

heirs and assigns, (as against the party recovering such judgment, his heirs and assigns,) shall enjoy forever the right to keep up and maintain the dam or dams respecting which such judgment was rendered, and raise the water by means thereof.

**Remedy Ex-**  
**clusive.** SEC. 8. The remedy provided by this act for the injuries to lands overflowed by the dam or dams aforesaid shall be exclusive of all other remedies of whatever nature.

**Forfeiture.** SEC. 9. If the said George S. Ruble, his associates, successors, heirs and assigns, shall, for the space of eighteen months from and after the passage of this act unreasonably neglect to avail themselves of the privileges herein granted, the privileges so neglected shall be forfeited.

**A Public Act.** SEC. 10. This act is hereby declared to be a public act, and may be amended by any subsequent Legislative Assembly in any manner not destroying or impairing vested rights.

**To take effect.** SEC. 11. This Act shall take effect and be in force from and after its passage.

J. W. FURBER,  
Speaker of the House of Representatives.  
JOHN B. BRISBIN,  
President of the Council.

APPROVED—February twenty-six, eighteen hundred and fifty-seven.  
W. A. GORMAN.

SECRETARY'S OFFICE, MINNESOTA, }  
SAINT PAUL, March 10, 1856. }

I certify the above to be a true copy of the original on file in this office.

J. J. McCULLOUGH,  
Acting Secretary.

## CHAPTER VII.

### *An Act to incorporate the Nininger, St. Peter and Western Railroad Company.*

- SECTION 1. Incorporation—Privileges and Franchises.  
2. Shall open Books—Organize.  
3. Capital Stock—Shares.  
4. Powers and Duties of Directors—Hold Meetings.  
5. Survey and Locate Road.  
6. Map and Profile to be filed.  
7. Commence and Complete Road.  
8. Mails to be Transported.  
9. Right of Way—School Lands.  
10. May take Additional Lands—Compensation.  
11. Shall build Fence and Bridges.  
12. Willful Obstruction—Injuries—Penalty.

*Be it enacted by the Legislative Assembly of the Territory of Minnesota:*

SECTION 1. That John Nininger, George B. Clitherall, G. O. Robertson, J. R. Case, Ignatius Donnelly, L. Faiver,

*Charles E. Clark, M. E. Ames, William D. Lowry, Alexander Ramsey, Joseph A. Paine, Phillip Rohr, Charles L. Emerson, John B. Cook, John Eason, and William S. Hinckley, and all such persons as shall hereafter become stockholders in the Company hereby incorporated, shall be, and are hereby constituted a body politic and corporate by the name and style of the "Nininger, St. Peter and Western Railroad Company," and under that name and style, shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter and renew the same at pleasure, and by their said corporate name and style, shall be capable in law, of contracting and being contracted with, shall be, and are hereby invested, with all the power, privileges, immunities and franchises, and of acquiring by purchase or otherwise, and of holding and conveying real and personal estate, which may be needful to carry into effect fully the purposes and objects of this Act.*

Incorporation.

Privileges.

Sec. 2. That the corporators specifically named in the preceding section, or a majority of them, shall on or before the first Monday in July, 1857, meet and open such Books as may be necessary, at some proper and convenient place in the city of Saint Paul, and at the city of Nininger, in the Territory of Minnesota, and at such other place or places in or out of the said Territory, as may be deemed expedient, for subscription to so much of the capital stock of said Company, as they may deem proper, first having given twenty days notice thereof in one or more public newspapers printed in the city of New York or Philadelphia, and in the city of St. Paul aforesaid, of the time or times, and place or places of such meeting, and of the opening of books for the subscription of the stock of said Company, and after a sum of not less than Five Hundred Thousand Dollars of the capital stock of said Company shall have been subscribed, and an installment of not less than five per cent. paid upon each share thereof, then the subscribers shall become corporators of said Company, and shall within thirty days thereafter, proceed to elect a Board of Directors from the corporators and stockholders of the said Company, consisting of not less than six, nor more than twelve, and the Directors so elected, shall within ten days thereafter, proceed to organize, by the election of a President, and such other officers as they may see fit to appoint, and until such organization, the corporate powers of said Company shall remain in and be exercised by the corporators hereinbefore specified.

Open Books

Officers.

Sec. 3. The capital stock of said corporation shall be Two Millions of dollars, and shall be divided into shares of One Hundred dollars each; five dollars of each share shall be paid at the time of subscribing.

