

CHAPTER 429.

[Published April 29, 1864.]

AN ACT to incorporate the Green Bay, Shawano and St. Croix Falls railroad company.

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

Corporators.

SECTION 1. Andrew E. Elmore, Henry M. Rice, Fred. S. Ellis, W. J. Abrams, H. Naber, T. C. Pound, Charles Shutter, Henry D. Barron and Wm. S. Hungerford, [and such other persons as] shall become stockholders in the corporation hereby created in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic, by the name and style of the "Green Bay, Shawano and St. Croix Falls railroad company," and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court whatever, but shall never set up the defense of usury in any court whatever. The said corporation may make, have and use a common seal, which it may alter or renew at pleasure. It shall be capable of acquiring for the legitimate use of said company, for railroad purposes, by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest or any other estate, either real, personal or mixed; and shall have and enjoy all the privileges, franchises and immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform, for the well being of said corporation.

Capital stock.

SECTION 2. The capital stock of said corporation shall be eight million dollars, and shall be divided into eighty thousand shares of one hundred dollars each, and shall be subdivided in the manner hereinafter provided.

Commissioners to receive subscriptions.

SECTION 3. The said Andrew E. Elmore, Henry M. Rice, Fred. S. Ellis, W. J. Abrams, H. Naber, T. C. Pound, Charles Shutter, Henry D. Barron and Wm. S.

Hungerford, are hereby appointed commissioners to receive subscriptions to the capital stock of said company, a majority of whom shall constitute a quorum, and shall have authority and power, and are hereby authorized and empowered, to do any act or thing by which the commissioners, by virtue of this act, may do or perform. The said commissioners shall give notice by publication for three successive weeks, in one newspaper printed in each of the counties of Brown, Shawano and Polk, of the time and place when and where they will meet to receive subscriptions to the capital stock of said corporation; and at such meeting shall prescribe rules as to the manner in which subscriptions to the capital stock of the company shall be made, the amount, not less than five dollars, to be paid upon such share at the time of such subscription, and the times and places of payment of the remainder, which rules shall be entered at length upon the books of subscription. The books of subscription shall be kept open until the whole number of shares shall be subscribed, when they shall be closed, and no more subscriptions received by the commissioners.

Notice of meeting to receive subscriptions.

Rules relating to subscriptions.

When books to be closed.

SECTION 4. Whenever five hundred shares of the capital stock shall be subscribed in conformity with the rules prescribed by the commissioners, and the amount prescribed by such rules paid upon each share so subscribed, the commissioners shall give notice to the stockholders by publication for three or more successive weeks in said newspapers printed in the several places aforesaid, to meet at a time and place to be specified in such notice, to elect nine directors of said corporation, who shall hold their office until other directors are elected in pursuance of the by-laws of said corporation.

First election of directors.

SECTION 5. The said company shall have authority and power, and they are hereby authorized and empowered, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain and operate a railroad, with one or more tracks or lines, on such route and with such alignment and graduation as said company shall think proper, from such point as the directors shall determine, on or near the outlet of Fox river, near Green Bay, thence on the most feasible route to Shawano, in township twenty-seven, range sixteen east, thence to Waussau, and thence to Chippewa Falls, in the county of Chippewa, thence to St. Croix Falls, in the

Survey and location of road.

county of Polk, on the St. Croix river, as the directors shall determine; and the said company shall have authority and power to take, transport and convey persons and property upon said railroad by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to make, construct and put in operation all such turnouts, side tracks, and tracks connecting such road with any other which it may intersect, as they shall think will promote the interests of the company; to erect and construct all depots, station houses, warehouses, car houses and shops, engine houses and shops, machine shops, and other fixtures useful for the accommodation of said road and of those using it, to manufacture or purchase all necessary engines, tenders, cars or other conveniences for running said road; and said company shall have power to connect its railroad with any other railroad in this state, and to operate the same in connection with such other railroad, and perpetually or for a limited time to lease or purchase from any other railroad company, the whole or any part of any railroad: *provided*, that nothing in this act shall be so construed as to authorize said company to consolidate its capital stock with or acquire or purchase the franchises of any other railroad company.

