

ive counties, work-houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said work-house, and paupers, shall be under such rules and regulations as said board of commissioners may deem proper and just; and that if any person shall bring and leave any pauper, or paupers, in any county in this territory, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars, for every such offence, to be sued for, and recovered, by and to the use of such county by action of debt, before any justice of the peace in the proper county, or any court having jurisdiction of the same.

Penalty for bringing a pauper from another county.

SECTION 11. That from and after the first organization of the first board of county commissioners, in the several counties in this territory, all acts and parts of acts, contravening any of the provisions of this act, are hereby repealed and of no effect.

Repealing clause.

Approved Jan. 3, 1838.

No. 23.

AN ACT to incorporate the Milwaukee and Rock river canal company.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That all such persons as shall become stockholders, agreeably to the provisions of this act, in the corporation hereby created, shall be a body politic and corporate, by the name and style of "the Milwaukee and Rock river canal company," and by that name, may have succession, may sue and be sued, complain and defend, in any court of law or equity, may purchase, hold and convey real, personal or mixed estate, may make and use a common seal, and alter the same at pleasure, may make by-laws, rules and regulations for the management of its property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the laws of this territory, and of the United States; and may moreover appoint such subordinate agents,

Name and style of company.

Powers.

officers and servants, as the business of said corporation may require and allow to them a suitable compensation, prescribe their duties, and require bonds for the faithful performance thereof, in such penal sum, and with such sureties, as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.

Capital stock.

SECTION 2. That the capital stock of said corporation shall be one hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each.

Mode of obtaining subscriptions thereto.

SECTION 3. That John S. Rockwell, Alvin Foster, Augustus A. Bird, Madison W. Cornwall, Solomon Juneau, James Sunderson and Byron Kilbourn, shall be commissioners for receiving subscriptions to the capital stock of said corporation, who shall give notice, within twelve months after the passage of this act, of the time and place where books will be opened, at Milwaukee, and such other places as they may deem necessary, in some public newspaper, at least ten days previous to the opening of such books of subscription. A majority of said commissioners shall appoint one or more of their number, who shall attend at the time and place appointed, by such notice for the opening of said books, and shall continue such subscriptions to the capital stock, of the said corporation, from all persons who shall subscribe thereto, until at least fifty thousand dollars shall have been subscribed; whereupon said books may be closed, by the said commissioners, and transferred to the board of directors, as hereinafter provided. Each subscriber, at the time of subscribing, shall pay to the commissioners one dollar on each share of the stock by him subscribed; and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount of money received on the subscription of stock.

Directors, how elected.

SECTION 4. That the affairs of said corporation shall be managed by a board of seven directors, to be annually chosen by the stockholders, from among themselves. As soon as may be, after fifty thousand dollars of the capital stock shall have been subscribed, the commissioners shall give notice of the time and place, at which a meeting of the stockholders will be held, for the choice of directors; and at such time and place, appointed for that purpose, the commissioners or a ma-

majority of them shall attend, and act as inspectors of said election; and the stockholders present, shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election, under their hands, which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All elections thereafter shall be held at the time, and in the manner, prescribed by the by-laws and regulations of said corporation. Each stockholder, shall be allowed as many votes, as he owns shares, at the commencement of such election; and a plurality of votes shall determine the choice. The said directors shall hold their offices for one year, and until their successors are elected, and they shall elect one of their number as president of said board.

SECTION 5. That the capital stock of said corporation may at any time hereafter be increased, to a sum not exceeding one million of dollars, if the same shall be judged necessary to the completion of the work; and the same, as well as any portion of the capital stock which shall not have been subscribed for and taken, as herein before provided, shall be subscribed for and taken, under the direction of the directors of said corporation, whenever they shall direct one or more books to be opened for that purpose, and shall be subscribed and taken, in such manner as the said directors for the purpose shall order and appoint. The said directors shall have power to collect, under such regulations as they may deem proper, the amount subscribed by each stockholder, in instalments not exceeding ten dollars on each share, after giving thirty days' notice in some public newspaper published at Milwaukee, of the time at which such instalment will be required; and in case any stockholder shall neglect or refuse to pay the amount of his subscription, when so required, the said directors shall have power to sue for, and collect the same, in an action of assumpsit in any court having cognizance thereof.

SECTION 6. That said corporation shall have the right to construct, maintain and continue, a navigable canal, or slack water navigation, from the town of Milwaukee to Rock river, on such route, and of such dimensions, and to terminate at such point, as shall be determined on by said corporation; and to construct

Capital stock
may be increas-
ed.

Location of ca-
nal.