Capital Stock

Sec. 4. The said Directors shall have power to make, or-

Directors, their  
Powers and Du-  
ties.

tain and establish all such by-laws, rules and regulations as may be deemed expedient or necessary to fulfill the objects and purposes and carry into effect the provisions of this Act, and for the well-ordering, regulating and securing the affairs and business of the Company, and such by-laws, rules and regulations adopted by the Directors, or a majority thereof, at any regular meeting, shall have the force and effect of law, provided the same be not repugnant to the Constitution and laws of the United States, or to the laws of the Territory or future State of Minnesota. The Board of Directors shall have power to establish such rates of toll for the conveyance of persons and property upon the Railroad by this Act authorized to be built, as they shall from time to time, direct and determine, and to levy and collect the same for the use of said Company, the transportation of persons and property, the width of track, the construction of wheels, the form and size of cars, the weight of loads, and all other matters and things respecting the use of said road, and the conveyance of passengers and property, as well as the management of the affairs of said Company generally, shall be exclusively within the control of said Board of Directors, and in conformity to such rules and regulations they shall from time to time prescribe and determine. Said Board of Directors shall have power to appoint and hold its meeting at such time and places as they may designate for that purpose.

Meetings.

Locate Road.

SEC. 5. The said Corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate as a Railroad with one or more tracks or lines of rails, from a point on the Mississippi River within the city of Nininger, upon as direct a line as practicable, to St. Peter, on the Minnesota River, which shall be determined by said Board of Directors, with reference to the best route therefor.

File Map and  
Profile.

SEC. 6. Said Corporation shall, within a reasonable time after said Road shall have been permanently located, cause to be made a Map and profile thereof, and of the land taken and for the use of said Road, and file the same in the office of the Secretary of the Territory or future State of Minnesota, and also like maps of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds in the county in which said parts of said roads shall lie, and also where any re-location of said line or lines may have been made as heretofore authorized, then a like map or profile thereof shall be made and filed in the manner and place aforesaid.

Commence and  
Complete Road.

SEC. 7. The said Company shall commence the construction of the said road within two years from the passage of this Act, and shall build and complete the same as fast as the means of the Company will admit of; *Provided*, that the said road shall be constructed, completed, and put in operation throughout the entire route from the city of Nininger to

Saint Peter aforesaid, within five years from the passage of this Act.

SEC. 8. The said Company shall carry and transport the Mail of the United States on such terms as may be agreed upon, and all such freight and passengers as may be offered, if required so to do, on the terms usual with like Railroad Companies. Carry Mails.

SEC. 9. The said Corporation shall have the right of way upon, and may appropriate to its own use and control, for the purposes of the Railroad and its appurtenance, one hundred and fifty feet in width throughout its entire length, and may, by its engineers, agents and contractors, enter upon and take possession of and use, all and singular, any land, timber, stream and materials of any and every kind, for the purposes of making the survey and location of said Railroad; and of all stations, depots, turn-outs, and other things necessary, proper and convenient for the same, and the full use and protection thereof, and of all of its appendages and appurtenances. All such lands within the limits of the line of said Railroad, and which may now belong to this Territory, or hereafter be acquired thereby, or by the State in which said land may be, is hereby granted to the said Corporation for such purposes, to be by them held and possessed so long as the same shall be used for such purposes, and no longer. Right of Way.  
*Provided*, That in case any of the lands which shall have been reserved or shall hereafter be reserved or granted for the use of Schools, shall be included within the limits of said line, the said corporation shall pay therefor such sum not less than one dollar and twenty-five cents per acre, as the Legislature of the Territory, or such State shall fix, which shall be paid to the Governor thereof, and shall belong to the School fund of said Territory or State. School Lands.

SEC. 10. The said Corporation may take and hold for the said purposes or any of them, such additional lands as may be requisite or convenient therefor; but unless said lands taken by said Corporation for any purpose, or for the purposes mentioned in section 9, shall be purchased of or voluntarily given by the owners thereof, full and proper compensation therefor shall be made by said Corporation to the owner or owners thereof, which compensation shall be ascertained and determined in the manner following: The said Corporation shall present to a court in the county in which the lands or real estate proposed to be taken shall be situate, having jurisdiction competent to entertain, adjudicate and determine questions of title to real estate, a petition signed by some authorized agent or attorney thereof, describing with reasonable certainty or accuracy, by maps, plot, survey or otherwise, the lands or real estate so proposed or required to be taken, and setting forth the name of each and every owner, incumbrancer, or other persons interested in the same or any part thereof, so far as the same can be ascertained by the legal records affecting the same, and by the view of the May take Lands.

