

of the execution thereof by such town clerk and his sureties in any court in this state.

SEC. 4. The said town, or any person or persons sustaining damage by reason of the loss of any paper mentioned in the second section of this act, or the neglect to perform, or unfaithful performance of any duty therein mentioned, may sue for and recover such damage in an action of assumpsit against said clerk and his sureties, in any court having jurisdiction of similar actions between other parties: *Provided*, That all actions against a town clerk and his sureties upon any such instrument, shall be prosecuted within four years after the expiration of the year for which the town clerk named therein shall have been elected.

How damage recovered.

SEC. 5. This act shall not be so construed as to make town clerks liable in case of loss by fire or other unavoidable accident.

Not liable for loss by accident.

J. McM. SHAFER.

*Speaker of the Assembly.*

E. B. DEAN, JR.,

*President pro tem. of the Senate.*

Approved, April 1, 1852.

LEONARD J. FARWELL.

[*Published April 10, 1852.*]

An Act to incorporate the LaCrosse and Milwaukee Rail Road Company.

Chap 198

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

SECTION 1. That Timothy Burns, Samuel T. Smith, Benjamin F. Healy, of LaCrosse county, Moses M. Strong, of Iowa county, Thomas J. Moorman, of Portage county, John Lowth, of Dodge county, Henry Weil and Patrick Toland, of Washington county, Hugh McFarlane, of Columbia county, Patrick Rogan, of Jefferson county, Henry Shears, of Waukesha county, Leonard J. Farwell, of Dane county, D. C. Reed, Edwin H. Goodrich, Geo. H. Walker, Levi Blossom and Garriet Vliet, of Milwaukee county, be and they are hereby appointed commissioners, under the direction of any five of whom, subscriptions may be received to the capital stock of the La Crosse and Milwaukee 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 the times and places of taking such subscriptions, by publishing the same weekly in a public newspaper, printed in the counties of La Crosse, Sauk, Columbia, Jef-

Commissioners.

erson, Dodge, Washington, Waukesha, and Milwaukee, or in such of said counties as there shall be a newspaper printed in.

Capital stock

SEC. 2. The capital stock of said company shall be divided into forty thousand shares of one hundred dollars each, and as soon as five 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 become stockholders in conformity with the provisions of this act, 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 "LaCrosse and Milwaukee 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; 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 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 the said corporation.

Created body corporation.

When commissioners to close books.

SEC. 3. The said commissioners, or a majority of them, after the said five hundred shares of stock are subscribed, shall close the books of subscription, and shall give at least thirty days' notice, in the newspapers hereinbefore mentioned, or in some three of them, one of which shall be printed in the city of Milwaukee, of the time and place by them appointed for the stockholders to meet for the purpose of electing seven directors, 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.

Board of directors.

SEC. 4. All of the affairs of the said corporation shall be managed by a board of seven directors, who shall be stockholders, and who are hereby invested with all the powers of the said corporation; they shall be chosen annually by ballot at the annual meeting of the stockholders, (which shall be held on the first Wednesday of February,) by the stockholders of the said company on like notice as is herein prescribed for the first election of directors. The votes shall be delivered in person or by proxy duly authorized, and in all cases in which stockholders shall vote each share of stock shall be entitled to one vote, and in all elec-

tions for directors, those stockholders equal to the number to be elected, having the greatest 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 from 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, on thirty days' notice to be given as aforesaid, and until such election be had, the directors of the preceding year shall continue to act; and that the corporation hereby created shall not forfeit or lose any of its privileges, franchises or immunities, by the reason of the irregularity or want of such election. The board of directors may at any time increase or diminish the number of directors to be elected at the next annual meeting of stockholders: *Provided*, The number shall not be less than five nor more than fifteen, and in case of such increase or diminution, the number to be elected shall be specified in the notice of election. Proviso.

SEC. 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 elect, by ballot, one of their own number to be president, who shall when present, preside at all meetings of the directors, and when absent, the directors may appoint a president, *pro tem*. The board of directors shall appoint a secretary, treasurer, and such engineers, superintendents, agents and other officers as they may find necessary; fix their compensation, and may 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 re-open the books for subscription to the capital stock of the company, or open new books under their own direction or the direction of a majority of them, or under the direction of such person or persons as they may designate; to decide upon the amount to be paid on such subscription, the time and manner and proportions in which the stockholders shall pay subsequent installments on their respective shares, and to forfeit to the use of the company, the share or shares of any person failing to pay any installments so required; to regulate tolls and charges for the transportation of freight and passengers; to make such covenants, contracts and agreements with any person or persons, co-partnership or corporation whatsoever, as the execution and management of the works and the convenience and interests of company may require; to make any General powers of directors.

contract or agreement which they shall think proper with any other railroad company for the leasing or purchase of the whole or any part of any railroad constructed or to be constructed by such railroad company; to make and establish such by-laws, rules, orders, and regulations, not inconsistent with the constitution and laws of the United States, or of this state, as they shall think necessary 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.

