

**Chap 489** An Act to incorporate the Port Washington and Newburg Plank and Turnpike Road Company.

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

**Commissioners.** SECTION 1. Harvey Moore, William Porter, Orman Coe, William Pain, Lyon Silverman, 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 Port Washington and Newburg Plank and Turnpike Road Company, hereby incorporated, and they may cause books to be opened at such times and places as they shall 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 in a newspaper printed in Washington county.

**Capital stock.** SEC. 2. The capital stock of said company shall be twelve thousand dollars in shares of twenty dollars each, and as soon as two hundred shares of the capital stock shall be subscribed, and five per cent. of the amount thereof actually paid in or secured to the said company, the subscribers to said stock with such other persons as shall thereafter associate with them for that purpose, their successors and assigns shall be, and they are hereby created and declared a body corporate and politic, by the name and style of the "Port Washington and Newburg Plank and Turnpike Road Company," with perpetual succession, and by that name shall be capable in law of purchasing, holding, selling, bargaining, and conveying estate, real, personal, and mixed, and in their corporate name may sue and be sued, may have a common seal, which they may alter or renew at pleasure, and generally may do all and singular the matters and things which an incorporated company may by law do.

**To call meeting.** SEC. 3. The said commissioners, or a majority of them, after five hundred shares of stock shall have been subscribed as aforesaid, shall give at least twenty days' notice in one or more of the newspapers of the said county of Washington, of the time and place of the meeting of the stockholders for the purpose of electing five directors, who shall hold their offices until their successors are elected, and annually thereafter upon the anniversary of the first election, upon notice of the place of meeting being given by the directors, then in being, published in one or more of the newspapers in the county aforesaid, to be designated by the said directors, the said stockholders shall meet

to elect directors: *Provided*, That until the first election <sup>of directors.</sup> of directors, the said commissioners above named, upon the subscription of two hundred shares of stock, and the organizing of said commissioners by the election by them of one of their number president, shall have all the powers and perform all the duties of a board of directors for said company, and the corporate existence of said company shall be taken and held to have begun and be completed as if a regular election of directors had taken place; and in case of a vacancy at any time happening in the board of directors, or in said board of commissioners acting in the capacity of directors, the board shall have power to fill such vacancy.

SEC. 4. The affairs of said company shall be managed by the said directors, who shall be stockholders, and be chosen by ballot by the stockholders in person, or by their proxies duly authorized, and in all elections, and in the discussion of all questions acted upon at any meeting of the stockholders, each share of stock shall be entitled to one vote, and the majority of the votes cast shall govern, except in elections where the five persons having the greatest number of the votes cast for directors shall be declared duly elected. <sup>Board of directors.</sup>

SEC. 5. A majority of the said directors shall form a quorum for the transaction of all business, and shall organize by choosing one of their number president, and they shall have power to appoint a secretary and treasurer, and such other officers and agents as they shall deem fit, and may fix their compensation, and may demand adequate security for the performance of their respective trusts, and may remove said officers, and revoke the powers of said agents at pleasure; they shall also have power to make all necessary and proper by-laws, rules, and regulations for the management of said company, the subscription of stock, the payment of installments thereon, the assignment and transfer of stock certificates, and prescribing the duties of officers; all of which by-laws not inconsistent with the constitution and laws of the state when duly recorded in the books of the company, shall be effectual and binding upon the members of said company, and all persons interested therein, as if the same formed a part of this act of incorporation. <sup>Powers of directors.</sup>

SEC. 6. The said board of directors shall also have power to decide the time and manner in which stockholders shall pay installments upon their stock, and to declare the forfeiture of said stock and all prior payments thereon for failure to pay such installments as may be called for, and <sup>May declare stock forfeited.</sup>

also to accept in behalf of the company a relinquishment of any stock subscribed, and execute to the person or persons relinquishing the same, valid releases, discharging them from all liabilities thereafter, for or on account of the acts of said company or its officers.

To issue certificates.

SEC. 7. The said directors shall have power to regulate tolls, and to make such covenants and contracts in the name and under the seal of said company, with any person or persons as the execution or management of the work and the interest and convenience of the company may require, and may issue to each stockholder a certificate or certificates for the shares which he or they shall subscribe for, stating in the body of such certificate or certificates the amount paid on such share at the time of issuing such certificate or certificates; which certificate or certificates shall be signed by the president and countersigned by the secretary of said company, and which certificate or certificates shall be transferable in the manner prescribed by the by-laws of said company.

