

An Act to incorporate the Oshkosh and Waupun Plank Road Company.

Chap 270

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

SECTION 1. That Walter H. Weed, Lucas M. Miller, Jedediah Brown, Orlando B. Reed, Chester Ford, Samuel Sanborn, Daniel B. Whitacre, Clinton Mattison, Farnum A. Sumner, and Josiah Drummond, 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 Oshkosh and Waupun Plank 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 receiving such subscriptions, by publishing the same in one or more newspapers printed in Winnebago and Fond du Lac counties. Commissioners.

SEC. 2. The capital stock of said company shall be seventy-five 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 thereon actually paid in or secured to the said company, the subscribers of such stock with such other persons as they 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 "Oshkosh and Waupun Plank Road Company," with perpetual succession, and by that name shall be capable in law of purchasing, holding, selling, bargaining, and conveying estate, real and personal, or mixed; 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. Capital stock.

SEC. 3. The said commissioners, or a majority of them, after said two 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 counties of Winnebago and Fond du Lac, 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, being published in one or more of the newspapers in the counties aforesaid, to be designated by the said directors: *Provi-* To call meeting
Proviso.

ded, That until the first election 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 complete 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 the said board of commissioners acting in the capacity of directors, the board shall have power to fill such vacancy.

Board of directors.

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 proxy 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 votes cast shall govern, except in elections where the five persons having the greatest number of votes cast for directors, shall be declared duly elected.

Powers.

SEC. 5. A majority of 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 such 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 this 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.

Further powers.

SEC. 6. The said board of directors shall also have power to decide the time and manner in which said stockholders shall pay installments upon their stock, and to declare the forfeiture of said stock, and all pay or payments thereon, for failure to pay such installments as may be called for, and also to adopt, in behalf 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 and on account of the acts of said company or its officers.

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 and management of the work and the convenience and interest of the company may require, and may issue to each stockholder a certificate or certificates of the amount paid on such share at the time of issuing of such certificate, which certificate or certificates shall be signed by the president and countersigned by the secretary of said company, and such certificate or certificates shall be transferable in the manner prescribed by the by-laws of said company. ^{To issue certificates.}

SEC. 8. The said company shall have power to locate and construct a single or double track road from the village of Oshkosh, in Winnebago county, to the town of Rosendale, and from thence to the town of Waupun, in Fond du Lac county, by the most eligible and practicable route as the directors shall decide. The track of said road shall be constructed of plank, stone, gravel, charcoal, or either, in whole or in part, each at the option of the directors, so that the same when completed shall constitute a firm, regular and proper surface for the passage of wagons and carriages. ^{Route of road.}

SEC. 9. It shall and may be lawful for said company, their officers, engineers or 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 road 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 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 cases as may be necessary for the company to obtain gravel and stone, or to make excavations and embankments for the construction of said road, the company may locate the route of said road, not to exceed four 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. ^{May enter upon lands.}

SEC. 10. When the said corporation shall not agree with the owner or owners of any land, gravel, stone or other ^{How damages settled.}

material required for the construction of said road, for the purpose thereof, or for the compensation to be paid therefor, or when by the 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 said county, not directly interested, requiring him to summon a jury of nine freeholders of 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 at the 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 pannel of nine jurors, and from them the said company or the owner or owners of said 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 their skill and judgment; whereupon the said justice and jurors shall proceed to review 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 said 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 district court of the proper county, who shall file the same. Such inquisition shall describe the property taken or to be 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, (and) [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 and 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 trustee, 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.

SEC. 11. The directors shall have power in their discretion to construct said plank road along and upon any road or highway, now or hereafter to be laid, opened, and established by the proper authorities, and of such width and in such manner as the said directors shall determine: *Provided*, That such authority shall first proceed from the supervisors of the town in which such public highway may be situated; and they may erect toll gates and exact toll from persons traveling on their road whenever five 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 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 every 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 tolls. 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 thereon 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 property, to be approved by the said board of directors, and upon the acceptance of such security from said stockholders or any of them, the subscription of such stockholder shall be considered as paid, and certificates of stock shall be issued to said stockholder in the same manner as if he had paid in the full amount of

his subscription in money; and it shall be competent for the said stockholders paying their subscriptions to said stock in securities as aforesaid, to contract and to pay to said company interest at the rate of twelve per centum 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 in the same manner as if the same were made payable to individuals or to their order or assigns.

Penalty for damage to road.

SEC. 13. If any person shall willfully or knowingly, obstruct, break or destroy the said road to be constructed by the said company, or any part thereof, or any works, buildings 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 wherein the offence 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.

Penalty for evading toll.

SEC. 14. Any person who shall willfully break or throw 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 such gate, without having paid the legal toll, or to avoid the payment of 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 offence forfeit a sum not exceeding ten dollars to and for the use of said company, and also 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 to complete the same.

How charter forfeited.

SEC. 16. If said company shall not within five years from the passage of this act, commence the construction of said plank road, and expend three thousand dollars or more thereon, and shall not within ten years from the passage of this act, construct, finish, and put in operation, a single or double track plank road, the rights, privileges and

powers of the said corporation, under this act, shall be null and void.

SEC. 17. This act shall be favorably construed to effect the purposes thereby intended, and the same is hereby declared to be a public act, and copies thereof printed by authority of the state shall be received as evidence thereof. Public act.

SEC. 18. This act may be altered or amended by any future legislature of the state of Wisconsin.

J. McM. SHAFTER,
Speaker of the Assembly.

E. B. DEAN, JR.,
President pro tem. of the Senate.

Approved April 9, 1852.

LEONARD J. FARWELL.

[*Published May 26, 1852.*]

An Act to declare certain lands a public highway.

Chap 271

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

SECTION 1. All that portion of land one hundred and twenty-five feet in width, on each side of the centre of the canal leading from the main channel of the Mississippi river to Grant river, is hereby declared a public highway. Declared highway.

SEC. 2. The judge of the circuit court of the county of Grant shall appoint three disinterested persons commissioners to view the land so made a highway, and assess the damages that may be sustained by the owner or owners of such land, by reason of such land being taken for that purpose, and on full payment of all such damages, that may have been assessed being made by the trustees of the town of Potosi, to the owner or claimant of such land, the land so made and declared a highway by the first section of this act, for the purpose of a common highway, and for all purposes of finishing the canal and the necessary repair thereof, shall vest in the state of Wisconsin, and for no other purposes whatever. Commissioners

J. McM. SHAFTER,
Speaker of the Assembly.

E. B. DEAN, JR.,
President pro tem. of the Senate.

Approved, April 9, 1852.

LEONARD J. FARWELL.

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