To issue certificates.

SEC. 6. The directors shall issue a certificate or certificates to the stockholders for the number of shares held by them respectively, in said corporation signed by the president and secretary and sealed with the common seal of the company, subject, however, to all the payments due and to grow due thereon, which stock shall be transferable in such manner as shall be provided by the by-laws of the company.

To exhibit statement.

SEC. 7. 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-fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying the object of the meeting.

Power to locate road, &c.

SEC. 8. The said company shall have power to locate and construct a rail road with one or more railways or tracks from such point in the village of La Crosse, in the county of La Crosse, to such point in the city of Milwaukee as shall be determined upon by the board of directors, or from the said point in the village of La Crosse aforesaid, to some point where the same shall intersect and connect with some other rail road, running to the said city of Milwaukee; and the 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 of any mechanical or other power or of any combination of them; and to make, construct, and put in operation all such branch rail roads, turn-outs, side tracks, and connecting tracks, as they shall think will promote the interests of the company; and to erect and construct all such depots, station houses, ware houses, car houses and shops, engine houses and shops, toll houses, machine shops, and all other fixtures useful for the accommodation of said road, and of those

using it, to manufacture or purchase all necessary engines, tenders, cars, and other conveniences for running said road; and they shall have power to connect the said rail road or branch rail road with any other rail road or branch rail road in this state, and to operate the same in connection with such other rail road or branch rail road, and to lease or purchase from any other rail road company the whole or any part of any rail road or branch rail road owned by such company, or to lease or to sell to any other company, the whole or any part of the rail road or any of its branches to be built or owned by this company.

Sec. 9. The said company is hereby authorized and fully 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 rate of interest which May borrow money. may be agreed upon by and between said company and any person or party of whom such money may be obtained, any law on the subject of usury in this state or any other state where such transactions may be made, to the contrary notwithstanding; 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 discharge of any liabilities that it may incur in the construction, repair, equipment, or running of said road; and the powers of the said corporation for the purposes aforesaid, and for all purposes necessary to carrying out the object of said company, namely: the construction of a rail road 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.

Sec. 10. If said corporation shall not within three years from the passage of this act, commence the construction of said rail road, and in ten years from the time aforesaid complete the same, then the rights, privileges, and powers of said corporation under this act, shall be null and void. How charter forfeited

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 rail road, doing thereto no unnecessary damage, and when the said route shall be determined by 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 land not exceeding one hundred feet in width along the line of said route; subject, May enter upon lands.

however, to the payment of such compensation as the company may have agreed to pay therefor, or shall be ascertained in the manner hereinafter provided in such cases respectively, and it shall further be lawful for said company, by their officers, engineers and agents, to enter upon lands adjacent to the rail road, beyond the limits provided in this act, when necessary for the purpose of erecting depot buildings, station houses, and necessary fixtures for the operation and 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 deep cuts, and to obtain earth, gravel, and other materials for embankments and structures necessary to the construction and repairs of said road, doing however, no unnecessary damage; 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 provisions of this act; and when such damage shall have been paid or tendered, the title to the land occupied by such building, fixtures, excavations, and embankments, shall vest in fee simple in said company, agreeably to the provisions contained in this act; and it shall further be lawful for said company to purchase and hold in fee simple, lands adjoining or adjacent to the rail road for the purpose of procuring earth, gravel or other material for embankment and structures necessary to the construction and repairs of said road and necessary buildings; and whensoever such lands shall be no longer needed for the purposes aforesaid, the said company is hereby authorized to sell and convey the same.

State land granted to company

Sec. 12. In case the said company shall locate the line of their rail road on any lands belonging to the state, the said lands to the extent of one hundred feet in width along the line of said road, are hereby granted to said company in fee simple, together with such other lands adjacent to said rail road beyond the limits of said one hundred feet, as shall be necessary for the purpose of erecting depot houses, buildings, station houses, and necessary fixtures, or of obtaining earth, gravel, or other materials for embankments and structures necessary to the construction and repairs of said road; and the said company is hereby authorized and empowered to construct their said rail road and its branches in sections, as fast as they may obtain the means of so doing, and the franchise of the portions so

completed and put in operation, shall vest in said company the same as though the whole were completed; and if any appropriation of land shall be made to the state by congress, to aid in the construction of a rail road between the points aforesaid, such proportion of the whole quantity of land so appropriated as the length of the section or sections completed, bears to the whole length of the surveyed line of said rail road, is hereby granted to the said rail road company; and upon the completion of such section or sections, shall vest in fee simple in said company; and the lands so granted shall be such of the lands appropriated by congress as aforesaid, as shall lie most contiguous to the section or sections so completed as aforesaid.