SECTION 6. All the affairs of said company shall be managed by a board of nine directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot, by the stockholders at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such place as shall be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders, every stockholder shall be entitled to one vote for each share of stock held by him or her, and may vote in person or by proxy duly authorized; and no business shall be transacted at any meeting of the stockholders unless a majority of the stock is represented. In all elections of directors, the persons receiving a majority of all the votes representing the stock subscribed, shall be deemed and declared duly elected. The election shall be conducted in such manner as shall be prescribed by the by-laws of the company; and if from any cause an election of di-

Transportation
of passengers
and freight.

Turnouts.

Depots, &c.

Engines, &c.

Connections.

Cannot consoli-
date.

Board of direc-
tors.

Failure to elect
not a loss of
franchise.

rectors shall not be had at the time when by the provisions of this act or of the by-laws it should be had, the same may be held at any other time, on notice to be given as aforesaid; and until 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 such election, nor be reason of any abandonment or non-user of such privileges, franchises or immunities, for a less period than fifteen consecutive years; but in case of any abandonment or non-user of such privileges, franchises or immunities for such period, the same shall be forfeited. The board of directors may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of the election, but shall never be less than nine nor more than fifteen.

Number of directors.

SECTION 7. 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 elect one of their own number to be president, and one to be vice-president. The president shall, when present, preside at all meetings of the board and of the stockholders, and when absent, the vice-president shall discharge the duties of president, and when both are absent, the directors may appoint a president *pro tem*. The board of directors shall have power to appoint an executive committee, and prescribe its powers and duties, to appoint a secretary, treasurer, and such engineers, superintendents, agents and other officers as they may deem necessary, and remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties and trusts. The directors shall have power to fill any vacancy which may occur in their own board. The directors shall issue a certificate or certificates to the stockholders for the number of shares held by them, respectively, signed by the president and secretary, which shall be transferable in such manner and at such place or places as shall be prescribed by the by-laws; and for the purpose of such transfer, they may establish transfer agencies out of

Quorum and meetings.

President and vice-president.

Executive committee and other officers.

Vacancies.

Certificates of stock.

Tariff of prices. this state, and such shares shall be deemed personal property. The directors shall have power to prescribe a tariff of prices for the transportation of freight and passengers, and to alter or change the same, or, in their discretion, to empower the superintendent or other agents to prescribe or alter such tariff. The directors shall have authority and power, and they are hereby authorized and empowered, to make such covenants, contracts and agreements with any person or persons, copartnership or corporation whatsoever, as the construction of their railroad or its management, and the convenience and interests of the company and the conduct of its affairs, may in their judgment require; and also to make any contract or agreement which they shall think proper with any person or persons, company or corporation, leasing to such person or persons, company or corporation, perpetually or for a limited time, the whole or any part of the railroad to be constructed or owned by this company, together with the rolling stock, machinery, buildings, tenements or fixtures, and all other property, real, personal or mixed, of this company, and all the franchises, rights, privileges and immunities of this company, and reserving or receiving rents therefor, or to sell the same. The directors shall also have power and authority to make, prescribe and establish such by-laws, rules, orders and regulations, not in conflict with or repugnant to the constitution and laws of this state or of the United States, as they shall think best for the well ordering of the affairs of said company, and, in general, to superintend and direct all of the operations, receipts, disbursements and all other affairs and proceedings of said company.

Contracts for construction and lease of road.

By-laws, &c.

Annual exhibit of affairs of company.

Special meetings

SECTION 8. At each annual meeting of the stockholders for the election of directors, the directors of the preceding year shall exhibit to the stockholders a complete statement of the affairs and proceedings of the company for such year. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-half in amount of the capital stock, on like notice as that required for annual meetings, which notice shall specify the object of the meeting.

May borrow money, and execute notes, bonds, mortgages, &c.

