

reading room of the association, at least one week previous to said meeting.

~~May fill vacancies.~~ SEC. 5. The board of directors shall have power to fill vacancies in the several offices, and to appoint, and at pleasure remove such subordinate officers, agents, or servants, as the business or interest of the said corporation may, in their opinion require.

~~How property devoted.~~ SEC. 6. The estate, property, and funds of the said corporation shall be devoted solely to the general purposes and objects specified in the first section of this act.

SEC. 7. This act shall take effect immediately.

J. McM. SHAFTER,

Speaker of the Assembly.

TIMOTHY BURNS,

Lt. Governor and President of the Senate.

Approved, March 8, 1852.

LEONARD J. FARWELL.

[Published, March 27, 1852.]

Chap. 98.

An Act to incorporate the Sheboygan and Mississippi Rail Road Company.

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

~~Commissioners appointed.~~

SECTION 1. Asahel P. Lyman, Henry H. Conklin, William W. King, Charles D. Cole, Horatio N. Smith, John Bannister, A. B. Hamilton, Samuel W. Beall, John P. Sherwood, Robert Jenkinson, Benjamin F. Moore, Thomas B. Stoddard, and James McM. Shafter, shall 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 Sheboygan and Mississippi Rail Road Company, hereby incorporated; and they may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, first giving thirty days notice of such times and places, by publishing the same in one newspaper printed at the village of Sheboygan, and one in the village of Fond du Lac.

~~Capital stock.~~

SEC. 2. The capital stock of said company shall be three million dollars, in shares of one hundred dollars each, and as soon as three hundred shares of stock shall be subscribed, and five dollars on each share actually paid in, the subscribers of such stock, with such other persons as shall associate with them for that purpose, their successors and assigns, shall be and they are hereby declared and created a body corporate and politic, by the name and style of the

"Sheboygan and Mississippi Rail Road Company," with ^{Powers, &c.} perpetual succession, and by that name shall have all the privileges, franchises, and immunities incident to a corporation; they shall be capable in law of purchasing, holding, selling, leasing, and conveying estate, real, personal, and mixed, so far as the same may be necessary for the purposes hereinafter mentioned; and in their corporate name may sue and be sued, plead and be impleaded, may have a common seal, and may alter the same at pleasure, and generally, may do all and singular the matters and things which to them it shall lawfully appertain to do, for the well being of said corporation.

SEC. 3. The said commissioners, or a majority of them, after the said three hundred shares of such stock shall have been subscribed as aforesaid, shall give at least thirty days' notice in the newspapers hereinbefore mentioned, of the time and place by them appointed for the subscribers or stockholders to meet for the purpose of electing thirteen directors, and annually thereafter the said stockholders shall meet on the third Wednesday of January, for the purpose of electing directors as aforesaid, upon a like previous notice to be given as aforesaid: *Provided*, That previous to ^{Provide} the first election, the commissioners hereinbefore named shall elect one of their number president, and they shall perform all the duties and be invested with all the powers of directors: *And provided*, That if from any cause an election shall not be held at the regular time specified therefor, the same may be held at any other time, on notice as aforesaid; that until such election, the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: *And provided also*, That in case of vacancy from the death, removal, or resignation of any director, his place may be filled by a majority of the board of directors.

SEC. 4. The affairs of said corporation shall be managed by a board of thirteen directors, who shall be chosen annually by ballot, on the days hereinbefore prescribed, 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 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. ^{Affairs to be conducted by board of directors.}

SEC. 5. None but stockholders shall be elected direc-

Qualification of 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 duly elected.

Sec. 6. 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 said directors shall appoint a treasurer, a secretary, 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, 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 installment 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 contracts, covenants, 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 instalment called in at any one time shall exceed twelve dollars per share, and that no instalment shall be called for by the directors without at least thirty days' notice thereof in the newspapers hereinbefore named.

Sec. 7. 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 due 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 make annual statement. 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 meetings; 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.

SEC. 9. The said company shall have power to locate and construct a single or double track railroad, from the village of Sheboygan, in the county of Sheboygan, via Fond du Lac, to the Mississippi river; and shall have power to transport, take, and carry property and persons upon the same by power and force of steam, of animals, or of any mechanical or other power, or by any combination of them; and they shall also have power to make, construct and erect, all such side tracks, turn-outs, and connecting tracks, and also such ware houses, 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 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 said company with the capital stock of any rail road company with which the roads of 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.

SEC. 10. If said corporation shall not within fifteen years from the passage of this act, complete the construction of said rail road, then the rights, privileges, and powers of said corporation under this act shall be void.

SEC. 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 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; and said company are further authorized by their officers, engineers, agents, and servants, to enter upon lands adjacent to the road be-

Route of road.

How charter for
feited.

Powers to locate
route, &c.

yond 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 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 damages 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 provisions 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 said company, for the purposes aforesaid.

SEC. 12. When 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 any 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, 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 this 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,

Questions of
damage, how
settled.

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 thereof by the said company, whereupon such commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damage, if any, 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 clerk of said court 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 empanelled 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 thereof shall have sustained or may sustain, by the taking of the same, to such owner or owners for the construction of such rail road, and judgment of 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 making and filing of any report, as aforesaid, and payment or 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 contractors for making or repairing said rail road, may immediately take and use the same without awaiting the issue of any appeal brought thereon.

When compensation tendered by company entitled to lands. SEC. 13. 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 estate and interest in the same, as fully as if it had been conveyed in fee simple; 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 less sum than that reported by the said commissioners.

Rail road not to obstruct public highway. SEC. 14. 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 passage-way 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.

To make passage. SEC. 15. 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 on any farm, the person owning or possessing such farm shall not be entitled to require said company to make additional causeway.

SEC. 16. This act shall be construed favorably 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.

SEC. 17. Any person who shall wilfully 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 obstruction, 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 laws in such cases made and provided.

*Damage to road
how punished.*

SEC. 18. 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 shall 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 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 object of said com-

*Authorized to
borrow money.*

Contracts binding. pany, namely : the construction of a rail road from Sheboygan in the county of Sheboygan, to the Mississippi river; 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. 19. 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.

To deposit damages.

SEC. 20. 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 hereinbefore 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 said owner of the said land, or his lawfully authorized agent, upon the removal of the said incumbrances.

May connect with other roads.

SEC. 21. The corporation hereby created shall have power to enter upon and use any rail road with which this road may intersect, for all purposes for which such roads are ordinarily used, upon such terms as the several corporations owning such roads can agree, and if they cannot agree, then, upon such terms as shall be fixed upon by three commissioners to be appointed by the supreme court upon the application of either party, and upon such notice and in such manner as said court shall direct. The rail road hereby authorized to be built shall be subject to be entered upon and used by all other roads under the provisions and liabilities of this section.

To carry mails.

SEC. 22. The government of the United States shall have the right to require the corporation hereby created to transport over said road all mails at such rate as may be agreed upon by said government and said corporation, and in case of disagreement, the terms of said transportation shall be fixed in the same manner as is provided in section twenty-one for the disagreement therein specified.

J. McM. SHAFTER,

Speaker of the Assembly.

TIMOTHY BURNS,

Lt. Governor and President of the Senate.

Approved, March 8, 1852.

LEONARD J. FARWELL.

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