

## CHAPTER II.

*An Act to amend an act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March tenth, eighteen hundred and sixty-two.*

- SECTION 1.** Amendment to Section 5. When incorporation to acquire absolute title—duty of Governor when road is completed.
2. Amended by adding the following sections:
  15. Name of said incorporation—Board of Directors, how elected—vacancies how filled.
  16. May construct and maintain fences and cattle guards.
  17. All additional aid granted by Congress shall become vested in said Company—duty of Governor on completion of every consecutive twenty miles of said road.
  18. May construct telegraph line.
  19. Duty of Commissioner of State Land office.
  20. May enter upon any lands for purpose of surveying and locating said railroad—damages how ascertained—when company to have absolute right or title to said lands—rights of appeal—how amount of compensation to be ascertained—fee of Commissioners.
  21. Right to construct road across or over any public or private highway, square, etc.
  22. Proceedings heretofore taken for the appointment of Commissioners to assess damages, etc., are hereby confirmed.
  23. When act to take effect.

*Be it enacted by the Legislature of the State of Minnesota:*

**SECTION 1.** The fifth section of an act entitled "An act to facilitate the construction of the Minneapolis and Cedar Valley Railroad, and to amend and continue certain acts in relation thereto," approved March 10, 1862, is hereby amended, so as to read as follows:

**Sec. 5.** *And be it further enacted,* That it shall be a condition of the grants and benefits conferred by this act, that no title to the lands granted by an act entitled "An act to execute the trusts created by the act of Congress, entitled 'an act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory of Minnesota, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein

When incorporation to acquire absolute title

named," approved May 22, A. D. 1857, or any other act of the Legislature of the Territory or State of Minnesota shall vest in the persons, purchasers or company availing themselves of, and taking under the provisions of this act, except in the manner and at the time or times, and upon the condition, to wit :

Said persons or company, taking under the provisions of this act, shall construct and fully complete said railroad, ready for business, and so that the cars can be run continuously over the same from the Iowa line, west of range sixteen, via Faribault to Minneapolis, on the present located line of said road, except so far as it may be expedient to change the same for engineering purposes, not departing from the general course of said line, by the first day of January, A.D. 1866; and upon the construction and completing of fifty continuous miles of said railroad, the Governor of the State shall certify the same to the Secretary of the Interior, and shall execute, in the name of the State of Minnesota, under the great seal thereof, a deed in fee simple to said persons or company, in and to so many and such portions of the lands appertaining to the completed portion of said road, and not exceeding one hundred and twenty sections, as the State may then be entitled to under and by virtue of the act of Congress, entitled "An act making a grant of lands to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in that State." And whenever the entire road is completed as aforesaid, from the Iowa line, via Faribault, to Minneapolis, so that cars can be run continuously over the same, the Governor shall so certify to the Secretary of the Interior, and shall execute, as aforesaid, a deed to said persons or company in and to all the lands which the said State shall then be entitled to under said act for the construction of the said road, and which would have accrued to said Minneapolis and Cedar Valley Railroad Company, or to which it would under any law of the Territory or State of Minnesota, or in any way or manner be entitled, and upon the execution of said deed, the said company

Duty of Governor  
when road is com-  
pleted

or the said persons shall have the absolute, full and complete title to the said lands in fee simple.

SEC. 2. The following sections are hereby added to said act as additional sections thereto :

SEC. 15. The said company shall hereafter be known by the name and style of "Minnesota Central Railway Company." The board of directors of said company shall, after the next annual meeting of said company, consist of nine persons, a majority of whom shall constitute a quorum, who shall be elected by the stockholders, and shall serve for one year, and until their successors are chosen and qualified ; and the officers and directors shall not be required to be residents of this State. Elections for directors shall be held annually, at such time and place, either within or without this State, as may be fixed by the by-laws of said company, and the meeting of directors may be held within or without the State. All vacancies may be filled by the remaining members of the board.

