

CHAPTER 2.

[Published February 13, 1872.]

AN ACT in relation to railroad companies organized under chapter seventy-three of the revised statutes, entitled "of joint stock companies."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May vote to increase capital stock.

SECTION 1. Any corporation heretofore organized under the provisions of chapter seventy-three of the revised statutes of Wisconsin, for the purpose of building a railway in this state, may by a vote of its board of directors, increase its capital stock to an amount not exceeding twenty-five thousand dollars for each mile of railway which said railway corporation may, by its articles of association, contemplate building in this state, and said capital stock may be divided into shares of one hundred dollars each.

May hold real estate.

SECTION 2. Every such railway corporation may hold all such real estate in fee simple, within this state, as it may acquire by purchase or otherwise, and may manage, sell, lease and dispose of the same by its proper officers, at pleasure.

Shall not plead usury.

SECTION 3. No such railroad company shall ever set up the defense of usury as against the holder of any bond or other obligation for the payment of money, issued by said company.

Mortgages and trust deeds to be recorded.

SECTION 4. Any mortgage or deed of trust, executed by such railway company, may be recorded in the office of the secretary of state, in a book to be kept for that purpose, and such record shall have the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run.

May enter upon lands, for surveying route.

SECTION 5. Any such railway company shall have authority and power, and is hereby authorized and empowered, by its officers, engineers and agents to enter upon any land for the purpose of exploring, surveying, locating or determining the route of its railroad, and when the route of said railroad shall be determined by said company by resolution adopted by the board of

directors, the company shall also have authority and power, and it is hereby authorized and empowered, by its agents, officers, engineers, contractors, employes and servants to enter upon, take, possess, occupy and use any land, along and including the line of said route, not exceeding one hundred feet in width; and the said company shall also have authority and power, and it is hereby authorized and empowered, at any time, to enter upon, take, possess, occupy and use any other lands beyond the limits of one hundred feet, which shall be necessary for the use of said company, for the purpose of erecting depot buildings, stopping stages, station houses, freight houses, ware houses, engine houses, machine shops, or for buildings or fixtures of any kind, or grounds about any such buildings, houses or fixtures, for the convenient operation of the business of the road, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of making deep cuts or excavations, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel, stone or other materials for embankments, structures, or superstructures, necessary to, or for the construction, completion, alteration, maintenance, preservation and complete operation of said railroad; and a copy of said resolution, duly certified by the secretary of said company, shall be recorded in the office of the register of deeds of the county in which the lands described in the resolution shall lie, and all private property which the said company is by this act authorized to take is hereby declared to be taken for public use. And the said company shall, at such time and in such manner as is prescribed by this act, pay the full value of all lands so taken, possessed, occupied or used, and all damages to the owner or owners by reason of such taking, which value and damages shall be ascertained in the manner hereinafter provided, and whenever the same shall have been paid, tendered or deposited as provided in this act, the title in and to any and all such lands shall become vested in said company for the purposes of said railroad.

Also for depot grounds, &c.

For making deep cuts, or embankments.

Copy of resolution to be recorded.

Shall pay full value of lands

SECTION 6. Whenever the line of any such railroad shall be located, and its route determined, the

May apply for appointment of commissioners

said company may apply by attorney to the circuit court for the county through which it passes, or to the judge thereof in vacation, for the appointment of three commissioners to make an appraisal and award of the value of any and all lands which are private property of any person on the line of said railroad, and which said company have entered upon, taken, possessed, occupied or used, or which it may hereafter enter upon, take, possess, occupy or use for any of the purposes for which, by this act, the said company is authorized to enter upon, take, possess, occupy or use said lands, the said commissioners to be paid by the railway company.

Notice of application. The said company shall give notice of its intention to apply for the appointment of such commissioners by publishing the same at least ten days before the time of hearing such application, in at least one newspaper published in the county in which such lands shall be; and upon an affidavit of the publication of the same, the court or judge to whom the application shall be made, shall appoint three commissioners, who shall have cognizance of all cases arising on the line of the

Examination of premises. route of said railroad; and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable, to the owner, and at least five days' personal notice to such owner if resident in the county; and whenever it shall appear to said company or its officers that the title of such land is in dispute, or that several parties claim interest therein by tax sales, tax titles, incumbrances, liens or equitable claims, the said commissioners shall, upon request of said company or its officers, give notice to all persons claiming any interest in such lands, whether as owners, incumbrancers or otherwise; and when the person to be notified has no known residence in this state, within the knowledge of such commissioners, the notice may be by publication in a newspaper, for such length of time as the commissioners shall deem reasonable, not less however than three weeks; and after making such examination, the said commissioners, or a majority of them, shall in each

