

deliver the same to the board of directors of said company, or to such officer as said board of directors may appoint to receive said bonds.

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

When act to take effect.

Approved February 9, 1870.

CHAPTER LVII.

An Act to amend an act entitled "An Act to incorporate the Minnesota Western Railroad Company," approved March third, one thousand eight hundred and fifty-three, and the acts amendatory thereof.

Feb'y 4, 1870.

- SECTION 1. Change of route of said road.
2. Repeal of former Section.
 3. Strike out "fifteen," and insert "twenty-five."
 4. Right of way of said Company—manner of ascertaining damages to property owners along said line and branches—fees of commissioners, clerk, &c., how paid—right of appeal.
 5. Company authorised to change its name—may issue preferred and special stock—when road and appurtenances exempt from taxation—when Company to pay to State the per centage on gross earnings of said road—rates of per centage—amount of gross earnings how ascertained—payment how secured.
 6. Repeal of former Section—proviso.
 7. When act to take effect.

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

SECTION 1. That section one of an act entitled "An act to amend an act entitled an act to incorporate the Minnesota Western Railroad Company, passed March the third, one thousand eight hundred and fifty-three," which was approved March fifth, one thousand eight hundred and sixty-nine, is hereby amended by inserting after the words "may select," the words "and from the point of

Change of route of said road.

junction with said first named road to the north line of Iowa."

Repeal of former section.

SEC. 2. Section two of said act approved March fifth, one thousand eight hundred and sixty-nine, is hereby repealed.

Strike out 'fifteen,' and insert 'twenty-five.'

SEC. 3. Section thirteen of said act approved March third, one thousand eight hundred and fifty-three, is hereby amended by striking out the word "fifteen," and inserting instead, twenty-five.

SEC. 4. Section fourteen of said act of March third, one thousand eight hundred and fifty-three, is hereby amended so as to read as follows :

Right of way.

Sec. 14. The said company shall have the right of way upon and may appropriate to its own use and control for the purposes of said road and its appurtenances, land not exceeding one hundred and thirty feet in width throughout its entire length, and that of its branches, except where it is necessary to have and leave room for turn-outs, sites for water, depot buildings, and store houses, machine shops and other shops and extra tracts necessary therefor, in which case such further quantity may be taken as shall be necessary for such purposes, and whenever it is necessary for said company to have such lands, they shall have the right to enter upon, take, hold and occupy such lands, and also to enter upon any lands adjoining said road, and obtain therefrom sand, gravel, stone and other materials which may be necessary for the construction of said road, and whenever any lands or materials shall be required for the construction of said road, and the same shall not be given or granted to said company, the compensation to be paid therefor by said company shall be ascertained in manner following: The said corporation may present to any court in the judicial district in which the lands or real estate proposed to be taken are situated, 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 and accuracy by map, plat, survey, government sub-divisions or otherwise, the lands or real estate so proposed or required to be taken, and setting forth the name of each and every owner, encumbrancer and 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 view of the premises or other inquiry touching the occupation thereof, and praying

Damages, how ascertained.

the appointment of three competent, disinterested persons as commissioners to ascertain and determine the compensation to be made to the said owner or owners, respectively, and to all tenants, incumbrancers and others interested for the taking or injuriously affecting said land or real estate. That upon the filing of such petition in the clerks office of such court, the said company shall cause notice to be signed by its attorney, which shall contain the name or style of the court in which such petition is filed, and be directed to the persons in said petition named as owners, lien holders or otherwise, and to all whom it may concern, therein stating that a petition has been filed by said company for the purpose of condemning certain real estate therein particularly described for the use of said corporation, and specifying the time and place at which the application under said petition will be made for the appointment of commissioners, which notice shall be served by delivering a copy thereof to such of the parties as can be found in said district, or who may be known residents of the state, and in case any of said parties cannot be so personally served with such notice, then upon affidavit of such fact, the court shall by its clerk, enter an order directing the publication of a copy of such notice in some newspaper published in the judicial district in which said proceeding is pending, and in case no newspaper is printed in such district, then in some newspaper printed in an adjoining county, and in case there should be no such paper printed in an adjoining county in this state, then such publication shall be made in one or more of the newspapers published at the seat of government, as said court may direct, which publication shall be at least once a week for three successive weeks prior to the time fixed for said application. That it shall not be necessary to publish a description of the property sought to be affected by said proceedings or give any further notice than as above provided. That upon proof of service of such notice, personally or by publication thereof, and proof thereof filed, the service shall be complete and the parties and all persons interested be deemed in court, and the court shall thereupon have jurisdiction of the property in the petition described, as well as of the parties interested therein, and at the time specified, or at the time to which the same may be adjourned, the court may make the order appointing three commissioners to ascertain and determine the damages or compensation to be made to the owners or