Name of incorporation—Board of Directors, how elected—vacancies how filled

SEC. 16. Said company shall construct and maintain a good and legal fence on both sides of their said road, wherever it may run through enclosed land, within two years after the commencement of the operation of their said road across said lands, and during said period of two years, shall construct and maintain good and sufficient cattle guards, at points of crossing such lands, and shall also construct all necessary farm crossings over the track of their said road.

shall construct cattle guards and fences

SEC. 17. *And be it further enacted,* That if at any time the Congress of the United States should make a further grant of lands to the State of Minnesota for the purpose of making good the quantity of lands to which the Minneapolis and Cedar Valley Railroad was entitled, under the act of Congress granting lands to the Territory (now State) of Minnesota, for railroad purposes, and which are now deficient, all said lands so granted to the State, are hereby pledged, granted to, and shall become vested in the Minnesota Central Railway Company, on the terms and in the manner following : whenever any continuous twenty miles of said road shall be completed, with the running of regular trains of cars on the same, it shall be the duty of the Governor to certify the same to the Secretary of the

All additional aid granted by Congress shall become vested in said company

Interior, and thereupon, and not before, said company may demand and shall be entitled to receive from the Governor, in the name and for the State, a deed in fee simple for one hundred and twenty sections of land, and in like manner, and whenever as often as a further distance of twenty miles shall be so completed, the Governor shall certify the same to the Secretary of the Interior, and in like manner convey to said company another quantity of one hundred and twenty sections of land, and so from time to time till said road is completed; and when the entire length of said road shall be completed, with cars running over the same, it shall be the duty of the Governor to certify the same to the Secretary of the Interior, and thereupon convey by deed in fee simple, to said company, whatever lands, if any, there may remain, and to which the company may be entitled. *Provided*, That if the amount of lands hereafter to be granted as aforesaid, together with the lands heretofore granted, shall not be sufficient to supply one hundred and twenty sections of land for every twenty miles of road, then, in that case, said company shall be entitled, for every twenty miles of road completed, with cars running thereon, as aforesaid, to demand and receive a deed as aforesaid, for such proportion only of the land to be hereafter granted, as such length of twenty miles bears to the whole length of said proposed road from Minneapolis to the Iowa line.

Duty of Governor  
on completion of  
every twenty con-  
secutive miles

SEC. 18. Said company is hereby authorized and empowered to construct, maintain and operate a telegraph line over and along its road, and for that purpose is hereby vested with all the powers, privileges, and immunities, and subjected to all the duties and liabilities of telegraph companies organized under the laws of this State.

May construct tele-  
graph lines

SEC. 19. The State Auditor, as ex officio Commissioner of the State Land Office, is hereby authorized in behalf of said State, to grant to said company, its successors and assigns, upon such terms as may be agreed upon, such rights, privilege, and estate as are particularly specified in the next section of this act, over and upon any school or university lands belonging

Duty of Commis-  
sioner of State  
Land Office

to said State, through which the road of said company may run.

May enter upon any lands for purpose of locating said road

Damages how ascertained

When company to have absolute title to said lands

SEC. 20. It shall and may be lawful for said company, their officers, engineers, agents and servants, to enter upon any lands 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, to enter upon, take possession and use such land, not exceeding two 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 such damages as shall be ascertained in the manner hereinafter directed and provided in such cases; and said company are further authorized by their officers, engineers, agents and servants to enter upon and take possession of and use land adjacent to the railroad within or beyond the limits of two 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 business of said road, and for the purpose of making drains, and giving proper direction to water-courses, across or along said road, and to remove all substances and things which may endanger, obstruct, or interfere with the free use of said road, and to deposit gravel or earth, taken from deep cuts, and to obtain earth, gravel, and other materials for embankments and structures necessary for the construction and repairs of said road, doing no unnecessary damage; and all damages arising in any case under the provisions of this act, shall be ascertained and paid in the manner, and agreeably to the provisions hereinafter contained, and when such damages shall have been paid, tendered or deposited as hereinafter provided, the right to the absolute and exclusive use and control of the land so entered upon as aforesaid, shall vest in said company for the purposes specified in this act, the charter of said company or any amendments thereto. Whenever the line of said railroad, or any part thereof, shall be located and its route determined, the said company may apply to the Supreme Court in session, or

