

An Act to incorporate the Madison, Fort Atkinson and Whitewater Rail Road Company. Chap 328

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

SECTION 1. That Elisha Burdick, James D. Ruggles, Nathaniel W. Dean, Archibald Tredway, Cassius Fairchild, Eliab B. Dean, Dwight Foster, Milo Jones, Aaron Rankin, George P. Marston, S. A. Rice, Harry Ingerson, George G. Williams, Rufus Cheny, Jr., Joseph L. Pratt, Lucius A. Winchester, Jarvis K. Pike, and E. Wakeley, 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 Madison, Fort Atkinson and Whitewater 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 Madison, one in the county of Jefferson, and one in the county of Walworth. Commissioners

SEC. 2. The capital stock of said company shall be eight hundred thousand dollars, in shares of fifty dollars each, and as soon as two 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 "Madison, Fort Atkinson, and Whitewater Rail Road Company," with 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 or mixed, as 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, which they may alter and renew 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. Capital stock.

SEC. 3. The said commissioners, or a majority of them, after the said two hundred shares of 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 To call meeting

Proviso. 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 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.

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 vote 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.

Each share of stock entitled to one vote. SEC. 5. None but stockholders shall be elected directors, and at every election, and in all other cases, upon which 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 greatest number of votes shall be declared duly elected.

Officers. 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 secretary, treasurer, and such engineers and other officers as they may find necessary; they shall have the full power to fix the compensation of all officers, and may demand adequate security for the performance of their respective trusts; they shall decide the time and manner and proportion 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 install-

ments so required, at a reasonable period of 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 two dollars and fifty cents per share, and that no installment shall be called for by the directors without at least thirty days' notice thereof in the newspapers hereinbefore mentioned.

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.

SEC. 8. 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 proceedings 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 in amount 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 rail road from Madison, in the county of Dane, via. Fort Atkinson, Jefferson county, to some point in the village of Whitewater, in the county of Walworth, 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 all 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 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.

How charter for
sited.

SEC. 10. If said corporation shall not within three 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 null and void.

May enter on
lands.

SEC. 11. It shall and may 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 therefor 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 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 rail road, beyond the limits of one hundred 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 of 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, 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 agreeable to the provision hereinafter provided; and when such damages 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. 12. 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 any such owner or owners, no such agreement or pur-

chase can be made, then and in that case, it shall be lawful for any judge of the circuit court of the county, on application of either party, and at the cost and charge of such corporation, to appoint three disinterested persons residing in said county, whose duty it shall be to view and examine or survey such lands, 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 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 lands 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; whereupon such commissioners shall proceed to examine the premises and estimate the value of such land, and the amount of damages, if any, over and above the benefits and advantages which may accrue to the owners as aforesaid, and shall make a report in writing of such valuation under their hands and seals, to said judge, 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 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 empaneled 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, 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 shall 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, in such manner as the court may direct: *Provided also*, That upon the 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 contractor for making or repairing said rail road, may immediately take and use the same without awaiting the issue of any appeal brought thereon.

Company entitled to estate.

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 a less sum than that reported by the said commissioners.

Not to obstruct 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 manner 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 such 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 the 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. 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 way 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 such rail road in any farm, the person owning or possessing such farm shall not be entitled to require said company to make any additional causeway. To make passage way.

SEC. 16. So soon as the net profits accruing and received from the use of said road, or part thereof, according to the provisions of this act, shall exceed six per cent. upon the amount of said capital stock paid in, the directors of said company shall make a dividend of such net profits among the stockholders in proportion to their respective shares. Proviso.

SEC. 17. 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. To make dividend.

SEC. 18. 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 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 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 Public act.

Penalty for damage to road.

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.

May borrow money.

SEC. 19. 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 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 for carrying out the objects of said company, namely: the construction of a rail road from Madison, in the county of Dane, via Fort Atkinson, in the county of Jefferson, to Whitewater, in the county of Walworth; 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. 20. It shall be lawful for said company to purchase lands adjoining or adjacent to said rail road, or to enter upon such lands 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, subject to the provisions herein contained in relation to damages and compensation; and whenever lands purchased shall no longer be needed for the purposes aforesaid, the said company are hereby authorized to sell and convey the same.

Rule of evidence

SEC. 21. 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.

SEC. 22. This act shall take effect from and after its passage.

J. McM. SHAFER.

Speaker of the Assembly.

E. B. DEAN, JR.

President pro tem. of the Senate.

Approved April 14, 1852.

LEONARD J. FARWELL.

[Published, June 17, 1852.]