

the use of said company, and also for all damages done to the profits of said company in an action of trespass.

SEC. 15. The directors of said company at any annual or special meeting of the stockholders, may provide for such increase of the capital stock of said company as may be found necessary to complete said road, in such sections as may have been actually commenced but remain in an unfinished state for want of means for completing the same. May increase capital stock.

SEC. 16. If said corporation should not within five years from the passage of this act commence the construction of said plank road and expend one thousand dollars or more thereon, and shall not within ten years from the passage of this act construct, finish, and put in operation a single or double track of plank or gravel road between the places aforementioned, then the rights, privileges, and powers of the said corporation under this act, shall be null and void. How charter forfeited.

SEC. 17. This act shall be favorably construed to effect the purposes thereby intended, and the same is hereby declared to be a public act, and copies thereof printed by authority of the state, shall be received as evidence thereof. Public act.

SEC. 18. This act may be altered or amended by any future legislature of the state of Wisconsin.

J. McM. SHAFER,

Speaker of the Assembly.

E. B. DEAN, JR.,

President pro tem. of the Senate.

Approved April 19, 1852.

LEONARD J. FARWELL.

[Published June 9, 1852.]

An Act to incorporate the Delavan and Whitewater Rail Road Company.

Chap 483

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

SECTION 1. That William C. Allen, H. C. Hemingway, E. M. Rice, M. F. Hawse, F. W. Phoenix, Charles H. Sturtevant, Aaron H. Faggert, Freeman L. Pratt, Leander Birge, S. C. Hall, J. S. Partridge, Norman A. Miller, Solmous Wakeley, William Birge, Prosper Cravath, Rufus Cheeney, Jr. and P. H. Brady, be and they are hereby appointed commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Whitewater and Delavan Plank Road Company, hereby incorporated, and they may cause books to Commissioners

be opened at such times and places as they shall direct for the purpose of receiving subscriptions to the capital stock of said company after first giving thirty days' notice of the times and places of taking such subscriptions, by publishing the same in a newspaper printed in the county of Walworth.

Capital stock

Sec. 2. The capital stock of said company shall be fifty thousand dollars, to be divided into shares of twenty-five dollars each, and as soon as two hundred shares of the capital stock shall be subscribed and five per cent. thereof actually paid in, the subscribers of such stock with such other persons as shall be associated with them for that purpose, shall be and they are hereby created and declared a body politic and corporate with perpetual succession, by the name and style of "The Whitewater and Delavan Plank Road Company," and shall be capable of holding, leasing, conveying, and purchasing estate, real, personal, and mixed, may sue and be sued in their corporate name in all the courts of this state, may have a common seal and generally may have all the rights and privileges incident by law to an incorporated company.

To call meeting.

Sec. 3. It shall be the duty of said commissioners as soon as practicable after the said two hundred shares of stock shall have been subscribed, to call a meeting of the stockholders at such time and place as they shall designate, by posting notices thereof in two public places in each of the towns of Whitewater and Delavan, and by publishing the same in a weekly newspaper published in the said county of Walworth, for the purpose of choosing seven directors of said company, and the persons then chosen shall be the first directors of said company and shall hold their offices for one year and until others are chosen in their stead.

Board of directors.

Sec. 4. The affairs of said company shall be managed by a board of seven directors who shall be chosen annually by ballot by the stockholders of the said company, at such time and place as the by-laws shall prescribe for the annual meeting of said stockholders. The said directors shall be stockholders, shall appoint one of their number president, and shall serve until others are elected in their stead; they shall make such by-laws and regulations not inconsistent with the constitution and the laws of the United States and of the state of Wisconsin, as may be necessary for the government of said company. At every meeting of stockholders each stockholder shall be entitled to one vote for every share of capital stock he shall hold, and may vote in person or by proxy duly authorized.

SEC. 5. Five directors shall constitute a quorum for the transaction of business. The said directors shall appoint a secretary, treasurer, and such other officers as shall be necessary, shall fix their compensation, and may demand adequate security for the performance of their respective trusts, they shall have full power to decide the time and manner in which the said stockholders shall pay the money due on their respective shares, not exceeding twenty-five per cent. in any one installment, and forfeit for the use of said company the share or shares of every person failing to pay any installment at a reasonable period not less than thirty days after the time appointed for the payment thereof. They shall have power to regulate tolls, to make such contracts as the prosecution of the work and the interest of the company may require, and generally to superintend and direct all the operations and financial affairs of the company, they shall also have power to fill any vacancy which may occur in their board.

Powers of directors.

SEC. 6. The directors shall issue a certificate to each stockholder for the number of shares he or she shall subscribe for, signed by the president and countersigned by the secretary, subject, however, to all payments due and to become due thereon, which stock shall be transferable in person or by attorney, under such regulations as may be provided in the by-laws of said company.

To issue certificates.

SEC. 7. The company when organized as provided in the third section of this act, shall have power to locate and construct a single or double track plank road from the village of Whitewater in the county of Walworth to the village of Delavan in said county. The track of said road shall be constructed of timber and plank, charcoal, stone, or gravel, or partly of each, so as to have a hard, smooth, and even surface; the particular mode of building said road to be determined by the directors.

Route of road.

SEC. 8. The locating of the route of said road shall be determined by the board of directors, and if any part of the same be located on any public highway, they shall have power to contract with the supervisors of the town in which said road may be, for the right to use the highway for the purpose of such road, and the said supervisors are hereby authorized to grant to said company the right to use any highway in their town as aforesaid.

Location to be determined by directors.