Feeders and
branch canal.

such navigable feeders for said canal, as shall be found actually necessary; and also a branch canal, to connect with the Fox or Pishteekee river, at or near Prairie Village, in Milwaukee county, under the same rights and privileges, as by this act is provided for constructing the main canal.

Company may
take private
property.

SECTION 7. That it shall be lawful for said corporation, by themselves and by any and every superintendent, agent, and engineer, employed by them, to enter upon, and take possession of, and use, all and singular any lands, waters, streams, and materials, necessary for the prosecution of the improvements authorized by this act; and to make all such feeders, dykes, locks, dams and other works and devices, as they may think proper for making said improvements, doing nevertheless no unnecessary damage; and that in case any lands, waters, streams, or materials, taken or appropriated for any of the purposes aforesaid, shall not be given or granted to said corporation, and in case said corporation shall not be able to acquire the title to the

In case of dis-
agreement as to
value.

same by agreement with the parties concerned, a board of appraisers shall be appointed, consisting of three persons, one of whom shall be appointed by the directors of the company hereby incorporated, one by the claimants applying for damage, and one by the commissioners or supervisors of the county, in which said lands, waters, streams, or materials, shall be, who shall, before they enter upon the duties of their office, severally take an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act. And it shall be the duty of said appraisers or a majority of them, to make a just and equitable estimate and appraisal, of the loss or damage, if any, over and above the benefit and advantage accruing by said works to the respective owners and proprietors, or parties interested in the lands, waters, streams, or materials, so taken for the purpose aforesaid. And the said appraisers, or a majority of them, shall make regular entries of their determination and appraisal, with an apt and sufficient description of the several premises taken and appropriated, for the purposes aforesaid, in a book or books, to be provided and kept by the directors of said corporation, and certify and sign their names to such entries and appraisal, and in

like manner, certify their determination as to those several premises which will suffer no damage, or will be benefited, more than injured, by or in consequence of the works aforesaid. And the said corporation shall pay the damages so assessed, and appraised, and the fee simple of the premises so taken and appropriated, shall thereupon vest in the said corporation: *provided, however,* that if the owner or owners of the lands, waters, streams and materials, so taken and appropriated, shall not make application to said corporation for the payment of damages by them sustained, within two years after such lands, waters, streams, or materials, shall have been taken possession of by the corporation, he, she or they shall thenceforth be barred from the collection of any damages from said corporation, for the lands, waters, streams or materials, so used: *provided, however,* that if either party shall feel aggrieved by any decisions of said board of appraisers, he, she or they shall have the right of appeal to the district court, within the county where the damages in question may have been sustained.

Application for compensation must be made within two years.

Appeals allowed.

SECTION 8. That it shall be lawful for the said corporation, to commence the construction of said canal at such points on any part of the aforesaid route, as in their judgment may appear expedient and proper; and so soon as any portion of said canal shall be completed, it shall be lawful for said corporation, to erect toll houses thereon, and collect such tolls as shall from time to time be prescribed by the legislature of this territory, or any state that may be formed out of the same, on the east side of the Mississippi river. And said corporation is hereby authorized to borrow any sum of money which may in their discretion be deemed necessary for the proper and efficient prosecution, of the works authorized by this act.

Company may borrow money.

SECTION 9. That it shall be lawful for the directors of said corporation, to make from time to time, such rules and regulations, not inconsistent with the laws of this territory, and of the United States, in respect to the size and structure of boats, rafts and other floats, on the waters of said canal, and the weighing and inspecting of boats and their loading, and in respect to all matters in relation to the navigation of the canals, and the collection of tolls and water rents; and impose such forfeitures of money, for the breach of such

May make regulations.

regulations, as they may judge reasonable; and to provide for the detention and sale of any such boats, rafts and other floats, as shall or may contravene such rules and regulations, in cases where the owner or owners of such boats, rafts, or other floats, shall neglect, or refuse to pay such forfeiture: *provided*, that no forfeiture so imposed shall for a single offence exceed the amount of actual damages more than fifty dollars, and that nothing in this section shall be so construed, as to prevent said forfeitures being recovered by action of debt as hereinafter provided.

Penalty for traveling, &c. on banks of the canal.

SECTION 10. That any person who shall lead, drive or ride any horse, ox, ass, mule or other animal, upon the towing path, or bank opposite the towing path of the canal hereby authorized to be constructed, except for the purpose of towing boats, or other floating things upon the waters thereof, or for the purpose of conveying articles to and from said canal, in order to their transportation on the waters of the same, or their delivery at their place of destination, shall forfeit for every such offence the sum of five dollars, and shall pay all damages consequent upon such offence over and above the said forfeiture.

Or for obstructing the same.