SECTION 9. The said company shall have authority and power, and it is hereby authorized and empowered in its corporate capacity, to borrow any sums of money

from any person or persons, corporation or body politic of any kind, and for any legal rate of interest which may be agreed upon by and between said company and any person or party of whom such money may be obtained; and to make, execute and deliver all necessary writings, notes, bonds, mortgages or other papers and securities, in amount and kind as may be deemed expedient by said corporation, in consideration of any such loan, or in the discharge of any liabilities that it may incur in the construction, repair, equipment or running of said road; and the powers of said corporation for the purposes aforesaid, and for all purposes necessary to carrying out the objects of said company, namely, the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation, and upon all other parties to such contracts. Said company shall also have authority and power, and it is hereby authorized and empowered, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations, from time to time, and at any time, in such an amount that all the bonds of said company outstanding at any one time, will not exceed the amount of the capital stock of said company. The directors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted, the sum or sums for which each of such bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable, the person or persons, trustees or corporation to whom the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest, not exceeding the legal rate, which such bonds shall bear, and the manner and form in which the interest coupons annexed to them shall be executed; and to secure the payment of any or all of such bonds, the said corporation is hereby authorized and empowered, in its corporate capacity, to make, execute and deliver a mortgage or deed of trust upon the whole or any part of its railroad constructed or authorized to be constructed, and of any or all of its estate, real, personal or mixed, in possession or expectancy, owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized

Amount of
bonds, interest
on same, &c.

Mortgage or
deed of trust to
secure payment
of bonds.

Powers of trust-
ee or mortgages.

Form of mortgage or deed of trust.

Sinking fund for payment of bonds.

Sale of bonds.

Mortgage or deed of trust to be recorded in office of secretary of state.

May enter upon lands, survey

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 its estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights and privileges of said corporation. And the directors of said company are hereby authorized and empowered to prescribe, by resolution to be by them adopted, 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 to provide for the periodical payment to such trustee or receiver as they shall appoint, a certain sum, to create a sinking fund with which to pay off or 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 such sinking fund, or any part of it, shall be applied; and the said railroad company is hereby fully authorized and empowered, by its treasurer, agents or brokers, or otherwise, at any place to sell, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par or at any price less than par, and for such sum or sums, and on such terms as to the said company shall appear most for the interest of said company; and the said company and its directors, officers, agents and brokers are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers hereby conferred upon them, respectively, any law of this state to the contrary notwithstanding. And any such mortgage or deed of trust, and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificates of such recording indorsed on such mortgage or deed of trust, shall have the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run, and such record in the office of the secretary shall be sufficient notice to all persons.

SECTION 10. The said corporation shall have author-

ity and power, and is hereby authorized and empowered, and locate road, and use lands on line of same. by its officers, engineers and agents, to enter upon any land for the purpose of exploring, surveying, locating or determining the route of its railroad; and when the route of said railroad shall be determined by said company by resolution adopted by the board of directors, the company also shall have authority and power, and it is hereby authorized and empowered, by its agents, officers, engineers, contractors, employees and servants, to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding one hundred feet in width; and said company shall also have authority and power, and it is hereby authorized and empowered, [at] any time to enter upon, take, possess, occupy and use any other lands beyond the limits of one hundred feet, which shall be necessary for the use of said company for the purpose of erecting depot buildings, stopping stages, station houses, freight houses, warehouses, engine houses, machine shops, or for buildings or fixtures of any kind, or grounds about any such buildings, houses or fixtures, for the convenient operation of the business of the 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 other materials, for embankments, structures or superstructures necessary to or for the construction, completion, alteration, maintenance, preservation and complete operation of said railroad. A copy of said resolution, duly certified by the secretary of said company, shall be recorded in the office of the register of deeds of the county in which the lands described in the resolution shall lie. And all private property which the said corporation is by this act authorized take, is hereby declared to be taken for public use. And the said company shall, at such time and in such manner as is prescribed by this act, pay the full value of all lands so taken, possessed, occupied or used, which value shall be ascertained in the manner hereinafter provided, and whenever the same shall have been paid, tendered, or deposited as provided in this act, the title in and to any and all such lands shall become vested in said company for the purpose of said railroad; and whenever the company shall deem

Purposes for which other lands may be taken.