premises or other inquiry touching the occupation thereof, and praying the appointment of three competent disinterested persons to ascertain and determine the compensation to be made to the owner or owners respectively, and to all tenants, incumbrancers, and others interested, for the taking or injuriously affecting such land or real estate. A copy of such petition, with a notice of the time and place, when and where the same will be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering such copy of the petition and notice to each of the persons so named therein, if a resident of this Territory, or in case of the absence of such person, by leaving such copy of petition and notice at his or her usual place of abode, with some person of sufficient age and understanding to comprehend the object thereof which shall be communicated to such person, with a request to deliver the same to the individual for whom it is thus left at the earliest opportunity. In case there shall be any persons named in such petition who are not residents of this Territory, and upon whom service cannot be made in the manner above prescribed, a notice stating briefly the objects of the petition, a description of the lands proposed to be taken, and the time and place of the presenting the petition to the court, and directed to such person or persons, shall be published in the newspaper published nearest the location of such lands, and in a newspaper published at the seat of government of the Territory or State in which the lands shall be situate, once in each week for six consecutive weeks previous to the time designated for presenting such petition. The court to whom such petition shall be presented, shall not make any order for the appointment of Commissioners to ascertain and determine the compensation to be paid to any owner or person interested who shall not appear in person or by attorney, or counsel, except upon proof by affidavit and to the satisfaction of the court, of the service of the petition and notice in the manner hereinbefore prescribed, but may do so upon the appearance of the party or parties or upon such proof of service in the absence of a party or parties. The Court may upon the application of the said Corporation or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new and further notice to be given to any party whose interests may be affected thereby. When the Court shall have proof satisfactory that all parties interested in any parcel of land have been duly served with the petition and notice in the manner herein prescribed, and of the nature and extent of the interest of each and every party in the same, the Court may make an order to be recorded in the minutes thereof, appointing three disinterested competent persons Commissioners to

Compensation.

ascertain and determine the amount to be paid by the said Corporation to each of such persons, as compensation for his interest or estate in such parcel or parcels of land and specifying the time and place of the first meeting of such Commissioners. The said Corporation shall without delay procure and deliver to each of such Commissioners a copy of such order. **Serve copy of order.** Before the said Commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath that they will faithfully and impartially, and without fear, favor, reward, or the hope or promise of reward, discharge their duties as Commissioners, to ascertain and determine the compensation to be paid by the Nininger, St. Peter and Western Railroad Company to [Here insert the names of the persons whose property is to be appraised] for lands or interest in lands to be taken for the use of said Company. Such oath may be taken before any officer authorized by law to administer oaths. Whenever the place of any Commissioner shall become vacant the Court may, upon notice to the parties as he may prescribe, and by like order supply the place by the appointment of another person as such Commissioner, who shall be in like manner served with a copy of the order appointing him, and take the like oath. The Commissioners shall meet at the time and place specified in the order appointing them, and the order supplying any vacancy in such commission. When met and all present may proceed to the hearing of the proofs and allegations of the parties present, or reasonably notified to be present, and authorized to administer oaths to witnesses before them, and before making any report they shall, if requested by any party interested, or by either of their number, view the premises for which compensation is to be made and the amount of which they are to determine. **View premises.** The Commissioners may, as the exigency of any case or the convenience of the parties or themselves may require, adjourn from time to time and to such place as may in their judgment be most conducive to the purpose of their investigation. No proceedings shall be had by the said Commissioners unless two-thirds of them be present, except to adjourn, but any question submitted to them may be decided by a majority, and a report by a majority shall be valid.—Said Commissioners shall keep minutes in writing of all their proceedings, in which they shall enter the time and place of their meetings and adjournments, the names of parties appearing before them in person or by attorney, the substance of the testimony of the witnesses sworn and examined before them, find all disputed questions which shall be submitted to them, and their decisions thereon. **Keep Minutes** In estimating damages or compensations to be paid to any claimants to lands or interest in lands so proposed to be taken, the said Commissioners shall take into consideration the benefits to accrue to the claimant by the construction of the said Railroads, and allow such benefits by way of recompense against the damages