SECTION 11. That if any boat or other floating thing, shall be so moored in any of the canals, as to obstruct the navigation thereof; or if any person or persons shall obstruct the navigation of said canal, or cause the same to be done, by means of loading, unloading, misplacing, or otherwise misconducting any boat or other floating thing, and shall not immediately upon being requested thereto, by any engineer, superintendent or agent of said corporation, employed on said canal, or by any person incommoded by such obstruction, remove the same, the boatman or person who caused the obstruction, shall forfeit for every such offence the sum of twenty-five dollars, over and above the expense of removing said obstruction.

SECTION 12. That if any person or persons shall wilfully obstruct the navigation of said canal, or its branches, by sinking any vessel, timber, stone, earth or other things, in the same, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path, such person or persons, shall forfeit for every such offence the sum of twenty-

five dollars, over and above the expense of removing said obstruction.

SECTION 13. That if any person shall wantonly or unnecessarily open, or cause to be opened, or shut, any lock-gate, or paddle-gate, or any waste-gate, or drive any nails, spikes, pins or wedges into either of said gates, or take any other mode of preventing the free use of either of said gates; or shall wantonly or maliciously break, throw down or destroy any bridge on said canals, such person or persons shall, for every such offence, forfeit the sum of fifty dollars, and pay all damages consequent upon such offence, over and above such forfeiture. Or for wanton injury.

SECTION 14. That if any person shall, willfully and maliciously, break, throw down, or destroy any lock-gate, bank, waste-wire, aqueduct, or culvert, belonging to the canals authorized by this act, such person or persons shall, for every such offence be deemed guilty of a misdemeanor, and on conviction thereof, before the proper court, shall be sentenced to imprisonment in the penitentiary at hard labor for any time, not less than three, nor more than five years, at the discretion of the court; and shall moreover be liable to pay all damages sustained in consequence of such offence.

SECTION 15. That every person who shall knowingly sign or deliver to any collector, a false bill of lading, with the design of avoiding the payment of tolls, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than three times the value of the property omitted, or falsely stated in such bill. Or defraud the collector.

SECTION 16. That every collector of tolls, on the canals herein authorized, may require the master of any boat, upon exhibiting his bill of lading, to verify it by his oath, which such collector is hereby authorized to administer; and any person who shall testify falsely, before any collector, shall be deemed guilty of perjury. Collector may require oath.

SECTION 17. That for all damages done to the said canals, the offenders shall be proceeded against by indictment, in the proper courts, and on complaint being made to any judge or justice of the peace of the proper county, against any person or persons, doing Offenders to be proceeded against by indictment.

any such damage as is mentioned in the preceding sections of this act, it shall be the duty of such judge or justice, forthwith to issue a warrant to the proper officers to arrest and bring before him such offender or offenders. And if upon the return of such warrant, it shall appear to the satisfaction of such judge, or justice, that such complaint is true, he shall commit such offender or offenders, if he or they shall refuse to give security for their appearance, to the proper court, to answer said complaint: *provided, however*, that if the offender or offenders, shall pay to such judge or justice of the peace, the penalties, forfeitures, and expenses, which he or they may have incurred, together with the costs of prosecution, such offender or offenders shall be discharged.

Who and what
liable for pen-
alty.

SECTION 18. That the captain, or master and the owner of any boat or other float, on the canals herein authorized, and likewise the boat or float itself, shall severally be liable for the payment of any penalty or forfeiture, and likewise of all damages which may accrue, in consequence of the violation of any of the provisions of this act, or of any order of the board of directors, duly made and published, relating to the canals or the navigation thereof, or the collection of tolls thereon, by any person navigating such boat, or assisting in the navigation or management thereof, at the time of such violation; and any such boat or other float, may, at the discretion of the agents of the corporation hereby created, be prevented from navigating said canal, until such penalty, forfeiture, and damages, and costs, accrued in prosecuting therefor, shall be fully paid.

Lien of the cor-
poration.

SECTION 19. That all materials, that shall have been procured, by any contractor, for the construction of any part of said canal or any work therewith connected, shall from the time they are prepared for transportation to the place where they are to be used, be subject to the lien of the corporation, for all moneys that may have been or shall be advanced by the said corporation, during the performance of said contract; and for all damages that may be sustained in consequence of the non performance thereof; and no sale made by said contractor or under any execution issued upon any judgment or decree shall in any wise affect said lien.

SECTION 20. That every person, actually engaged in laboring on the canals herein authorized, shall be exempt from doing militia duty in this territory, except in cases of insurrection, or invasion, during the time he is actually engaged; and the certificate of one of the officers of the corporation, or of the contractors who shall employ such men so liable to perform militia duty, in performance of their contracts, shall be prima facie evidence of such engagement.

Laborers on the canals exempt from militia duty.