SEC. 9. It shall be lawful for said company, their officers and agents, to enter upon any lands for the purpose of exploring, surveying, and locating the route of said plank road, doing thereunto no unnecessary damage, and when said route shall have been determined it shall be lawful

May enter on lands.

for them, their agents, officers, engineers, contractors, and servants, to enter upon; take possession of, and use such lands for the purposes of said road, not exceeding four rods in width along the line of such road, and to take from any lands adjoining thereto such earth, gravel, stone, or other material as may be required for the construction 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 directed and provided.

**How damages
settled.**

SEC. 10. When the said corporation cannot agree with the owner or owners of any lands or earth, gravel, stone, or other material required for the construction of said road, for the purchase thereof, or the compensation to be paid therefor, or when by reason of the absence or legal incapacity of the owner or owners no such agreement or purchase can be made, then and in any such case it shall be lawful for any justice of the peace in the county in which the property may lie, to issue his warrant to the sheriff or any constable of said county not directly interested, requiring him to summon a jury of nine freeholders of said county not interested in said property, to meet in some convenient place at or near the property to be valued, on a day in said warrant named, not less than five nor more than ten days from the date of said warrant, and if at the time and place named any of the persons so summoned do not attend, then said sheriff or constable shall immediately summon as many as may be necessary with the persons in attendance as jurors to furnish a pannel of nine jurors, and from them the said company and the owner or owners of the property to be valued, their agent or attorney, or either of them, and if they are not present in person or by attorney, the sheriff or constable shall for him, her, or them strike off each two of said jurors, and the remaining five shall act as a jury of inquest of damages, and before they act as such the said justice of the peace shall administer to each of them an oath or affirmation that he will faithfully and impartially estimate the compensation which shall be paid to such owner or owners for such land or material required for the construction of said road according to the best of his skill and judgment; whereupon the said jurors shall forthwith or at such time not exceeding forty days therefrom, as they may designate, when such adjournment may be necessary to admit of the required notice, proceed to view the said land or material so required, and to hear the evidence of the respective parties, which the said jurors shall reduce to writing, which shall

be signed by all or a majority of said jurors and by the said justice of the peace in attendance, and the said justice shall within five days thereafter transmit the same to the clerk of the county court of said county, who shall file the same. Such inquisition shall describe the property so taken or to be taken, the boundaries of the land in question, and the compensation to be paid as aforesaid; and when such compensation shall be paid, together with the cost of such inquisition, or tendered to the owner or owners, or deposited with the said court, shall entitle said company to the estate and interest of the land thus valued, as if it had been conveyed by the owner in fee simple, so long as the land thus valued shall be used for the track of said plank road: *Provided*, That it shall not be lawful for any justice and jury to proceed in the valuation of any such property or material in the absence of the owner or owners thereof, his, her, or their legal representatives or agents, unless it be made to appear by affidavit that such owner or owners have had at least five days' notice of the time and place of meeting for the purpose of making such valuation, or unless it shall in like manner appear that such owner or owners are under age or *non compos mentis*, in which case service of notice may be made on the guardian or trustee under the same restrictions as the case of owners, or if there be no guardian or trustee, the same shall be established by affidavit, and in case such owner or owners reside out of this state, or cannot by due diligence be found therein, the notice may be given by publication for four weeks in a newspaper printed in the county where the premises are situated: *Provided, further*, That in case of such disagreement the company shall not take possession of any land or material until such jury shall have first decided that the taking thereof is necessary, and in case of materials, that the same are not essentially necessary to the owner or owners thereof, for his, her, or their private use.

Proviso.

Rates of toll

Proviso.

SEC 11. On the completion of said road or any portion of the track not less than three miles, the company may erect one or more toll gates upon their road, but not at a less distance apart than three miles, and may demand and receive such tolls as from time to time they may think reasonable, not exceeding two cents per mile for [any] vehicle drawn by one or two animals; one cent for every additional animal; for every horse and rider or led animal, one cent per mile; for every score of sheep and swine, two cents per mile; and for every score of neat cattle, four cents per mile: *Provided*, That persons going to or re-

turning from any military parade which they are required by law to attend, and persons going to or returning from funerals, shall be exempt, and no toll shall be exacted from any person or persons while actually going to or returning from any religious meeting on Sunday.

Penalty for damage to road.

SEC. 12. Any person who shall willfully break or throw down any gate on such road which may have been erected in pursuance of this act, or shall forcibly or fraudulently pass any gate without having paid the legal toll, or to avoid the payment of legal toll shall with his team, animal, or animals turn out of such road or pass any gate thereon and again return thereon, shall for each offense forfeit a sum not exceeding ten dollars to and for the use of said company, and shall also be liable for all damages done.

How charter forfeited.

SEC. 13. If said company shall not within five years from the passage of this act commence the construction of said road or shall not within ten years have completed a single or double track for a distance of six miles, or if said company shall misuse or abuse any of the privileges hereby granted, the legislature may reserve the rights and privileges vested in said company, or may establish rules for the government of said company in the use of said road.

May increase capital stock.

SEC. 14. The directors of said company may at an annual or special meeting of the stockholders with the consent of a majority in amount of said stockholders, provide for such increase of the capital stock of said company as may be necessary to complete said road.

SEC. 15. This act may be amended by any future legislature.

J. McM. SIAFTER,

Speaker of the Assembly.

E. B. DEAN, JR.

President pro tem. of the Senate.

Approved, April 19, 1852.

LEONARD J. FARWELL.

[*Published July 1, 1852.*]

Chap 484

An act to incorporate the Hustisford and Toland Prairie Plank and Turnpike Road Company.

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

Commissioners.

SECTION 1. That Samuel W. Limann, Sybrant Hall, Edward Weitherall, Hiram Sanders, Luther Powers, Abel B. Sanford, Patrick Toland, L. S. VanOrden, and William Schman be, and they are hereby appointed commissioners, under the direction of a majority of whom subscrip-