

two animals, one cent a mile for every additional animal; for every vehicle drawn by one animal, one cent a mile; and for every horse and rider or led animal, one cent a mile; for one score of sheep or swine, two cents a mile; and for every score of neat cattle, six cents a mile.

How charter
forfeited.

SEC. 11. If said corporation shall not, within three 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, complete the road, then the rights, privileges, and powers of the said corporation under this act shall be null and void.

J. McM. SHAFTER,

Speaker of the Assembly.

E. B. DEAN, JR.,

President pro tem. of the Senate.

Approved, April 17, 1852.

LEONARD J. FARWELL.

[*Published July 1, 1852.*]

Chap 419

An Act to incorporate the Northwestern Rail Road Company.

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

Created a body
corporate.

SECTION 1. Otis Hoyt, Wiram Knowlton, Timothy Burns, B. Allen, and John B. Hoyt, their associates, successors and assigns, are created a body corporate, by the name of the Northwestern Rail Road Company, and by that name shall be and are hereby made capable in law to purchase, hold and enjoy to themselves and their successors, lands, tenements, and hereditaments, so far as may be necessary for the purpose of erecting and constructing a rail road between the points hereinafter named, and shall have full power to sell, grant, rent, or in any manner dispose of the same; and the said company shall have full power to contract and be contracted with, to sue and be sued, plead and be impleaded, answer and be answered, and also to make, have, and use a common seal, the same to alter, break or renew at their pleasure.

To open books.

SEC. 2. The above named persons, or a majority of them, are hereby authorized to open books for receiving subscriptions to the capital stock of said company, and shall prescribe the form of such subscription, which books shall be opened within eighteen months from the passage of said act at such place or places as they may deem expedient, and the said books shall be kept open thirty days.

SEC. 3. AS SOON as the sum of fifty thousand dollars is subscribed to the capital stock of the said company, the above named persons shall give notice to the stockholders in writing of a meeting of the stockholders to choose directors for the said company, and the said stockholders shall at such meeting choose nine directors, each share of capital stock entitling the owner to one vote, and may be cast by the owner or by proxy, and the above named persons or any two of them shall be inspectors of said election, and shall certify in writing who are chosen directors. To call meeting.

SEC. 4. The board of directors shall have full power to make such rules and by-laws for the choosing of their officers as they may see fit, and may constitute such officers as they may think for their advantage, as well as for conducting the business of the said company. May make rules.

SEC. 5. Said company shall have full power to construct a rail road from the Falls of St. Croix, in the county of St. Croix, by the way of Willow River, to the Wisconsin River, at the most practicable point for crossing said river, and on the shortest and best route for reaching said point, and from thence to Madison in Dane county; and the capital stock of the said company shall be two million dollars and shall be divided into shares of one hundred dollars each. Route of road.

SEC. 6. The affairs of said corporation shall be managed by a board of not less than nine and not more than thirteen directors, to be determined by the said company, who shall be chosen annually by ballot, by the stockholders of the said company, the votes to be delivered in person or by proxy duly authorized, which directors shall appoint one of their own number to be president, and shall respectively serve for one year, or until other directors are elected; they shall have power to make and establish such by-laws, rules, and regulations not inconsistent with the constitution and laws of this state, as may be necessary for the well ordering the affairs of said company. Board of directors.

SEC. 7. None but stockholders shall be elected directors; and at every election, and in all cases where stockholders shall be called upon to vote, each share of stock shall be entitled to one vote, and in all cases of elections of directors, the thirteen stockholders having the highest number of votes shall be declared elected. Each share of stock entitled to one vote.

SEC. 8. The said directors shall meet at such times and places, and be convened in such manner as they may hereafter decide upon. A majority of said directors shall be a quorum for the transaction of business, who in the absence of the president shall appoint a president *pro tem*. The Powers of directors.

said directors shall appoint a secretary, treasurer, and such engineers and other officers as they may find necessary; and they shall have full power to fix the compensation of all officers and agents, and may demand adequate security for the performance of their respective trusts; they shall decide the time and manner and proportions in which the said stockholders shall pay the money due on their respective shares, and forfeit to the use of the company the share or shares of every person or persons failing to pay any installments so required, at a reasonable period, not less than sixty days after the time by them appointed for the payment thereof; they shall have full power to regulate tolls, to make such covenants, contracts, and agreements with any person, co-partnership, or body politic whatsoever, as the construction and management of the works and the convenience and interest of the company may require, and in general to superintend and direct all the operations, receipts, disbursements, and other proceedings of the company: *Provided*, That no installment called in at any one time shall exceed twelve dollars per share, and that no installment shall be called for by the directors without at least thirty days' notice thereof to be given as the by-laws of said company may provide.