Route of road.

SEC. 8. The said company shall have power to locate and construct a single or double track road from the village of Port Washington, in the county of Washington, to the village of Newburg by the way of the village of Saukville in said county, as shall be determined upon by a vote of the stockholders holding a majority of the stock of said company who shall be represented in person or by proxy at a special meeting called for (*that*) [the] purpose of fixing the location of said road. The track of said road shall be constructed of plank, gravel, and coal, or either, in whole or part, each at the option of the directors, so that the same when completed shall constitute a firm, regular and proper surface for the (*purpose*) [passage] of wagons and carriages.

May enter upon lands.

SEC. 9. It shall and may be lawful for said company, their officers, engineers, and agents, to enter upon any lands for the purpose of exploring, surveying, and locating the route of said plank road, doing thereto no unnecessary damage, and when said route shall be determined by said company, it shall be lawful for them, their agents, engineers, contractors, and servants, at any time to enter upon, take possession of, and use such lands, not exceeding four rods 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 as will be ascertained in the manner hereinafter directed: *Provided*, That in such places as may be necessary for the company to obtain gravel and stone, or to make excavations and embank-

ments for the construction of said road, the company may locate the route of said road, not to exceed six rods in width, and they may also cut down such trees, on each side of said road, as may endanger said road by falling or otherwise.

SEC. 10. When said company shall not agree with the owner or owners of any land, gravel, stone, or other material required for the construction of said road for the purpose thereof, or for the compensation to be paid therefor, or when by reason of the absence or legal incapacity of the owner or owners, no such agreement or purchase can be made, then and in any such case, it shall be lawful for any justice of the peace to issue a warrant directed to the sheriff or any constable of the county in which the land, gravel, stone, or other material is situated, not directly interested, requiring him to summon a jury of nine freeholders of his said county, not interested in said property, to meet the said justice at some convenient place at or near the property to be valued, on a day in said warrant named, not less than five nor more than ten days from the date of said warrant; and if at the time and place named any of the persons so summoned do not attend, the said sheriff or constable, shall immediately summon as many as may be necessary, with the persons in attendance as jurors, to furnish a panel of nine jurors, and from them the said company and the owner or owners of the property to be valued, their agent or attorney, or either of them, and if they are not present in person or by attorney, the sheriff, or constable, shall for him, her, or them, strike off each two of said jurors, and the remaining five shall act as a jury of inquest of damages. Before they act as such, the said justice of the peace shall administer to each of them an oath or affirmation that they will faithfully and impartially value the land and material required for such road, and all damages which the owner or owners shall sustain by reason of the construction of said road, according to the best of his skill and judgment; whereupon the said justice and the jurors shall proceed to view the said land or material so required and to hear the evidence of the respective parties, which the said justice shall reduce to writing, which shall be signed by the said justice, and the verdict of the jurors thereon shall be signed by the jurors, or a majority of them, and by the justice of the peace; and the said justice of the peace shall within five days thereafter transmit the same to the clerk of the circuit court of the proper county, who shall file the same. Such inquisition shall describe the property taken, or to be

How damages settled.

taken, or the boundaries of the land in question and the value thereof as aforesaid, and such valuation when paid, together with the costs of such inquisition, or tendered to the owner or owners, or deposited with the said court, shall entitle the said company to the estate and interest in the same thus valued, as if it had been conveyed by the owner or owners thereof, so long as the land thus valued and taken shall be used for the track of said plank road: *Provided*, That it shall not be lawful for any justice or jury of inquest to proceed in the valuation of any such property or material, in the absence of the owner or owners thereof, his, her, or their legal representatives, unless it be made to appear by affidavit that such owner or owners have had at least five days' notice of the time and place of meeting for the purpose of making such valuation, or unless it shall in like manner be shown that such owner or owners are under age or *non compos mentis*, such service of notice may be made upon the guardian or trustees under the same restrictions as in the case of owners, or if there be no guardian or trustee, the same shall be established by affidavit: *Provided*, That no such materials shall be taken if the jury shall decide that the same are essential to the owner or owners thereof: *Provided*, That any party conceiving himself aggrieved by any decision herein stated, may in every such case appeal from such decision to the circuit court of the county in which the property in question is situate, as in ordinary cases of appeal.

Proviso.

May construct road on highway.