Compensation for lands.

that the same or any part thereof shall be no longer necessary for the purpose for which the same were taken, the said company is hereby authorized and empowered to lease or sell the same, or any part thereof.

Application for appointment of commissioners to appraise lands.

SECTION 11. Whenever the line of said railroad shall be located and its route determined, the said company shall apply, by attorney, to the circuit court for the county through which it passes, or to the judge thereof in vacation, for the appointment of three commissioners to make an appraisal and award of the value of any and all lands which are the private property of any person on the line of said railroad, and which the said company shall have entered upon, taken, possessed, occupied or used, or which it may thereafter enter upon, take, possess, occupy or use for any of the purposes for which by this act the said company is authorized to enter upon, take, possess, occupy or use lands. The said company shall give notice of its intention to apply for the appointment of such commissioner, by publishing the same at least ten days before the time for hearing such application, in at least one newspaper published in the county in

Notice of application to be published.

Appointment of commissioners.

which such land shall be; and upon an affidavit of the publication of the same, the court or judge to whom the application shall be made, shall appoint three commissioners who shall have cognizance of all cases arising on the line or route of said railroad; and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable to the owner, and at least five days' personal notice to such owner, if resident in the county; and whenever it shall appear to said company or its officers,

Examination of premises.

If title in dispute, notice to be given to claimants.

that the title to such lands is in dispute, or that several parties claim interest therein, by tax sales, tax titles, incumbrances, liens or equitable claims, the said commissioners shall, upon request of said company or its officers, give notice to all persons claiming any interest in such land; whether as owners, incumbrances or otherwise; (and when the person to be notified has no known residence in this state within the knowledge of such commissioners, the notice may be by publication in a newspaper, for such length of time as the commissioners shall deem reasonable;) and after making such examination, the said commissioners, or a majority of them, shall, in each case separately, make an appraisal and award of the value of the land so entered

Award of damages.

upon, taken, possessed, occupied or used by said company for any of the purposes aforesaid, at the time when the same was so entered upon and taken, and shall deliver one copy of their award, in each case, to the said company, and shall file another in the office of the clerk of the circuit court of the county in which said land shall lie, with the cost of the award taxed upon each of said copies; and if neither party shall appeal from said award in the manner hereinafter provided, the said circuit court, on motion of the party in whose favor any award shall be made for such value as aforesaid, unless such award shall have previously been paid, shall enter up judgment in conformity with such award. And in case either of said commissioners shall die, resign or decline to act, the said court or judge shall appoint another commissioner in his stead. The said company, or any party receiving notice from the said commissioners as aforesaid, may within thirty days after such award shall have been filed with the clerk as aforesaid, appeal from the same to the circuit court of the county in which such award shall be filed, by filing with the clerk of said court a written notice of such appeal. Upon receiving such notice, the said clerk shall enter the appeal as a case upon the docket of the court, setting down the owner or owners and person or persons claiming any interest in said land, embracing all persons so having received such notice from said commissioners, as plaintiffs, and the said company [as] defendant; and the said court shall proceed to hear and determine such case in the same manner that other cases are heard and determined in such court; and all issues of fact arising therein shall be tried by a jury, unless a jury shall be expressly waived by both parties. The appellant shall not be entitled to have the case tried in any term of said court, unless he shall give notice to the appellee or his attorney, at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee has no known residence in this state, or attorney of record residing therein, no such notice need be given. In all cases the appellee may waive such notice, in which case the same rule for trial shall be applicable to it as to other cases in said court. After the hearing of such case, the jury, or if a jury be waived, the court shall assess the value of the land so entered upon, taken, possessed, occupied and used

One copy of award to be filed.

Entering up judgment, if neither party appeal.

Vacancies.

Appeal, and trial of case.