Provide.

SEC. 9. The directors chosen as aforesaid, shall issue a certificate to each stockholder for the number of shares he or she may subscribe for or hold in said corporation, signed by the president and countersigned by the secretary, and sealed with the common seal, subject, however, to all payments due or to become thereon, which stock shall be transferable in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided for in the by-laws of said company.

To issue certificates.

SEC. 10. At each annual meeting of the stockholders for the purpose of electing directors, the directors of the preceding year shall exhibit to them a complete statement of the affairs and doings of the company for such year; and special meetings of the stockholders may be called by order of the directors, or by stockholders holding one-fourth of the capital stock on like notice as that required for annual meetings, specifying moreover the object of such meeting; but no business shall be transacted at such special meeting, unless a majority in value of the stockholders shall attend in person or by proxy.

To exhibit statement.

SEC. 11. The said company shall have power to locate and construct a rail road with a single or double track; and shall have power to transport, take, and carry property and persons upon the same by power and force of steam, of ani-

Power to construct road.

males, or of any mechanical or other power, or by any combination of them ; and they shall also have power to make, conduct, and erect all such side tracks, turn-outs, and connecting tracks, and also such warehouses, toll houses, machine shops, carriages, cars, and other works and appendages, as may be necessary for the convenience of the company for the use of the said rail road, and also to connect said rail road, and operate the same with other rail roads and branch rail roads in the state of Wisconsin, and consolidate the capital stock of the said company with the capital stock of any rail road company with which the roads of the said companies shall intersect, and shall have full power to place the road of this company and its capital stock so consolidated, under the direction of a joint board of directors to be chosen on such terms as the directors of the companies consolidating their capital stock shall agree upon ; and the board so constituted shall have power to adopt such name as they may see fit, and may alter the same at will, and shall upon such adoption or alteration (*shall*) give proper notice of the same in a newspaper published in Madison.

Sec. 12. If said corporation shall not within ten years from the passage of this act commence the construction of said rail road, then the rights, privileges, and powers of said corporation under this act shall be void. How charter forfeited.

Sec. 13. 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 road, doing thereto no unnecessary damage ; and when the said route shall be determined by the said company, it shall be lawful for them, their agents, officers, engineers, contractors, and servants, at any time, to enter upon, take possession of, and use such lands, not exceeding one hundred and thirty feet in width, along the line of said route subject, however, to the payment of such compensation as the company may have agreed to pay therefor, or such as shall be ascertained in the manner hereinafter directed and provided in such cases respectively. Said company are further authorized by their officers, engineers, agents, and servants, to enter upon lands adjacent to the rail road beyond the limits of one hundred and thirty feet, in the manner provided in this act, when necessary for the purpose of erecting depot buildings, station houses, and necessary fixtures for the operation and for the business of said road, and for the purpose of making drains and giving a proper direction to water courses across or along said road, when the same are necessary beyond the limits of said road, and to May enter upon lands.

remove all substances and things which might endanger, obstruct or interfere with the free use of said road, and to deposit earth, gravel, and stone taken from cuts, and to obtain earth, gravel, stone and other materials for embankments and structures necessary to the construction and repairs of said road, doing, however, no unnecessary damage, and all lands so acquired, and all damage which shall be done to any lands or property under the provisions of this section, shall be ascertained and paid for in the manner and agreeably to the provision hereinafter provided; and when such damage shall have been paid for, or tendered, the title of the land occupied by such fixtures, excavations and embankments, shall vest in fee simple in said company.

How damages
settled.