SEC. 13. The said company shall have the right to enter upon any lands required for their use as provided in the eleventh section of this act, and to survey and lay out said road, not exceeding one hundred feet in width, and the said company shall if possible agree with the owner of said lands 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 the person or persons owning or possessing such legal or equitable title, lien, or incumbrance shall be a minor, *non compos mentis*, insane, or married woman, or under any legal disabilities, then with the guardian of such person, or the husband of such married woman; and if said company cannot agree with such owner, or with such guardian or husband, then such question of compensation shall be submitted to arbitration in the manner following, to wit: the said company shall select a disinterested arbitrator, and such owner, guardian, or husband shall select another who shall be disinterested and not of kin to him, or if they should refuse or neglect for the space of three days after being notified by said company to do so, or if they be non-residents of this state, they shall be notified by mail, by letter, signed by the secretary and addressed to their usual place of residence, to select such arbitrator, and if they shall refuse or neglect for the space of sixty days after mailing of such letter, then in all cases of neglect or refusal as aforesaid, the judge of the county court or chairman of the county board of supervisors of the county in which such land shall lie, shall appoint three competent persons to act as arbitrators, who shall not be of kin to the claimant, or in any manner interested in said company, and the said arbitrators having first determined that it was necessary to take said property, shall proceed to make an award of the amount of compensation which shall

How damages to be settled.

Appeal may be taken.

be paid by said company to such person for the land so taken, and shall deliver a copy of their award in writing to each of the parties, and if the amount awarded by said arbitrators shall be more than said company had previously offered to pay, then said company shall pay all the expenses of said arbitration; and if it shall be less, then the other party shall pay such costs. And either party may within ten days after receiving a copy of such award, appeal from the same to the court of the proper jurisdiction for the county in which such land is situated, by giving written notice of such appeal to some one of the arbitrators, and upon receiving such notice of appeal it shall be the duty of the arbitrators to certify all their proceedings to said court, and the said court shall enter said case on its docket, setting down the claimant or claimants as plaintiff, and the said company as defendant, and the said court shall proceed to ascertain the amount of compensation to be paid by said company to said complainant, taking into consideration all the facts and circumstances which said arbitrators were by this act required to take into consideration, and the said court shall thereupon proceed to render judgment in favor of such complainant, against said company, and if the amount so found for such claimant shall exceed the amount so found by said arbitrators, then judgment shall be rendered against said company for costs, and if it shall not exceed the amount so found by said arbitrators, then judgment shall be rendered in favor of said company for costs, and against said claimant. And when such compensation so to be ascertained according to the provisions of this section, shall be paid or tendered to the party entitled to the same, the title to said lands shall vest in the said company in fee simple, and a copy of such award or judgment, filed in the office of the register of deeds of the county in which the 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 said lands for all the lawful purposes of said corporation, and they shall not, while such proceedings shall be pending, or until such refusal, be disturbed in such possession, use, occupancy, and enjoyment, by any proceeding either at law or in equity.

SEC. 14. The said company may construct the said rail road across any public or private road, highway, stream of water, or water course, if the same shall be necessary, but

May construct road on highway



the said company shall restore such road, highway, stream of water, or water course, to its former state, or in a sufficient manner not to impair the usefulness of said road, highway, stream of water, or water course, to the owner or to the public.

SEC. 15. On the completion of said rail road or any section of the track not less than five miles, it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property, as they shall from time to time think reasonable. May demand freightage.

SEC. 16. If any person shall willfully and knowingly injure or destroy the rail road so to be constructed by said company, or any part thereof, or any work, building, 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 road, such person or persons so offending, shall each of them for every such offence, forfeit and pay a sum not exceeding three times the amount of damages caused by such offence, which may be recovered in the name of the said company, by action of debt in any court having competent jurisdiction in the county wherein the offence shall be committed, and shall also be subject to indictment, and upon conviction of any such offence shall be punished by fine and imprisonment, or either, at the discretion of the court. Penalty for injury to road.

SEC. 17. The property of every individual invested in said corporation shall be liable to be taken in execution for the payment of his or her debts, in such manner as is or may be provided by law: *Provided*, That all debts and unpaid stock due said company shall be first paid. Property liable for debts. Proviso.

SEC. 18. This act is hereby declared to be a public act and shall be favorably construed to effect the purpose thereby intended, and copies thereof printed by authority of the state, shall be received as evidence thereof in all cases. Public act.

SEC. 19. This act shall take effect and be in force from and after its passage, and all acts and parts of acts conflicting with the provisions of this act, or with the rights, privileges, and franchises hereby created, are hereby repealed. Conflicting acts repealed.

J. McM. SHAFER,  
*Speaker of the Assembly.*  
E. B. DEAN, JR.  
*President pro tem. of the Senate.*

Approved, April 2, 1852.

LEONARD J. FARWELL.

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