Assessment of damages, and entering up judgment.

by said company at the time when the same was entered upon and taken; and after such assessment, the court shall proceed to render judgment against said company for the amount of said assessment, in favor of the plaintiff or plaintiffs in such case. If the amount so assessed in favor of the said plaintiff or plaintiffs shall exceed the amount awarded by said commissioners, with interest at the rate of seven per cent. per annum from the time of such award to the time of such assessment by the jury or court, then judgment shall be rendered against said company for costs; and if it shall not exceed such amount, (and interest as aforesaid,) then judgment shall be rendered in favor of said company for costs, and against said plaintiff or plaintiffs, and execution may issue accordingly. Either party shall be entitled to a change of venue for the trial of such cause, on affidavit filed, stating the belief of the person making the affidavit that a fair trial cannot otherwise be had. The change of venue shall be to the nearest county where a fair trial can be had. The judgment of the circuit court may be reviewed on appeal or writ of error, as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, or whenever, in case of appeal, a final judgment shall be rendered, it shall be the duty of the company, and not before, to pay to the party entitled to the same, the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax sale, tax title or equitable claim to or upon the land or any part thereof, which is the subject matter of such award or judgment, or when more than one person shall be entitled to or shall set up any claim to the amount of such award or judgment, or any part of it, or when the person entitled to receive the same shall not have any known residence within the state, the said company may deposit the amount of such award, when there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment thereon with the clerk of the circuit court in which such judgment shall have been rendered; and the money so deposited in either case, shall be paid over by order of the circuit court to the person or persons who shall be adjudged to be entitled to receive the same. Whenever the amount

Costs.

Change of venue

Review.

When company to pay damages.

In case of lien, award, &c. may be deposited.

When title shall

of such award or judgment shall have been paid, tendered or deposited as aforesaid, an absolute estate in fee simple in such lands, shall be and become vested in said company, and all persons so receiving notice from the said commissioners, and all persons claiming under them, shall be forever excluded from questioning such title so acquired by the said company. Said company shall have full power and authority, after entering upon and taking such lands, to have, hold, possess, occupy, use any enjoy the same for any of the lawful purposes of the said company, from the time of such entry and taking until the proceedings provided for by this act shall have been finally determined, and until said company shall have refused, after demand made, to pay the value of the land so ascertained as aforesaid; and the said company shall not, during such time, nor until such refusal, be disturbed in such possession or occupancy, use or enjoyment, by any proceedings either in law or equity.

become vested in company.

Company to enjoy possession of lands until damages are finally determined.

SECTION 12. The said company shall have the right, authority and power, and it is hereby authorized and empowered, to construct its said railroad across, over or under any railroad it may intersect, upon and along, across, under or over any public or private highway, road, street, plankroad or railroad, if the same shall be necessary; but the said company shall put said highway, road, street, plankroad or railroad in such condition and state of repair as not to impair or interfere with its free and proper use; and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water or water-course, at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

May construct road along side of or across other roads.

SECTION 13. If any person shall willfully or knowingly injure or destroy any part or portion of the railroad so to be constructed, or any works, buildings or machinery attached to or in use upon the same, belonging to said company, or shall willfully and maliciously place any obstruction or thing upon the track of said railroad, such person or persons so offending shall each of them, for every such offense, forfeit and pay to said company three times the amount of damages caused by such offense, which may be recovered in the name of said company in any court having competent jurisdiction. Such person or persons shall also be subject to

Penalty for injury to road, &c.

indictment, and on conviction of any such offense, shall be punished by fine and imprisonment in the state prison or either, at the discretion of the court; and in case any accident shall occur in consequence of any such obstruction or damage to said road or machinery, whereby the death of any person shall be caused, the person so offending shall, on conviction, be adjudged guilty of murder in the first degree, and punished accordingly, in the same manner as shall be prescribed by law for the punishment of murder in the first degree.

Public act, &c.

SECTION 14. This act is hereby declared to be a public act, and shall take effect and be in force from and after its passage and publication.

Approved April 4, 1864.

CHAPTER 430.

[Published April 30, 1864.]

AN ACT to incorporate the Janesville and Afton railroad company.

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

Corporators.

SECTION 1. O. B. Ford, John Clark, Maurice Smith, Michael McKey, Hamilton Richardson, Solomon Hutson and Thomas Lynch, (*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 Janesville and Afton 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

Name and powers.