

## CHAPTER LXXV.

*An Act relating to the Minnesota and Northwestern Railroad Company.*

March 7, 1870.

- SECTION 1. Amendment to Section Two (2) of the act incorporating said road. Company authorized to construct and maintain a railroad—company to designate route.
2. Amendment to Section Ten (10) of said act. Right of way of said Company—manner of ascertaining damages to property owners along said line and branches—right of appeal—fees of commissioners, clerk, &c., how paid.
3. Amendment to Section Thirteen (13) of said act. Right to construct across or over any public or private highway, stream, &c.—may construct and maintain cattle guards and fences.
4. Repeal of Section Fifteen (15) of said act.
5. Powers of Board of Directors.
6. When bridges, right of way, depot grounds, &c., may become joint stock.
7. Authorized to create and issue special or preferred stock—for what purpose.
8. When act to take effect.

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

SECTION 1. That section two of an act of the legislative assembly of the territory of Minnesota, approved May twenty-third, one thousand eight hundred and fifty-seven, entitled "an act to incorporate the Minnesota and Northwestern Railroad Company," as the same is revised and amended by section two of chapter seventeen of the special laws of A. D. one thousand eight hundred and sixty-seven, and by chapter forty, on pages two hundred and fifty-six and two hundred and fifty-seven, of the special laws of A. D. one thousand eight hundred and sixty-nine, be and the same is hereby amended so as to read as follows:

Sec. 2. That said company is hereby authorized and empowered to survey, locate, construct, complete, maintain, use and operate at their pleasure, a railway with one or more lines or tracks of rail, with all necessary stations, depots and turn-outs, from some point in the state on or near the north line of the state of Iowa, to be selected by

Authorized to  
construct railroad  
—company to  
designate route.

said company, west of range thirteen, and thence by such route as the company may select, to the city of Mankato, and thence by the most legible route (to be selected by said company) to the western boundary of the state, in the direction of Big Stone Lake and Sioux Wood River, or to some points of intersection with the St. Paul and Pacific Railroad, or the Northern Pacific Railroad within the state, at the option of said company; and may commence the construction of the same at any one or more points along the line of the said railroad at the same time. *Provided*, That in case the point of intersection with the north line of state of Iowa shall be selected east of range twenty-four, said road shall be constructed via the village of Albert Lea, to the city of Mankato, as aforesaid.

SEC. 2. *And be it further enacted*: That section ten of said act of incorporation, approved May twenty-third, one thousand eight hundred and fifty-seven, be and the same is hereby amended so as to read as follows:

Sec. 10. It shall be lawful for the said Minnesota and Northwestern Railroad Company, its 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 the said company shall have the right of way and may appropriate to its own use and control for the purposes of said road and its appurtenances, land not exceeding two hundred 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 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 the 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 or some part thereof are situated, having jurisdiction competent to entertain, adju-

Right of way.

Damages, how ascertained.

dicare and determine questions of title to real estate, or to the judge thereof, 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, incumberer 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 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

Damages, how  
ascertained.

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 same time specified, or at the time at which the same may be adjourned, the court may make the order appointing three commissioners to ascertain and determine the advantages or compensation to be made to the owners or others interested in said lands, and fix a time and appoint a place at which said commission 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 a 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 interests 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 for 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, or without further notice, 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 in like manner take the oath before entering upon his duties. The commissioners shall meet at the time and place specified in such order, and 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, at the time the same was taken and entered upon by said company, and shall make due allowance and deduction from such damages, for the benefits and advantages which such lands have received or will receive, by reason of the location or construction of said railroad, and shall report the balance of the damages only. And said commissioners shall state in such report the amount of damages or compensation to or against each tract or parcel of land, which report shall be filed in the office of the clerk of the court

Damages, how  
ascertained.

in which the petition was filed. The commissioners may, as the exigency or convenience of the case may require, *adjourn from time to time and to such places as may in their judgment be most conducive to the purpose of their examination and investigation.* No proceedings shall be had by such 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; and which report when so made and notice thereof given as hereinafter provided, shall be final unless appealed from as hereinafter provided. Upon the filing of the report of the commissioners, it shall be the duty of the said railroad company to cause notice of the filing of said report to be published in a newspaper published in the city of Mankato, for three successive weeks, 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 of said report shall be deemed complete, and in case the said company or any person interested in said report shall deem the same unjust in any manner affecting the amount of compensation to be paid, the company or such other party may appeal therefrom, at any time within twenty days after the publication of notice of the filing of said report as aforesaid. The party appealing shall file a notice of appeal with the clerk of the court, with whom the report of the commissioners is filed, stating the grounds of the appeal, and serve a copy thereof in the opposite party within the time above prescribed for taking the appeal, if a resident of the state, and by giving a bond in such penalty as the 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 shall fail therein. Upon the filing of the bond for appeal, with proof by affidavit of the service of the notice of appeal, as above prescribed, or that the party is not a resident of the state, 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 make the deposit or file the bond hereinafter provided for) and the cause upon such appeal shall be entered, proceeded in and determined in the same manner as in 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, un-

