

CHAPTER 101.

[Published March 16, 1865.]

AN ACT to incorporate the Portage city and Baraboo valley railroad company.

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

Corporators.

SECTION 1. John P. McGregor, Carl Haertel, N. H. Wood, Rodney Loomis, Ferrill Thomas, William Wallace, Noble C. Kirk, Charles K. Williams, Argalus W. Starks, Joseph Mackey, E. O. Rudd, Moses Young, William Palmer, John Smith and John G. Blackeslee, and their successors and associates, to be determined as hereinafter provided, are hereby made, instituted and appointed and declared to be a body politic and corporate, by the name and style of the "Portage city and Baraboo valley 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 estate, either real, personal or mixed, and may take and hold such estate by gift grant, purchase, lease or demise. 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.

Name and powers.

Capital stock.

Opening of books of subscription.

SECTION 2. The capital stock of the said company shall be divided into such number of shares, of one hundred dollars each, as the directors shall from time to time determine, not exceeding one million dollars, the entire cost of their railroad, the stocking and equipment thereof; and the directors 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.

SECTION 3: That the persons named in the first First directors: section of this act, shall be the first directors of said company, and shall hold their offices until other directors are elected by the stockholders, and shall possess all the powers conferred by this act upon the board of directors elected by the stockholders, as hereinafter provided. They shall, prior to opening the subscription books, designate the time the same shall be closed, which shall not be less than ten nor more than twenty days, and upon the close of said subscription books, they shall receive no more subscriptions until after the election of directors by the stockholders; and they shall immediately give not less than thirty days' notice Notice of meeting for election of directors. 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.

SECTION 4. All of 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 greater 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 Management vested in board of directors. Board to be elected annually. Failure to elect not a loss of franchise.

on thirty days' notice being 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.

Quorum and meetings.

President and other officers.

Reopening of books of subscription, &c.

By-laws, &c.

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 own number to be president, who shall serve for one year, or until other 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 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. 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 persons failing to pay any installments, as also all previous payments thereof. 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, copartnership or corporation whatever, as the construction of their railroad or its management and the convenience and interests of the company may require; and powers are hereby conferred on such company in their 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 gener-

al, to superintend and direct all the operations, receipts, disbursements and all other affairs of said company.

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.

Stock deemed personal property.

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

Special meetings

SECTION 8. The said company shall have power to locate and construct a railroad, with one or more railroads or tracks, from Portage city, in the county of Columbia, to Baraboo and Ironton, in the county of Sauk. 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, ware houses, 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.

May locate and construct railroad, &c.

SECTION 9. The said company is hereby authorized and fully empowered in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and 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

May borrow money, &c.

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 such corporation, 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 the 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 watercourse, at such points of crossing the same as they shall locate the railroad, with all necessary abutments, piers or other foundations.

Bridges, &c.

May survey route of 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 the route of said railroad, doing thereto no unnecessary damage; and when the route of said railroad 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 route, and also such lands adjacent to the line of said route beyond the said limits of one hundred feet, as may be necessary for the use of said company, for the purpose of 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 watercourses, or of diverting or changing the channel of watercourses 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 or gravel for embankments, structures or superstructures necessary for the construction or repair of said road; subject, however, to the payments of such compensation as they [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 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.

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 residents, to their agents, if any in such county, such sum as the company deem reasonable; and if such offer of compensation be neglected or refused, then such question of compensation shall be decided by three commissioners, as follows, viz.: The said company may 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 compensation to be paid to the several par-

Compensation.

To agree with owners.

In case of disagreement, commissioners to be chosen.

ties 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 shall 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 cost 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 lands 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 such 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 such company for costs, and if it shall not exceed the amount so found by said

Examination
and award.

Appeal.

Costs.

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 clerk of*) the circuit court of the county in which the land shall lie, to be disposed of by order of the judge of said court, the title to 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 peaceable 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

Possession of lands during pendency of proceedings.

SECTION 13. No person shall be incompetent to be a witness or give testimony in any suit or proceedings 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 juror, in any suit or proceeding, for the reason that such person is a stockholder in said company.

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, not in conflict with or repugnant to the laws of this state.

Freight, &c.

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 place any obstruction or thing upon the track of said road, such person or persons so offending shall each of them,

Penalty for injury to road.

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 said road 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 directors and of the stockholders of said company shall be called by at least a majority of the directors named in this act. A concurrence of a majority of the directors shall be necessary in order to adopt, establish, alter, modify, amend, rescind or abolish any resolution 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 franchises to be void.

SECTION 19. The privileges, 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 elected, may from time to time determine and fix the number of directors to be elected at any election next to be had, so that the number shall never be less than five nor more than fifteen.

Approved March 8, 1865.