SECTION 21. That said corporation shall be bound to erect bridges over said canal, at all places where it shall cross any public highway, which shall have been regularly laid out, and recorded, at the time of the construction of said canal; and where the location of the canal, shall interfere with any road, which shall be in use; and said corporation is hereby authorized to change the location of said road: *provided*, that before so doing the said corporation shall cause the new road to be opened and put in good repair, for the convenience of travel, as the road vacated was at the time of such vacation.

Company must build bridges.

SECTION 22. That said corporation shall commence the construction of the works authorized by this act, within three years from the passage thereof; and in default of said commencement being made within said three years, all the privileges, herein and hereby granted, shall be forfeited by said corporation, and this act shall be null and of no effect. And the right to construct so much of said works, which are by this act authorized, as shall not be completed within ten years from the passage of this act, shall be forfeited by said corporation; and the legislature shall have the right to dispose of such part or parts in such manner, as to them may seem best calculated to promote the public interest.

Work to be commenced within three years

and finished within ten.

SECTION 23. That the future state of Wisconsin, at any time after its admission into the union, shall have the right to purchase and hold for the use of the state, the canal, herein authorized to be constructed, together with all its branches and other improvements, by paying to the said corporation, the amount actually expended, in the construction and repairs of the same, together with such reasonable interest, not more than seven per centum per annum, as may be agreed upon by and between said state and

State of Wisconsin may purchase the canals.

the corporation: *provided, however*, that in case the congress of the United States shall make any appropriation or donation, either in land or money, in aid of the construction of the work by this act authorized, the right to the same shall vest in said state, whenever the said transfer of the canal shall be made; and the net proceeds of all sales of land and the amount of all money so appropriated or donated, shall be deducted from the amount to be paid to the said corporation, for the transfer of said works to the state. And the said corporation are hereby authorized to apply to congress for such an appropriation, in money or lands, to aid in the construction of the works authorized by this act, as congress in its wisdom shall see proper to grant.

Dimensions of
canals, locks,
&c.

SECTION 24. That the said canal shall not be less than forty feet wide at the top water line, and four feet deep. The locks and other structures, to be constructed of cut stone, and in a neat, permanent and workmanlike manner, at least eighty-five feet long in the chamber, between the upper and lower gates, and fifteen feet wide in the clear, between the walls; and all culverts, aqueducts, dams and other fixtures, to be constructed in like permanent manner, of such materials and dimensions as the circumstances of the case may require.

No more water
to be taken than
necessary.

SECTION 25. That said company shall not have the right to take the water away from any mill, which shall have been erected by any person on any stream, except for the purpose of feeding said canal, for the purposes of navigation. *And be it further provided* that nothing herein contained shall authorize said company, to take or use, more water from any stream or fountain, than shall be actually necessary for the economical navigation of said canal, unless they shall have obtained the right to use an excess of water, over and above the quantity required for navigation, from every person or persons, corporation or corporations, lawfully claiming the same.

SECTION 26. That in case the congress of the United States, should make a donation of lands to the aforesaid corporation, for the purpose of aiding in the construction of the before named canal, and the lands so donated, or any part thereof shall be actually improved, and settled upon, by any person or persons,

at the time such lands were donated to said corporation, the said corporation shall sell, to such settler or settlers, the lands so settled upon—one quarter of a section, or one hundred and sixty acres each, (comprehending the improvements of such settlers,) at one dollar and twenty five cents per acre : *provided* that the settler as before named, shall pay the said corporation for the same, within ninety days from the time the said corporation shall make a demand for said payment; and a failure to comply with the foregoing provisions of this section, on the part of said corporation, shall be considered a forfeiture of their charter, and the same shall be null and void.

Approved January 5, 1838.

No. 24.

AN ACT to establish a territorial road, from Bloomington in Muscatine county, to the forty mile point, on Cedar river.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin,* That Robert Baneford, John Vanetia and John Blaycock, be, and they are hereby appointed commissioners to view, make and locate a territorial road from Bloomington in Muscatine county, thence the nearest and best way to the town of Geneva, thence the nearest and best route to Moscow, thence the nearest and best route to the town of Rochester, thence the nearest and best route to the forty mile point on Cedar river. Location of the road.

SECTION 2. Said commissioners shall meet in the town of Bloomington, aforesaid, on the first Monday in May next, or within one month thereafter, and shall proceed to the discharge of their duties under this act by blazing trees in the timber, and by setting stakes in the prairies, at a reasonable distance apart. When and how laid out.

SECTION 3. Said commissioners shall make a map and report of so much of said road as lies in Muscatine county and file the same with the clerk of the board of county commissioners of said county, and also a map and report of so much of said road as lies in Cedar county with the clerk of the board of the county commissioners of the said county.