

CHAPTER XXVII.

An Act to Incorporate the Mississippi Valley Railway Company.

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

Sec. 1. That Lyman Dayton, W. H. Forbes, William Freeborn, Morris Hobart, H. B. Plant, W. P. Hilleary, E. A. Goodell, C. R. Reed, H. D. Huff and W. A. Jones, together with such other persons as may be hereafter associated with them in the manner hereinafter prescribed, their successors and assigns, with perpetual succession, are hereby created a body corporate by the name of "The Mississippi Valley Railway Company," and by that name shall be, and are hereby made capable in law to purchase, hold and enjoy, and retain to them and their successors, lands, tenements and hereditaments, so far as it may be necessary for the purpose of said railroad; and the same to sell, grant, rent, or in any manner dispose of, to contract and to be contracted with, to

power of In-
corporation.

sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, and also to make, have and use a common seal, the same to alter, break or renew at their pleasure; and if either of the persons named in this section shall die, refuse or neglect to execute the powers and discharge the duties hereby created, it shall be the duty of the remaining persons hereinbefore named, or a majority of of them, to appoint a suitable person or persons to fill such vacancies so often as the same shall occur.

SEC. 2. The said corporation is hereby authorized and empowered, and it is hereby declared that the objects and purposes thereof are to survey, locate, construct, complete, maintain, use and operate, and at their pleasure to alter the line thereof, a Railroad, with one or more tracks or line of rails from Winona on the Mississippi river, thence in the Valley of the Mississippi to Hastings, thence on the East side of the Mississippi to St. Paul, with a branch from Hastings to some point of intersection on the Minneapolis and Cedar Valley Railroad, and thence to the Minnesota River with the privilege of extending the said road to the Iowa Line.

Authorized to
build Rail-
road.

SEC. 3. The capital stock of the corporation hereby created, shall be five millions of dollars, and shall be divided into shares of one hundred dollars each, and shall be transferable in such manner as the corporation by its regulations or by-laws shall prescribe, but no share of said stock shall be transferred while there shall be any installments assessed thereon unpaid, and the directors of the said corporation may with the consent of the holders of a majority of the stock thereof, increase the capital stock thereof to such sum as may be necessary or convenient to carry into effect all the rights and privileges hereby granted thereto, not exceeding twenty millions of dollars. The shares of any increase of stock shall be the same and transferable in the same manner as the shares of the original stock.

Capital Stock

SEC. 4. The above named persons, or a majority of them, are authorized to open books for receiving subscriptions to the capital stock of said company, and shall prescribe the form of such subscriptions, which books shall be opened within sixty days from the acceptance of this charter by the corporators above named, as hereinafter provided, at such place or places as they may deem expedient, by giving thirty days' notice in some newspaper printed in St. Paul, Winona, and Red Wing, and such other place or places as may be thought advisable, of the time and place or times and places of opening said books; said books to be kept open thirty days or until five hundred thousand dollars of said stock is subscribed.

Opening
Books.

SEC. 5. The corporation shall thereupon give notice by publishing the same in the papers aforesaid, four weeks successively, of the time and place of the meeting of the stockholders of said Company for the purpose of electing a Board

Public notice
to be given
of same.

of fifteen Directors, which directors shall be elected from the different companies who are stockholders in the said Mississippi Valley Railroad company, in proportion to the amount of stock which each owns in said Company : *Provided*, That whenever individual subscriptions to said stock shall amount to two hundred thousand dollars, said stockholders shall be entitled to one Director, and ever thereafter in proportion to the amount of stock which said individual stockholders shall own in said Company. *Provided*, That if from any cause an election shall not be held at the regular time specified therefore, the same may be held at any other time, on notice as aforesaid, and that until such election the directors of the preceding year shall continue to act, and previous to the first election the corporators named in the first section of this act are hereby declared to be the directors of said Company, 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 death or resignation of any director, his place may be filled by the board of directors.

Subscription
by other
Roads.