Shall make separate appraisement. case separately, make an appraisal and award of the value of the land so entered upon, taken, possessed, occupied or used by said company for any of the purposes aforesaid, at the time when the same was so

entered upon and taken, and shall deliver one copy of their award, in each case to said company, and shall file another in the office of the clerk of the circuit court of the county in which said lands shall be, with the costs of the award taxed upon each of said copies; and if neither party shall appeal from said award in the manner hereinafter provided, the said circuit court, on motion of the party in whose favor any award shall be made for such value as aforesaid, unless such award shall have previously been paid, shall enter up judgment in conformity with such award. And in case either of said commissioners shall die, resign or decline to act, the said court or judge shall appoint another commissioner in his stead. The said company or any party receiving notice from said commissioners as aforesaid, may, within thirty days after such award shall have been filed with the clerk as aforesaid, appeal from the same to the circuit court for the county in which such award shall be filed, by filing with the clerk of said court, a written notice of such appeal. Upon receiving such notice, the said clerk shall enter the appeal as a case upon the docket of the court, setting down the owner or owners, and the person or persons, claiming any interest in said land, embracing all persons so having received such notice from said commissioners, as plaintiffs, and the said company as defendant; and the said court shall proceed to hear and determine such case in the same manner that other cases are heard and determined in such court; and all issues of fact arising therein shall be tried by a jury, unless a jury be expressly waived by both parties. The appellant shall not be entitled to have the case tried at any term of said court unless he shall give notice to the appellee or his attorney, at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee has no known residence in this state, or attorney of record residing therein, no such notice need be given. In all cases the appellee may waive such notice, in which case the same rule for trial shall be applicable to it as to other cases in said court. After the hearing of such case, the jury, or if a jury be waived, the court shall assess the value of the land so entered upon, taken, possessed, occupied and used by the said company at the time when the same was entered upon

Shall enter up judgment.

Either party may appeal from award.

Shall enter up on docket.

Who to be parties.

Shall be tried by jury.

Shall give notice of trial.

Shall assess damages.

and taken, and the damages arising therefrom, and after such assessment the court shall proceed to render judgment against such company for the amount of such assessment in favor of the plaintiff or plaintiffs in such case. If the amount so assessed in favor of the said plaintiff or plaintiffs shall exceed the amount awarded by said commissioners, with interest at the rate of seven per cent. per annum from the time of such award to the time such assessment by the jury or the court, then judgment shall be rendered against said company for costs, and if it shall not exceed such amount and interest as aforesaid, then judgment shall be rendered in favor of said company for costs, and against the said plaintiff or plaintiffs, and execution may issue accordingly. Either party shall be entitled to a change of venue for the trial of such cases on affidavit filed, stating the belief of the person making the affidavit, that a fair trial cannot otherwise be had. The change of venue shall be to the nearest county where a fair trial can be had.

The judgment of the circuit court may be reviewed on appeal or writ of error, as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, or whenever in case of appeal, a final judgment shall be rendered, it shall be the duty of the company, and not before, to pay to the party entitled to the same, the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax sale, tax title or equitable claim to or upon the land or any part thereof, which is the subject matter of such award or judgment, or when more than one person shall be entitled to or shall set up any claim to the amount of such award or judgment or any part of it, or when the person entitled to receive the same shall not have any known residence within the state, the said company may deposit the amount of such award, when there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment with the clerk of the circuit court in which such judgment shall have been rendered, and the money so deposited, in either case, shall be paid over by order of the circuit court to the person or persons who shall be adjudged to be entitled to receive the same, and when-

How costs to be awarded.

May have change of venue

Judgment may be reviewed.

In case of liens or incumbrances.

ever the amount of such award or judgment shall have been paid, tendered or deposited as aforesaid, the company shall have authority to take, use and occupy the land for all the purposes of its railway and the operation of the same, and all persons so receiving notice from the said commissioners, and all persons claiming under them, shall be forever concluded from questioning the title so acquired by said company.

When award or judgment paid, company may take possession.

SECTION 7. That any such railway company shall have the right, authority and power, and it is hereby authorized and empowered, to construct its railroad across, over or under any railroad it may intersect, upon and along, across, under or over any public or private highway, road, street, plankroad or railroad, if the same shall be necessary; but the said company shall put such highway, road, street, plankroad or railroad in such condition and state of repair as not to impair or interfere with its free and proper use; and also to erect and maintain all necessary bridges for the use of its railroad over any stream of water or watercourse at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

May construct along or across other roads.

SECTION 8. That section nineteen of said chapter seventy-three shall not be deemed to apply to or be obligatory upon companies organized under said chapter for the purpose of building railways.

Not to apply.

SECTION 9. All acts conflicting with or in any manner contravening the provisions of this act are hereby repealed.

SECTION 10. This act shall take effect and be in force from and after its passage and publication.

Approved February 9, 1872.