less a jury shall be waived by both parties. *Provided,* That upon appeal the amount of damages shall be ascertained under the same rules as are herein prescribed applicable to commissioners. 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 appellant, or shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with sufficient sureties, conditioned that the parties executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. 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, and the said company may exonerate itself from all liability as to the application of the amount awarded or adjudged to or for any particular tract, and from any disability, or refusal on the part of the person or persons entitled thereto to receive the same by paying the same into court, and in all cases the court may adjudge and determine by motion or interpleader as between the parties claiming the same, who is entitled thereto, and order any money to be paid to the persons entitled thereto. The fees of the commissioners, clerk and other officers, shall be determined by the court, and be paid by the company, except in case of appeal, in which, costs shall be awarded to the successful party as in other cases. The said corporation may perfect record evidence of the title to the property taken for the purposes hereinafter provided by causing the clerk of the court where the report of the commissioners is filed and the award of damages is paid, to make certified copies of such report, or any part thereof, so far as it affects or relates to any real estate or interest therein, situated in any county through which said railroad runs, and such certified copy when recorded in the office of the register

Fees of clerks,  
&c., how paid.

of deeds of the county in which real estate is situated, shall be notice to all parties of the title of said corporation therein, and such record may be read as evidence of such title in all the courts of this state, except in cases where valid appeals are taken from the report of said commissioners, and in such cases the judgment of the court upon such appeal, after the damages are paid may be recorded in the office of register of deeds of the county where the said real estate or interest therein, and affected by said judgment is situated, and such record shall be notice and evidence of title in like manner and effect, as the record of certified copies found in said report.

SEC. 3. That section thirteen of said act of incorporation, approved May twenty-third, one thousand eight hundred and fifty-seven, be amended so as to read as follows, to wit:

Sec. 13. The said company may construct the said railway across any public or private road, highway, stream, or other water course if necessary, but the said company shall restore said road, highway, stream, or water course to its power state, or in a manner not to impair its usefulness to the owner or the public. Said company shall construct and maintain all proper and necessary cattle guards and farm crossings over the line of said road, and also within two years after the completion of their road through any improved lands, shall build, keep and maintain a legal fence on each side of their road through such improved land.

May construct over highways, &c.—to construct cattle guards and fences.

SEC. 4. That section fifteen of said act of incorporation, approved May twenty-third, one thousand eight hundred and fifty-seven, is hereby repealed.

Repeal of former section.

SEC. 5. That the board of directors of said Minnesota and Northwestern Railroad Company may at any time by resolution of said board provide for a change of the number of directors to any number, not less than seven nor more than fifteen, and may prescribe the manner in which the stockholders shall ballot for their election, and shall have power to fill any vacancy that may occur in the said board.

Powers of board of directors.

SEC. 6. That whenever the said Minnesota and Northwestern Railroad Company shall find it necessary or convenient to unite with any other railroad company in the joint construction, purchase or use of any bridge, right of way, depot grounds, tracks or other railroad property, it shall be lawful for them to agree upon the terms of said

When bridges, &c., may become joint stock.

purchase, joint use, or ownership, and any agreements made for that purpose may define the rights of the respective parties, and [when] duly filed or recorded in the office of the secretary of state, shall be notice to all persons, and copies of such agreement, duly authenticated, shall be evidence in all courts and places.

SEC. 7. *And be it further enacted:* That the said Minnesota and Northwestern Railroad Company shall have the power to create and issue in such manner and on such terms as it may deem expedient, one or more classes of special or preferred stock, and to make such agreements as it may deem proper with the holders of any such special or preferred 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 said 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 may be provided against any future act of said company or of any of its general liabilities. And the said company may make such arrangements as it may deem proper with the holders of any such special stock as to the administration of the portion of said railroad to which it may pertain.

May create special or preferred stock—for what purpose.

When act to take effect.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved March 7, 1870.