SEC. 6. The several Railroad Companies which may become recipients of the lands granted to the Territory of Minnesota by the act of Congress, approved March 3d, 1857, are hereby authorized to subscribe to the capital stock of this said company in sums proportioned to the extent and cost of the said Road, to be built by each of the said companies as fixed by their respective charters.

Voting.

SEC. 7. The votes for said Directors may 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 be elected ; they shall have power to make and establish by-laws, rules, orders and regulations not inconsistent with the constitution and laws of the United States or of the Territory of Minnesota, as may be necessary for the well ordering of the affairs of said company.

Directors.

SEC. 8. 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 election for directors, the fifteen stockholders having the greatest number of votes shall be declared duly elected.

Powers and
duties of Directors.

SEC. 9. 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 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 officers as they may find necessary ; they shall have 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 instalment so required, at a reasonable period, not less than thirty 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, corporation, co-partnership or body politic whatsoever, as the execution and management of the works and convenience and interest of the company may require, and in general, to superintend and direct all operations, receipts, disbursements and other proceedings of the company: *Provided*, That no instalment called in at any one time shall exceed ten dollars per share, and that no instalment shall be called by the directors without at least thirty days notice thereof in the newspapers hereinbefore mentioned.

Sec. 10. 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 grow due thereon, which stock shall be transferable in person, or by attorney, executors, administrators, guardian or trustees, under such regulations as may be provided for in the by-laws of the company.

Certificates of
Stock.

Sec. 11. 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 each 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 the meeting; 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.

Annual state-
ment of offi-
cers.

Sec. 12. The said company shall have power to locate and construct a single or double track railroad along the valley of the Mississippi, between Winona and Saint Paul, and also from Winona to the Iowa State line, along the valley of the Mississippi River, and from Hastings to the Minnesota River, as aforesaid, upon such route or routes as shall be determined on by a vote of the stockholders holding a majority of the stock of said company, at a special meeting called for the purpose of fixing the location or end of said road, and shall have power to transport, take and carry persons and property upon the same by power and force of steam or 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 also all such warehouses, toll houses, machine shops, carriages, cars and other works and appendages, as may be necessary for the convenience of the

Power to lo-
cate road

company, to the use of the said railroad, and also to provide for connecting said railroad or its branches, and for operating the same with other railroads or railroad companies, formed or to be formed in said Territory of Minnesota.

Forfeiture of claim Sec. 13. If said corporation shall not within two years from the passage of this act commence the construction of said railroad, then the rights, privileges and powers of said corporation under this act shall be null and void.

Right of way Sec. 14. 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 railroad, doing thereto no unnecessary damage; and when the said route shall be determined by 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 land, 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 agree to pay therefor, or 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 and agents to enter upon lands adjacent to the railroad 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 to water courses across or along 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 and gravel taken from deep cuts, and to obtain earth, gravel 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 damage 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 building, fixtures, excavations and embankments, shall vest in fee simple in said company.

Form of arbitration in case of disagreement Sec. 15. When the said corporation cannot agree with the owner or owners of such required land for the purchase thereof, or the compensation to be paid to the owner or owners of any land taken for the purpose aforesaid, or when by reason of the legal incapacity or absence of any such owner or owners, no such agreement or purchase can be made, then, and in any such case, it shall be lawful for the Judge of the Probate, District or Circuit Court, of the county in which such lands are situated, 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 railroad, or works appertaining thereto, taking into consideration the advantages as well as the disadvantages of the same, to the said owner or owners; 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 to administer oaths, faithfully, and according to the best of their abilities to examine the land so taken or required by said company, and impartially to estimate or 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, over and above the benefits and advantages which such owner or owners shall derive from the construction of said railroad, 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 such owners, as aforesaid, and shall make a report of such valuation, in writing, under their hands and seals, to said judge, and shall return the same within thirty days after their appointment, to the Clerk of the District Court in the county in which they may reside, and it shall be the duty of the said Clerk to file the same, and in case no appeal shall be made within thirty days after the filing of the said reports as hereinafter provided, then the said Clerk shall record the same at the expense of the 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 the 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 empanelled 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, over and above the benefits which will accrue to such owner or owners from the construction of such railroad, and judgment of 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 material 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 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 owners

Appeal

are absent from the Territory of Minnesota, 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 their guardian or trustee, or agent, if any there be, or in such manner as the court may direct; *Provided further*, 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 contractors for making or repairing said railroad, may immediately take and use the same without awaiting the issue of any appeal brought thereon.