SEC. 14. When the said corporation cannot agree with the owner or owners of such required land, for the purchase thereof, or as to the compensation to be paid therefor, or when by reason of the legal incapacity, or absence of such owner or owners, no such agreement or purchase can be made, then, and in that case, it shall be lawful for any judge of the supreme court of this state, on application of the said company, and at the cost and charge of said company to appoint three disinterested persons residing in the counties through which the said road runs, whose duty it shall be to view and examine the lands so taken, with the buildings and improvements, if any thereon, and to estimate the value of the land so taken or required by the said company, and all damages which the owner or owners thereof shall sustain or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto; and it shall be the duty of the said company to give three weeks' notice of their application to the judge of the supreme court for the appointment of the said commissioners, to be published for three successive weeks in a newspaper published at the capital of the state, and also in a newspaper, if there shall be any published, in each of the counties through which said road may be located, and the affidavit of the publisher or printer shall be legal evidence of such publication; and the persons so appointed, before entering upon the discharge of such duties shall take an oath before some justice of the peace or other person competent by law to administer oaths, faithfully and according to the best of their abilities, to examine the land so taken or required by said company, and impartially to estimate and appraise the value of the same and the damage or injury which the owner or owners thereof shall have sustained,

or may sustain by reason of the taking and using thereof by the said company, over and above the benefits and advantages which such owner or owners shall derive from the construction of such rail road: whereupon such commissioners shall proceed to examine the premises and estimate the value of such land, and also the amount of damage, if any, over and above the benefits and advantages which may accrue to such owner or owners as aforesaid, and shall make a report in writing of such valuation, under their hands and seals, to the circuit court of the county where the land lies, and shall return the same within thirty days after their appointment, to the clerk of the circuit court of the county in which they reside, and it shall be the duty of the said clerk to file the same; and in case no appeal shall be made within thirty days after the filing of said report as hereinafter provided, then the said clerk shall record the same at the expense of said company, and judgment of the said court shall be entered thereon, on motion of either party, at any term of said court: *Provided*, That either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office, and such appeal shall be tried in the same manner as other issues are tried in said court, and the jury empannelled to try the same shall find the value of the land so taken or required by said company, and the damages which the owner or owners shall have sustained or may sustain by the taking of the same, over and above the benefits which will accrue to such owner or owners from the construction of such rail road, and judgment of the court shall be entered accordingly: *Provided also*, That it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials as aforesaid, in the absence of the owner or owners thereof, his, her, or their agents or attorneys, unless it shall be shown to them by competent testimony that the said owner or owners have had at least five days' notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners are absent from the state of Wisconsin; and if the said owner or owners shall be minors, or *non compos mentis*, or absent from the state, the service of notice may be made on the guardian or trustee, if there be any, or in such manner as the court may direct: *Provided also*, That upon the making and filing of any report as aforesaid, and payment as legal tender of the amount of any valuation or appraisal specified therein, to the owner or owners of any such lands, his, her, or their legal representatives, the said

company, their agents, or the contractor for making or repairing said rail road, may immediately take and use the same without awaiting the issue of any appeal brought thereon; and the said company shall before (*using*) [opening] said road through enclosed grounds, erect such fencing as shall preserve such enclosure entire, and shall before commencing to use said road as a rail road, erect a good and sufficient fence on both sides of said road through all enclosed grounds, and shall maintain the same so long as they use said road as a rail road.

Company entitled to easement of land.

Proviso.

SEC. 15. Whenever any judgment shall have been entered as hereinbefore provided, for the value of any lands, or for any damages for the taking and using of the same, and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such lands, his, her, or their legal representatives, the said company shall be entitled to the easement of the same so long as it shall be used as the track of said rail road; and if such valuation be not received when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: *Provided*, That the cost of any proceedings and judgments specified in the last preceding section shall be taxed by the court and paid by said company, except in cases where upon appeal the verdict of the jury shall be for the same or a less sum than that reported by the said commissioners.

Road not to obstruct highway.

Proviso.

SEC. 16. The said rail road shall be so constructed as not to impede or obstruct the free use and passage of any public road or roads which may cross the same, and in all places where such rail road may cross, or in any way interfere with any public road, it shall be the duty of said company to make or cause to be made a sufficient causeway or passageway to enable all persons traveling such public road to pass over or under such rail road without inconvenience: *Provided*, That in cases where said rail road may cross or come in contact with any public or private road so as to occupy any part of such road, it shall be lawful for said company to construct said rail road across or upon such road, after altering and putting the same in as good condition as before, and for that purpose the said company shall previous to occupying any part of such road, construct a new road, in part or in whole, as may be necessary, on ground adjacent to such road, and in every respect complete such newly constructed road or part of a road so interfered with, as substantially as it was previous to the disturbance and occupancy thereof by said company.