any judge thereof in vacation, or the district court of the district in which the required land is situated, in session, or the judge thereof in vacation, for the appointment of three commissioners to estimate the damages sustained in respect to any and all lands which have not been, or shall not be granted or given to said company, situated on or adjacent to the line of said railroad and branches or any part thereof, and designated in such application, and which the said company shall have entered upon, possessed, occupied or used, or which it may thereafter 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 lands, by reason of the appropriation thereof for said purposes, deducting from said damages the special benefits and advantages which said lands have received, or will receive by reason of the location or construction of said railroad and works. The said company shall give notice of its intention to apply for the appointment of such commissioners, by publishing the same once in each week, for four successive weeks before the time of hearing such application, in at least one newspaper published in the county in which such land shall be; but in case no newspaper be published in any such county, then in a newspaper published in the city of St. Paul, 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, on or adjacent to the line or route of said railroad and branches, or any division or part thereof, which shall be designated by said company in such application. In case either of said commissioners shall die, resign, or decline to act, another commissioner shall be appointed in his stead in like manner and on like notice as aforesaid. The said commissioners may, as the exigencies of any case or the convenience of the parties, or of themselves, may require, adjourn from time to time, and to such place as they may deem advisable. No proceedings shall be had by the said commissioners unless two-thirds of them be present, except to adjourn, but all questions coming before them shall be decided by a majority, and a report of a ma-

Appointment of  
commissioners to  
assess damages—  
by whom appointed

majority shall be valid. Said commissioners shall proceed to examine the premises in each case separately, and shall assess the damages in respect to each lot, tract or parcel of land separately and as an entirety, and shall not be required to apportion such damages among the persons interested therein, written notice thereof having first been given to the owner or owners of such lands, if residents of the State, of at least ten days, in the manner required by law for the service of summons in civil actions, and in case the same are school lands, to the Commissioner of the State Land Office, and in case the same are university lands, to said commissioner or the secretary of the Board of Regents of the State University, 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 adverse or distinct interests therein, legal or equitable, the said commissioners shall, upon request of said company, or its officers or agents, give notice to all persons claiming any such interest in said land, and when the person so to be notified has no known residence in this State, within the knowledge of such commissioners, the notice may be by publication as herein provided, in respect to the notice of application to appoint commissioners. Proof of service shall be by affidavit, and filed with the report of the commissioners when made. After making such examination, the said commissioners, or a majority of them, shall make a report of their doings, in which shall be stated, separately, their award of damages in respect to each lot, tract, or parcel of the lands so entered upon, taken, possessed, occupied or used by said company, by reason of the appropriation thereof, 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 report or reports in each case to said company, and shall file another in the office of the clerk of the district court of the county in which such lands may lie, or of the county to which such county may be attached for judicial purposes, and if neither party shall appeal from said award in the manner hereinafter provided, the said district court, on motion in behalf of said company,

Commissioners to  
make report of  
proceedings

or of the party in whose favor the award shall be made, shall enter up judgment in conformity with such award.