SEC. 11. The directors shall have power in their discretion to construct said plank road along or upon any road or highway, now or hereafter to be laid out, opened, and established by the proper authorities, and of such width and in such manner as the said directors shall determine: *Provided*, They procure by agreement with the supervisors of any town the right to take and use any part of any public highway in such town for the construction of such proposed roads, and agree with such supervisors upon the amount of compensation and damages to be paid by such company to such supervisors therefor. Every such agreement with the supervisors shall be in writing, and shall be filed in the town clerk's office of the town, and such compensation and damages when paid to the supervisors, shall be expended by them in improving the highways of such town; and they may erect toll gates and exact toll from persons traveling on their road whenever three consecutive miles are finished, or when the whole road is completed, not exceeding two cents per mile for every vehicle, sled, sleigh, or carriage drawn by two animals, and if drawn by more

Proviso.

Rates of toll.

than two animals, one cent per mile for every additional animal; for every sled, sleigh, or carriage drawn by one animal, one cent per mile; and for every horse and rider or led animal, one cent per mile; for one score of sheep or swine, one cent per mile; and for every score of neat cattle, four cents per mile: *Provided*, That persons going to and from military parade at which they are required by law to attend, and persons going to or returning from funerals, shall be exempt from toll. The toll gatherer at each gate, when erected on said road in pursuance of this act, may detain and prevent from passing such gate any animal or carriage subject to toll, until the toll thereupon is paid.

SEC. 12. The said directors may receive from any stockholder in said company, in lieu of money for the stock subscribed by him, real or personal security, to the approval of said board of directors, and upon the acceptance of such security from said stockholders or any of them, the subscription of such stockholders shall be considered as paid, and certificates of stock shall be issued to said stockholder in the same manner as if he had paid the full amount of his subscription in money, and it shall be competent for the said stockholders paying their subscription of said stock in securities as aforesaid, to contract and pay to said company interest at the rate of twelve per cent. per annum, for a period not exceeding ten years, and to execute to said company by its corporate name, bonds, mortgages, or notes for such stock, which shall be available for the use and benefit of said company and for all subsequent holders thereof, and be transferable by them or any of them, in the same manner as if they were made payable to individuals or to their order as assignees.

SEC. 13. And if any person shall willfully or knowingly obstruct, break, injure, or destroy the said road to be constructed by the said company, or any part thereof, or any work, building, or fixtures attached to or in use upon the same belonging to said company, such person or persons so offending, shall each of them, for every such offence, be liable to a civil suit for the recovery of damages by said company by an action of trespass, in any court having competent jurisdiction in the county where the offense shall have been committed, and shall also be subject to indictment, and upon conviction, shall be punished by fine and imprisonment, or either, at the discretion of the court.

SEC. 14. Any person who shall willfully break down any gate on such road which may have been erected in pursuance of this act, or do any damage to said road, or forcibly or fraudulently pass any such gate without having

paid the legal toll, or to avoid the payment of the legal toll, shall with his team, carriage, or animal turn out of said road or pass any gate thereon, or ground adjacent thereto, and again return on said road, shall for each offense forfeit a sum not exceeding ten dollars, to and for the use of said company, and also be liable for all damages done to the profits of said company in an action of trespass.

May increase  
capital stock.

SEC. 15. The directors of said company at any annual or special meeting of the stockholders, with the consent of a majority in amount of said stockholders, may provide for such increase of the capital stock of said company as may be found necessary to complete said road, in such sections as may have been actually commenced but remain in an unfinished state for want of means for completing the same.

To exhibit state-  
ment.

SEC. 16. At each annual meeting of the stockholders for the purpose of choosing directors, the directors of the preceding year shall exhibit to the meeting a complete statement of the affairs and proceedings of the company for such year, and special meetings of the stockholders may be called by the directors or by any number of stockholders holding one-fourth in amount in capital stock of the company, by giving twenty days' notice of the time and place of such meeting in a newspaper published in either of the counties through which said road is run. The road shall be completed from Port Washington to the village of Saukville, within two years from the publication of this act. The further extent of this road from Saukville to Newburg, shall be completed within four years from the publication of this act.

Public act.

SEC. 17. This act is hereby declared to be a public act, and copies thereof printed by authority of the state, shall be received as evidence thereof.

J. McM. SHAFER,

*Speaker of the Assembly.*

E. B. DEAN, JR.

*President pro tem. of the Senate.*

Approved, April 19, 1852.

LEONARD J. FARWELL.

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