SEC. 17. For the convenience of persons owning or possessing lands through which said rail road shall pass, it shall be the duty of said company when required, to make a good and sufficient passage over or under said rail road, whenever the same may be necessary to enable the occupants of said lands to pass over or under the same with wagons, carts, and implements of husbandry as occasion may require: *Provided*, That said company shall in no case be required to make more than one such passage way for each farm; and when any public road shall cross said rail road in any farm, the person owning or possessing said farm shall not be entitled to require said company to make any additional causeway.

To make pas-
sageway.

Proviso.

SEC. 18. This act shall be favorably construed to effect the purposes hereby intended, and the same is hereby declared to be a public act, and copies thereof printed by authority of the state of Wisconsin, shall be received as evidence thereof.

Public act.

SEC. 19. Any person who shall willfully and maliciously place any obstruction or thing upon the track of said road, or shall remove or damage any part thereof, in such a manner that the engine or cars may be impeded or thrown off the track, shall be guilty of a misdemeanor whether such result shall happen or not, and shall be punished for every such offence by imprisonment in the state prison, for a term of not less than one nor more than five years, at the discretion of the court, and in case any damage shall result from the placing such obstructions, or injury to said road, said party shall be liable to pay all such damage to said company, and to any other person damaged or injured thereby, and in case any accident shall happen in consequence of placing such obstructions, or in consequence of breaking or injuring said road, whereby death may be produced, the party so offending shall be adjudged guilty of murder in the first degree, and shall be punished agreeably to the law in such cases made and provided.

Penalty for dam-
age to road.

SEC. 20. The said rail road company are hereby authorized and fully empowered in their corporate name and capacity to borrow any sum or sums of money from any persons, corporations, or body politic of any kind, and for any 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 make and execute in their corporate name all necessary writings, notes, drafts, bonds, or other papers, and make, execute, and deliver such securities in amount and kind, as may be deemed expedient by said corporation, any law on the subject of usury in

May borrow
money.

this state or any other state where such transaction may be made to the contrary notwithstanding; and the powers of said corporation, for the purposes aforesaid, and for all purposes necessary to carrying out the objects of said company hereinbefore expressed, and the contracts and official acts of said company, are hereby declared binding, in law and equity, upon said corporation, and all other parties to said contracts.

May purchase lands.

SEC. 21. This act shall be in force from and after its passage; and it shall be lawful for said company to purchase lands adjoining or adjacent to said rail road, for the purpose of procuring earth, gravel, stone, or other materials for the construction and repair of said road or buildings and fixtures connected therewith, and whenever such lands shall no longer be needed for the purposes aforesaid, the said company are hereby authorized to sell and convey the same.

Proceedings in case of incumbrance.

SEC. 22. In case there shall be incumbrances upon the land taken as hereinbefore provided, it shall be sufficient for the said company to deposit the amount of damages assessed as herein provided, with the clerk of the circuit court of the county where the land lies, to be paid over by the said clerk to the owner of said land or his lawfully authorized agent, upon the removal of the said incumbrances.

Reciprocal use of roads.

SEC. 23. This company shall have power to enter upon and pass over the rail road of any other company whose rail road connects with that of this company, with their cars and engines, and any other company shall have like power to enter upon this rail road whose rail road connects with this rail road, and pass over the same with their cars and engines and such reciprocal use of said respective rail roads, shall be upon terms to be agreed upon by the officers of the respective companies, and in case such terms cannot be agreed upon by said officers, then an application may be made by either party to the supreme court of this state, whose duty it shall be to fix such terms for the respective parties as the equity of the case may demand.

J. McM. SHAFTER,

Speaker of the Assembly.

E. B. DEAN, JR.,

President pro tem. of the Senate.

Approved, April 17, 1852.

LÉONARD J. FARWELL.

[*Published July 13, 1852.*]