If, upon such motion, it shall be made to appear by affidavit or otherwise, that there are any incumbrances or liens upon the property which is the subject of the award, or that there are any conflicting or adverse claimants in respect thereto, or in respect to the damages so awarded, or that any other reason exists, rendering it doubtful as to whom said damages should be paid, the court shall order the amount thereof to be paid into court, and deposited as it may direct, subject to the disposition of the court, upon the application of the parties, or any of them, claiming the same; which order shall also be incorporated in the judgment. Said judgment may be docketed and satisfied as against said company in the same manner as judgments in civil actions are docketed and satisfied, and a copy of said judgment, certified by the clerk of the said court, with his certificate that the same has been satisfied as against said company, shall be evidence of the title of said company to the lands therein described in all the courts of this State, and the same may be recorded in the office of the register of deeds of said county in the same manner and with the like effect as deeds to real estate. Whenever the sum ordered to be paid or deposited by said judgment shall have been so paid, *tendered or deposited by said company an absolute right or title to the exclusive use, control, possession and enjoyment of the land and property therein described shall be and become vested in said company for all purposes, for which by law they may be authorized to take, hold and enjoy the same.*

When incumbrance or lien on property, duty of court

The said company, or any person or persons having any estate in said property constituting the subject of any award contained in any report of said commissioners, may, within thirty days after said report is filed, appeal to the district court of said county from such award, by filing with the clerk of said court, with whom said report is filed, a written notice of appeal, and in case said appeal is brought by any person or persons, except said company, they shall file with said notice an affidavit showing the nature and extent of their estate

Rights of appeal

in said property. Upon an appeal being then taken, all further proceedings on said award so appealed from, shall be stayed until the final determination of said appeal. The clerk shall enter the same on the calendar of said court, for the next succeeding general term thereof, for trial, according to the date of the appeal. Said appeal or proceeding shall be determined and tried at said term, unless otherwise ordered.

How amount of  
compensation to  
be ascertained

The amount of compensation shall be ascertained under the same rules applicable to commissioners in like cases, by a jury, or by the court, in case a jury is waived. The amount so ascertained shall stand in place of the award appealed from, and the like proceedings shall be thereupon had and the like judgment rendered as upon an award of commissioners not appealed from, and with like effect.

Said company may, after making the application for the appointment of commissioners, as provided in this section, proceed with the construction of their said road up to the time of the filing of the award of said commissioners, but not thereafter, until the amount of said award shall have been deposited, as directed by the court or judge, subject to the decision of the court in case of an appeal by either party.

Fee of commis-  
sioners

The said commissioners shall receive three dollars a day for their services, and ten cents a mile for actual travel. *It is further provided,* That said company may, before the time of hearing in any case by the commissioners, tender to the person or persons entitled to receive the same, such amount as they may deem reasonable, as compensation for the damages as aforesaid estimated, with a deduction as aforesaid, and if such tender shall not be received, then the costs of all subsequent proceedings, (in case the award or judgment does not exceed the amount so tendered,) shall be chargeable on the person or persons aforesaid.

Right to construct  
road across or over  
any public or pri-  
vate highway, etc.

SEC. 21. The said company shall have the right and authority to construct their said railroad upon and along, across, under or over any public or private highway, square, road, street, alley, plank road or railroad, if the same shall be necessary; but the said company shall put such highway, square, road, street, alley, plank-road or railroad in such condition as not to

prevent its proper use, and the said company shall have the right and authority to erect and maintain all the necessary bridges for the use of their said railroad over any stream of water, water-courses, or lakes at such points of crossing the same as they may locate the said road, with all necessary abutments, piers, or other foundation.

SEC. 22. The proceedings heretofore taken by said company for the appointment of commissioners to assess damages for lands taken by said company, and the proceedings of such commissioners are hereby confirmed, and all proceedings in all cases pending at the time of the passage of this act, shall be carried on and completed in conformity with the provisions of this act, and with the same effect as is specified in this act, and all proceedings heretofore taken in any case may be filed with the clerk of the district court of the county where the lands to which they relate, are situated, with the like effect.

Confirmation of  
proceedings of  
commissioners

SEC. 23. This act shall take effect and be in force from and after its passage, and shall be accepted by the board of directors of the said railroad company, by the filing of an attested copy of the resolution of said board, in the office of the Secretary of State.

Approved February 1, 1864.