Damages, how
ascertained.

others interested in said lands, and fix a time and appoint a place at which said commissioners shall meet to organize and hold their first meeting, that notice of such meeting shall be entered upon the minutes of said court, and the same shall operate as notice to all parties. Before said commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath, that they will faithfully and impartially discharge their duties as commissioners to ascertain and determine the compensation to be paid by the said corporation to the respective claimants 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 from any cause, or any one or more shall neglect to act, the court or judge may, upon such notice to the parties as he may prescribe, and by like order supply such vacancy, and supply the place of any one neglecting to act, 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 oath. The commissioners shall meet at the time and place specified in the said order, and when met and all present, may proceed to the hearing of the proofs and allegations of the parties, and are hereby authorized to administer oaths to witnesses before them. The commissioners may, as the exigency or convenience of any case shall require, adjourn from time to time and to such place as may in their judgment be most conducive to the purposes of their investigation. No proceedings shall be had by said commissioners unless all of them are present except to adjourn, but any and every question submitted to them may be decided by a majority, and a report by a majority shall be valid. The report of said commissioners shall state the amount of damages or compensation awarded to or against each tract or parcel of land, and the report of the commissioners or a majority of them, shall have the force and effect of the verdict of a jury, and upon the filing thereof in court, judgment shall be entered thereon as in case of verdicts in civil actions and with like force and effect, and subject to like proceedings in appeal as are now provided for in civil actions in such court. The fees of the commissioners, clerk and other officers, shall be paid by said company, except in case of appeal, in which case the court shall award costs to the successful party as in other

Damages, how
ascertained.

Fees of clerks,
&c., how paid.

cases. *Provided*, That no appeal shall operate to stay the work upon such road or deprive said company of the use of the premises affected, in case the company shall pay into court the amount awarded to the property of such appellant. The said company may exonerate itself from all liability as to the application of the amount awarded to or for any particular tract by paying the same into court, and in all cases the court may adjudge and determine upon motion or interpleader as between the parties claiming the same, who is entitled thereto. In estimating damages or compensation to be paid to any claimant, the said commissioners shall take into consideration the benefits to accrue to the claimant by the construction of said road, and allow such benefits by way of a reduction of the damages which such claimant may sustain thereby, and report only the balances of the damage if any, but no balances shall in any case be reported in favor of the company. Upon the filing of the report of the commissioners, at any time after the passage of this act, it shall be the duty of said railroad company to cause notice of the filing of said report to be published in a daily newspaper which may be published in the city of Minneapolis, for at least ten days, and upon such publication made, and proof thereof filed with the clerk of the court in which the proceeding is pending, notice of the making and filing said report shall be deemed complete, and in case said company or any person interested in said report shall deem the same unjust in any matter affecting the amount of compensation to be paid, the company or such party may appeal therefrom, at any time within twenty days after the publication of notice of filing said report as aforesaid. The party appealing shall file a notice of such appeal with the clerk of the court, with whom the report of the commissioners 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 an appeal, and by giving a bond in such penalty as the said court shall prescribe, conditioned to prosecute the appeal without delay and to abide the order the court may make on such appeal and to pay the costs if he should fail therein. Upon the filing the notice and bond for appeal, with proof by affidavit of service of notice of appeal, as above prescribed, all further proceedings affecting the particular parcel of property named in the notice of appeal upon the report, shall be stayed until the further order of the court (unless the company shall