Valuation of
lands

SEC. 16. 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 judgment 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 jury commissioners.

Payment of
damages

SEC. 17. Payments of compensation and damages estimated and assessed as aforesaid may be made first to parties laboring under no disability who are entitled to the land; second, to guardians of infants, husbands or trustees of females covert; third to conservators of insane persons, and a receipt for such payments shall operate as a confirmation of the action of the commissioner and shall estop the parties in interest from all further claim or proceeding in the premises. Payments to parties residing in the Territory, but not in the county, including infants who have no guardians, and insane persons who have no conservators, shall be made by depositing the money with the Clerk of the Court in which the proceeding is had, and payment to parties residing out of the Territory, and persons whose names are unknown, shall be made by depositing the money in the treasury of the county where the land lies, and the receipt of the parties entitled to moneys deposited as aforesaid, shall operate in like manner as receipts for moneys paid to parties herein provided: *Provided*, That if any person shall refuse to receive money when tendered, payment may, in such case be made by depositing the amount with the County Treasurer aforesaid.

Sec. 18. Appeals may be taken and prosecuted by husbands or trustees of femes covert, guardians of infants and conservators of insane persons, and in cases when infants have no guardians, and insane persons no conservator, appeals may be taken by the friends of such parties. Appeals

Sec. 19. The said railroad 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 railroad may cross, or in any way 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 railroad without inconvenience; *Provided*, That in cases where said railroad 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 said railroad 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 such road, and in every respect complete such newly constructed road or part of road so interfered with, (as it) was previous to the disturbance and occupancy thereof by said company. Crossings

Sec. 20. For the convenience of persons owning or possessing lands through which said railroad shall pass, it shall be the duty of said company, when required, to make a good and sufficient passage over or under said railroad, 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. Said company shall construct and maintain a good substantial board or rail fence four and a half feet high, on both sides of said road, and shall construct and maintain cattle guards wherever the same may be necessary to keep cattle, horses, sheep, and hogs, from off the track of said road, as fast as the said road is in running order, and shall be liable for all damages sustained by any person by reason of any neglect to keep and maintain such fence and cattle guards in good repair. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by the travelers, and on each side of said board shall be printed in capital letters of at least the size of nine inches each, the words, "Railroad crossing, look out for the cars." Bridges, on Private property—Fences

Sec. 21. On the completion of said railroad or any portion of the track it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property as they shall from time to time think reasonable. Partial completion

Property of stockholders SEC. 22. The property of every individual invested in said corporation shall be liable to be taken in execution for the payment of his or her debts, in such manner as is or may be provided by law : *Provided*, that all the debts due said company shall be first paid.

Public act SEC. 23. This act shall be favorably construed to effect the purpose thereby intended, and the same is hereby declared to be a public act, and copies thereof printed by the authority of the Territory of Minnesota shall be received as evidence thereof.

Obstruction—penalty SEC. 24. Any person who shall wilfully and maliciously place any obstruction or thing upon the track of said road, or shall remove or damage any part thereof, in such manner that the engines or cars may be impeded or thrown off the track, shall be deemed guilty of a misdemeanor, whether such accident shall take place or not, and shall be punished for every such offense 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 obstruction, or injury to said road, said party shall be liable to pay all such damage to said company, and to any person damaged 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 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.

Borrow money SEC. 25. The said railroad 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, bonds, script or other papers, and make and execute and deliver such securities in amount and kind, as may be deemed expedient by said corporation ; and the powers of said corporation, for the purpose aforesaid, and for all purposes necessary to carry out the object of said company, namely, the construction of a railroad and its branches, or such parts thereof as said company may think proper, over and upon the route hereinbefore designated, and the contracts and official acts of said company are hereby declared binding in law and equity, upon said corporation, and upon all other parties to such contracts.

