hold the same, and whenever in the opinion of the company, the same or (*company*) any part thereof shall no longer be necessary for the purposes for which the same was taken, the said company is hereby authorized to lease or sell the same or any part thereof in fee simple.

Compensation therefor.

SECTION 12. The said company shall, if possible, agree with the owner or owners of any and all lands upon which, by the provisions of this act, they are authorized, after the route of the said road shall be determined, to enter, and which they are authorized to take possession of and use, and which, according to the aforesaid provisions, shall vest in said company for the purposes of said railroad, as to the amount of compensation to be paid for said lands, whether such person shall own or possess the legal or equitable title to the same, or any lien or incumbrance on the same; and if such owner, or the person or persons owning or possessing such legal or equitable title, lien or incumbrance, shall be a minor, *non compos mentis*, insane, or a married woman, or under any legal disability, then with the guardian of such minor, *non compos mentis*, or insane person, or husband of such married woman; and if said company cannot agree with such owner, guardian or husband, said company shall, by its agent, offer to pay such owner, guardian or husband, if resident of the county in which such lands shall be, or if not such resident, to their agent, if any, in such county, such sum as the company deems reasonable; and if such offer of compensation shall be rejected or refused, then such question of compensation shall be decided by three commissioners, as follows, viz.: The said company shall apply to the judge of the circuit court for the ninth judicial circuit, or to a justice of the supreme court, either in term time or in vacation, for the appointment of three commissioners to decide upon the amount of

To agree with owners.

In case of disagreement, commissioners to be appointed.

Duty of commissioners.

compensation to be paid to the several parties with whom the said company shall have been unable to agree, as aforesaid. They shall give notice of their application for the appointment of such commissioners, by publishing the same three weeks successively in a newspaper printed in some county through which said road shall run, and which notice, having been duly published, the said judge or justice shall appoint three commissioners, who shall proceed to examine the premises, having first given such notice as they may deem reasonable to such owner, guardian or husband, if resident of the county in which such lands lie; and having first determined that it was necessary to take said land, shall make an award of the amount of compensation which shall be paid by said company for the land so taken for any of the purposes aforesaid, and shall deliver one copy of their award to the said company. One copy shall be filed in the office of the clerk of the circuit court of such county, with the costs of the award taxed upon each of said copies; and if the amount awarded by said commissioners shall be more than the said company had previously offered to pay, then said company shall pay the costs of said award, and if it shall not be more, then the other party shall pay such costs; and either party may, within ten days after such award shall be filed as aforesaid, appeal from the same to the circuit court for the county in which such land shall lie, by giving written notice of such appeal to some one of the commissioners; and upon receiving such notice of appeal, it shall be the duty of the commissioners to certify to said court a true copy of said award, and upon receiving the same, the said court shall enter the same as a case upon its docket, under the same rules as other cases are entered on its docket, setting down the claimant or claimants as plaintiff, and the said company as defendant; and the said court shall, upon ten days' notice, proceed to ascertain the amount of compensation to be paid by said company to the claimant for the taking and using of the said land, and the court shall thereupon proceed to render judgment in favor of such claimant and against said company, for the amount of such compensation; and if the amount so found in favor of such claimant shall exceed the amount so found by said commissioners, then judgment shall be rendered against said company for costs,

Appeals.

Judgment, costs, &c.

and if it shall not exceed the amount so found by said commissioners, then judgment shall be rendered in favor of said company for costs, and against said claimants; and when such compensation, so to be ascertained according to the provisions of this section, shall be paid to such party entitled to the same, or his agent, or in case there is a lien or incumbrance on the same, deposited with the clerk of the circuit court of the county in which the land shall lie, to be disposed of by the order of the judge of said court, the title of said lands, so taken for any of the purposes aforesaid, shall vest in said company for the purposes of said railroad; and a copy of such award or judgment, filed in the office of the register of deeds of the county in which such lands lie, shall be sufficient evidence of such title; and the said company shall have full power and authority, pending all such proceedings, and until they shall refuse to pay the compensation so to be ascertained as aforesaid, to use, occupy and enjoy the peaceful and uninterrupted possession of such lands for all the lawful purposes of said corporation; and they shall not, while such proceedings are pending, nor until such refusal, be disturbed in such possession, use, occupancy and enjoyment, by any proceeding either in law or in equity; and said company shall not be liable to pay such compensation until the same shall be demanded at their office.

When title to vest in company.

Company not to be disturbed in possession of lands.

SECTION 13. No person shall be incompetent to be a witness or give testimony in any suit or proceeding at law or in equity, in which the said railroad company shall be a party, nor shall any person be disqualified from discharging the duties of a judge, justice of the peace or of war [juror,] in any suit or proceeding, for the reason that such person is a stockholder in said company, *(not in conflict with or repugnant to the laws of this state.)*

Competency of witnesses, &c.

SECTION 14. On the completion of said railroad, or any section of the track not less than four miles, it shall and may be lawful for the company to demand and receive such sums of money for the transportation of persons or property, and the storage of property, as they shall from time to time think reasonable.

Freight and fare

SECTION 15. If any person shall willfully and knowingly injure or destroy the railroad so to be constructed by said company, or shall willfully and maliciously

Penalty for injury to road.

place any obstruction or thing upon the track of said road, such person or persons so offending shall each of them for every offense, forfeit and pay to said company the sum of fifty dollars, and in case any damage shall ensue, an additional sum equal to three times the amount of damages caused by such offense, which may be recovered in the name of said company by action of debt, in any court having competent jurisdiction in the county wherein the offense shall be committed, and shall also be deemed guilty of a misdemeanor and be subject to indictment, and upon conviction of any such offense, shall be punished by fine and imprisonment, or either, at the discretion of the court.

Company to maintain fences.

SECTION 16. Said company, before opening their road through inclosed grounds, shall erect such fences as shall preserve such inclosure entire, unless they shall otherwise agree with the owner or occupant; and shall, before they commence to use their road as a railroad, erect a good and sufficient fence on both sides of [the] railroad through all such inclosed grounds, and shall maintain the same, unless they shall otherwise agree as aforesaid.

First meeting of directors.

SECTION 17. The first meeting of the stockholders of said company shall be called by a majority of the commissioners named in this act, and the concurrence of a majority of the directors shall be necessary in order to adopt, establish, alter, modify, amend, rescind or abolish any one regulation or by-law of said company.

Act to be favorably construed.

SECTION 18. This act is hereby declared to be a public act, and shall be favorably construed to effect the purposes herein intended, and copies thereof, printed by authority of the state, shall be received as evidence thereof in all cases; and this act shall take effect and be in force from and after its passage.

When rights to cease.

SECTION 19. The privileges and immunities and franchises hereby granted, shall cease and be null and void, unless the said company shall within five years construct and put in operation at least ten miles of their road.

Number of directors.

SECTION 20. The board of directors hereby created, or hereafter to be created, may from time to time determine and fix the number of directors to be elected at any election next to be held, or may increase their number at any time, so that their number shall never be less than five nor more than fifteen.

Approved March 30, 1864.