Right of appeal.

make the deposit hereinbefore provided for) and the cause upon such appeal shall be entered, proceeded in and determined in the same manner as cases of appeal from the courts 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 a jury shall be waived by both parties. Whenever any report of the commissioners shall become final, and whenever any appeal from such report or part of report shall have been finally determined, the said corporation shall, upon the payment to each party interested of the sum determined thereby to be due him or her, as compensation for property taken, or the deposit of 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 a full, free and perfect use and occupancy of the same for the purposes aforesaid.

SEC. 5. Section twenty-one of said act, approved March third, one thousand eight hundred and fifty-three, is hereby amended by adding at the end thereof the following words: And said company may by a resolution of its board of directors change the name of said company and adopt any suitable name by which said company shall in future be known, and may designate the name by which any branch line shall be known, to take effect after public notice of such change shall be given for one month in any daily paper published at the city of Minneapolis, but such change of name shall not affect any rights or liabilities of said company under any former name. And said company shall have power to create and issue in such manner and on such terms as it may deem expedient, one or more classes of preferred stock and special stock, and to make such agreements as it may deem proper with the respective holders thereof, as to the dividends thereon, and the securities for such dividends; and to make such agreements as it may deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire to the payment of dividends on such special stock as may be issued in respect thereto, which appropriation, as made by such agreement, shall be effectual to secure to the said and future holders of such stock, the application of such net earnings as in the said agreement provided against any future act of the company or any of its general liabilities. And the said company may make

Company may
change its name
—may issue pre-
ferred and special
stock.

such agreements as it may deem proper with the holders of any such special stock as to the construction and administration of the portion of said railroad to which said stock may pertain; and for the separate organization of the holders of such special stock for the purpose of that construction and administration, and enabling them or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain, all the powers of the company, subject to the provisions of such agreement when made and entered into. *Provided*, That in consideration of an annual payment of a per centum (as provided in this section) by said corporation as aforesaid, the railroad its appurtenances and appendages and all other property, estate and effects of said corporation, which by the provisions of this act contained, said corporation is to acquire, purchase, hold, possess, enjoy or use for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments; and in consideration of the grants made to, and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section the said company shall during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the state, one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation, and shall during the seven years next ensuing after the expiration of the three years aforesaid pay into the treasury of this state on or before the first day of March of each and every year, two per cent. on the gross earnings of said railroad, and shall from and after the expiration of ten years from the completion of thirty miles of said railroad, on or before the first day of March of each and every year, pay into the treasury of this state three per cent. of the gross earnings of said railroad; and the payment of such per centum annually as aforesaid, shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earning aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said

When road and appurtenances exempt from taxation.

When company to pay per centage on gross earnings of said road.

Rates of per centage.

Amount of gross earnings, how ascertained.

company to the treasurer of this state, on or before the first day of February in each year, the truth of which abstract shall be verified by affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstract, full power is hereby vested in the governor of this state, or any other person appointed by law prescribed, to examine under oath, the officers and employees of said company or other persons; and if any person so examined by the governor or other authorized persons, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company, and upon all the property, estate and effects of said company whatever, real, personal or mixed, and the lien hereby secured to the state, shall take and have precedence of all demands, decrees and judgments against said company.

Payment, how secured.

Repeal of former section—proviso.

SEC. 6. Section twenty-two of said act, approved March third, one thousand eight hundred and fifty-three, is hereby repealed. *Provided*, That the said company shall carry, and the rights and privileges hereby granted are upon the express condition that the said company shall always carry freight and passengers over their main road and branches at just and reasonable rates.

When act to take effect.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 4, 1870.