Violation of Charter SEC. 26. In case of a violation by the company of any of the provisions of this act, the penalty for which is not otherwise provided for in this act, the Legislative Assembly of the Territory of Minnesota may resume all and singular rights and privileges hereby granted the said company.

SEC. 27. This act shall be in force from and after its pas-

sage, and it shall be lawful for said company to purchase the lands for the purpose of procuring earth, gravel or other materials, for embankments and structures necessary to the construction or repair of the said road, or buildings and fixtures connected therewith, or for the purpose of the better enabling said company to build said road, and the said company are hereby authorized to sell and convey the same at pleasure.

To be in force

SEC. 28. The aforesaid company shall have power to consolidate the capital stock of said company with any other railroad company with which it may connect, upon such terms and conditions as the companies may agree upon, and the companies when consolidated shall be managed and under the control of the Board of Directors of both companies acting jointly together until the first election of Directors of said consolidated company, when the stockholders of said consolidated company shall choose, at such time and place as they may agree upon, a Board of Directors not to exceed in number twenty-one, who shall have power to change the name of said company, and adopt a common seal, and the said company shall be known by the name so selected, and may contract and be contracted with, sue and be sued, plead and be impleaded, and have all the rights and privileges and franchises conferred on both by the laws of all the States and Territories through which said consolidated road shall pass respectively, and the right of way may be taken as provided for in this act, which agreement of consolidation shall be signed by the President and Secretaries of the two companies so consolidated, and a copy thereof filed in the office of the Secretary of Minnesota.

Consolidation

SEC. 29. This company shall have the power to enter upon and pass over the railroad of any other corporation whose railroad connects with that of this company, with their cars and engines, and any other company shall have like power to enter upon this railroad, whose railroad connects with this road, and pass over this road with the cars and engines, and such reciprocal use of said respective railroads shall be upon such terms and conditions as shall be agreed upon by the officers of the respective companies, and in case the two companies cannot agree upon terms, then either party may apply to the Supreme Court of this Territory, whose duty it shall be to fix such terms for the respective parties as the equity of the case may demand.

Passage over
other Rail-
roads

SEC. 30. Every conductor, baggage-master, or agent, or servant of the said company, who shall be engaged in the ticket office or on the cars of the said railroad, shall wear upon his hat or cap a plain badge which shall indicate his office or station, and no conductor or collector shall demand or be entitled to receive any fare or toll from any freighter or passenger, or exercise any control or direction in his station, or be authorized or allowed to interfere with any passenger, baggage or freight, without wearing such badge.

Badges to be
worn

Whistles

SEC. 31. Every locomotive engine on said railroad shall be furnished with a good and sufficient alarm bell and whistle, which shall be fully sounded at least eighty rods distant from every highway crossing, while the engine, either with or without a train of cars, shall be passing over said road; and for every violation of this section the said company shall forfeit and pay, to whomsoever shall prosecute for the same, the sum of ten dollars.

U. S. Mail

SEC. 32. The said company shall carry and transport the mail of the United States on such terms as may be agreed upon, and all freight and passengers as may be offered, if required so to do, on the terms usual with like railroad companies

First meeting
of corporators

SEC. 33. The corporators named in the first section of this act shall meet at St. Paul on the first Wednesday of June next, to determine whether they will accept or reject this charter. If a majority thereof shall not then and there meet, he or they who may be present may adjourn the meeting to some future day, and to such place as he or they may deem proper, and notify the absentees of such adjournment; and the same proceedings may be had at any meeting until a majority shall be present. Whenever a majority of such persons shall have met, they shall by resolution determine to accept or reject this charter, and notify the Secretary of the Territory thereof.

J. W. FURBER,

Speaker of the House of Representatives.

JOHN B. BRISBIN,

President of the Council.

APPROVED—May twenty-second, one thousand eight hundred and fifty-seven.

S. MEDARY.

SECRETARY'S OFFICE, Minnesota, }
SAINT PAUL, July 22, 1857. }

I hereby certify the foregoing to be a correct copy of the original Bill now on file in this office.

CHAS. L. CHASE,
Secretary of Minnesota Territory.