**Report damages.** which claimant may sustain thereby, and report only the balance of the damage, which shall remain after applying such benefits in recompense thereof, but no balance shall be in any case reported in favor of the Company. They shall make and sign a report which shall contain a description by metes and bounds, survey map, or plat of each separate parcel of land proposed to be taken by the said Company for its use, and the compensation for which they shall ascertain and determine, and the amount (if anything) to be paid by the said Company to each person whose interests are to be effected thereby. They shall as soon as their report shall be made, attach thereto their minutes and oaths of office, and file the same in the office of the Clerk of the Court appointing the said Commissioners, and notify the parties interested in such report that the same is made and filed. In case the said Company or any person interested in such report shall deem the same unjust, in any matter affecting the amount of the compensation to be paid, the Company or such party may appeal therefrom, at any time within twenty days after the service of notice of filing said report. The party appealing shall file a notice of such appeal with the Clerk of the Court with whom the report shall have been filed, stating the grounds of the appeal, and serve a copy thereof on the opposite party, within the time above prescribed for taking appeal, and giving a bond in such penalty as the Judges in the same Court shall prescribe, conditioned to prosecute the appeal without unnecessary delay, to abide the order the Court may make on such appeal, and pay the costs of appeal if he shall fail to sustain the grounds of error or injustice prescribed in his notice of appeal. Upon the filing of the notice and bond for appeal with proof by affidavit of the service of such appeal as above prescribed, all further proceedings on the report shall be stayed until the further order of the Court, and the cause upon such appeal shall be entered, proceeded in, determined in the same manner as cases on appeal from court of Justices of the Peace; and in case the appeal shall involve the determination of any question of fact, the same shall be tried by a jury, unless the jury shall be waived by both parties. The report of the Commissioners shall be final and conclusive unless appealed from in the manner above prescribed. Whenever the Company shall take an appeal from any report of Commissioners, such appeal shall not stay the work on the road or other structure on the premises or lands involved in the appeal, provided the Company shall deposit in Court, the amount awarded or assessed by the report or part or portion of the report appealed from, to abide the order to be made by the court on the appeal. An appeal from any report or part or portion of a report of Commissioners by or on the part of any person interested in any parcel of land or real estate proposed to be taken by the Company, shall stay all work on the road or other structure on the premises in question, unless the Company shall deposit in court the amount of money claimed by

such appellant, before the Commissioners, to abide the order of the court on the said appeal. Whenever any report or part of report of Commissioners shall have become final, and whenever any appeal from such a report or part of report shall have been finally determined, the said Corporation shall, upon the payment to each party interested, the sum thereby determined to be due to him or her as a compensation for property taken, or deposit the same in court for his or her use, become invested and seized of the title of the lands or real estate; for which such payment or deposit shall have been made, and entitled to the full, free and perfect use and occupation of the same for the purposes aforesaid, which are for all the objects of this act, hereby declared to be public purposes. The said Commissioners shall be entitled to receive three dollars per day for their services, and their compensation and all the fees of officers previous to and including the filing of the report of the Commissioners shall be paid by the said Company. In case the title acquired to any lands by the said Company for their use in the manner herein before mentioned or otherwise, shall prove defective, they are hereby authorized to take the proceedings prescribed in this section to procure the title from the real owner.

Seized of Title.

SEC. 11. The said Company shall build or cause to be built a good and sufficient fence on each side of said Railroad, and one or more bridges or culverts for the use of every farm through which said Railroad shall pass.

Build Fence and Bridges.

SEC. 12. That if any person shall wilfully or maliciously obstruct, or in any way injure, spoil or destroy the said Railroad, or any part or portion thereof, or any fixed or appurtenant thereto, and necessary and convenient for the free and safe uses, or any of the materials for the construction thereof, or any building, fixtures, or other structure, or any carriage, car or engine erected or belonging to said corporation, shall be deemed guilty of a misdemeanor, and liable to be indicted and punished therefor in the Territorial Prison for not more than ten years, and for not less than five years, and shall also be liable to pay the said corporation twice the value of the damages occasioned thereby. And in case the death of any person shall be produced by, or in consequence of any such wilful or malicious obstruction or injury to the said Railroad, the person who shall obstruct or injure the said Railroad or car or engine thereof, shall be deemed guilty of murder in the second degree.

Wilful obstruction.

Penalty.

J. W. FURBER,

Speaker of the House of Representatives.

JOHN B. BRISBIN,

President of the Council.

APPROVED—March fourth, one thousand eight hundred and fifty-seven.

W. A. GORMAN.

SECRETARY'S OFFICE, Minnesota, }  
SAINT PAUL, March 10, 1857. }

I certify the above to be a true copy of the original on file in this office.

J. J. McCULLOUGH,

Acting Secretary.