

CHAPTER 47.

An Act to Incorporate the Minnesota and North-Western Railroad Company.

March 4, 1854.

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Be it enacted by the Legislative Assembly of the Territory of Minnesota: That Robert Schuyler, William P. Burrall, George L. Schuyler, Morris Ketchum, Edward Bement, R. B. Mason, George W. Billings, of the city of New York; Erastus Corning, of the city of Albany; John M. Forbes, Curtus B. Raymond and John Gardner, of the city of Boston; Wyman B. S. Moore, of the city of Bangor, Maine; and Frederic S. Jesup, of the city of Dubuque, Iowa; and Franklin Steele, Charles W. Borup, Orange Walker, Alex. Wilkin, Willis A. Gorman, Alex. Ramsey, James Stinson and J. Travis Rosser of the Territory of Minnesota, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be a body politic and corporate, by the name and style of the "Minnesota and North 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 powers, 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.

Sec. 2. That the corporators specifically named in the preceding section, shall meet in the city of New York, at the room of the Chamber of Commerce, in the Merchants' Exchange, on the next first Tuesday in a month succeeding that in which this act shall be passed, which said time of meeting shall be not less than thirty days nor more than sixty days after the passage of said act. And it shall be the duty of said corporators, at their first meeting, to determine whether or not they accept the charter, and if the same be accepted, to give notice immediately of such acceptance to the Governor of the Territory of Minnesota, by certificate to that effect, signed by the corporators present, but not under seal, properly addressed and deposited in the Post Office in the city of New York. It shall also be the duty of the corporators, at their first meeting, to make such arrangements as may be proper and necessary, for future meetings, for the organization of the company, and the issue of capital stock.

Sec. 3. It shall be the duty of the above named corporators within sixty days after the acceptance of this charter, to cause to be

Corporators' names.

Where and when to meet.

When to open books.

opened at some designated place in the city of New York and in the city of St. Paul in this Territory, books for subscriptions to so much of the capital stock of said company as they may deem proper, giving twenty days notice thereof in one or more public newspapers printed in the city of New York and in the city of St. Paul, aforesaid; and after a sum not less than one million of dollars of the capital stock of said company shall have been subscribed and an instalment of not less than ten per cent. paid upon each share, then the subscribers shall become corporators of said company, and shall within thirty days thereafter, proceed to elect a board of directors, which shall consist of not less than twelve stockholders, citizens of the United States of America, and three of them shall reside in the Territory, or future State, of Minnesota: and said 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.

All powers to be vested in corporators.

SEC. 4. From and after the organization of the said board of directors, all the corporate powers of said company shall be vested in, and controlled and exercised by said board of directors, and such officers and agents as they shall appoint; three of whom shall hold the office of director for one year, three others for two years, three others for three years, and the remaining three for four years; the time which each of the first board of directors shall hold his term of office to be determined by lot, within thirty days, after the first organization of said board. At the expiration of the term of one year from the organization of said board, and every succeeding year thereafter, there shall be chosen three directors from among the stockholders of said company, due notice of such election having been first given by the Board of Directors, to supply the vacancies of those who go out, and each director shall continue in office until his successor is elected and assumes the trust conferred on him. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining; such appointees to continue in office until the next regular election of directors, but no person shall be so elected, who shall not have been openly nominated at a meeting of the directors, at least one week before the time appointed for such election. Other officers, agents and servants, whether members of the board or otherwise, shall be entirely subject to the control of the board. In every election of directors, or for any other purpose, each share of capital stock shall be entitled to one vote, to be given in person or by proxy; a majority of the board of directors shall constitute a quorum for the transaction of business.

Directors to make by-laws, &c.

SEC. 5. The said directors shall have power to make, ordain and establish, all such by-laws, rules and regulations, as may be deemed expedient and necessary to fulfil the 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 shall have the force and effect of law: *Provided*, That the same be not repugnant to the constitution and laws of the United States, or repugnant to the laws of the Territory, or future State, of Minnesota, or to this act. 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 by their resolutions direct and determine; and to levy and collect the same, for the use of the

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 shall be exclusively within the control of said board of directors, and in conformity to such rules and regulations as they shall from time to time determine. Said board of directors may have power to hold its meetings in the city of New York, and to order and hold all elections for directors in said city.

Sec. 6. The capital stock of said corporation shall be ten millions of dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places, as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper, and on refusal or neglect on the part of the stockholders or any of them, to make payments on the requisition of the board of directors, the shares of such delinquent may, after thirty days' public notice, be sold at public auction, under such rules as the said board of directors may adopt; the surplus money, if any remains after deducting payments due, with the interest and necessary costs of sale, to be paid to such delinquent stockholders; books for subscription to stock shall be opened by the board of directors in the city of New York, and in the city of St. Paul, and may be opened in the city of London, from time to time, as said directors may order.

Capital stock.

Sec. 7. The said corporation is hereby authorized and empowered, to survey, locate, construct, complete, alter, maintain and operate as a railroad, with one or more tracts or lines of rails, from a point on the North-West shore of Lake Superior in Minnesota Territory, north of the St. Louis River, opposite the entrance of the Left Hand River into Lake Superior; and near the mouth of the St. Louis River, Minnesota, on Lake Superior, by way of St. Anthony and St. Paul, Minnesota, and cross the Mississippi at St. Paul to such point on the northern boundary line of the State of Iowa, as the board of directors may designate; which point shall be selected with reference to the best route to the city of Dubuque. *Provided*, That such location shall conform in all respects, to such route as may be designated in any act of Congress granting lands for the construction of the said railroad.

Location of road.

Sec. 8. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, by paying therefor in the manner hereinafter provided, land not exceeding two hundred feet in width, through its entire length, may enter upon and take possession of and use all and singular said lands, two hundred feet in width and all streams, minerals and materials of every kind thereon, for the location of depots and stopping stations, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoilbanks, turnouts, engine houses, shops and other buildings, necessary for the construction, completing, altering, maintaining preserving and complete operation of said road. All such lands, waters, minerals, materials and privileges belonging, or which may hereafter belong to the Territory or future State of Minnesota, on and within said two hundred feet in width, are hereby granted to said corporation,

Right of way.

for said purposes and for no other; and for the purpose of aiding the said company in the construction and maintaining the said railroad, it is further enacted that any lands that may be granted to the said Territory to aid in the construction of the said railroad, shall be and the same are hereby granted in fee simple, absolute, without any further act or deed, and the Governor of this Territory or future State of Minnesota, is hereby authorized and directed, in the name and on behalf of said Territory or State, after the said grant of land shall have been made by the United States to said Territory, to execute and deliver to said company such further deed or assurance of the transfer of said property, as said company may require to vest in them a perfect title to the same. *Provided, however,* That such lands shall be taken and held upon such terms and conditions as may be prescribed by the act of Congress granting the same. *Provided, also,* Whenever the net earnings of said Road shall exceed twenty per cent. on the amount of capital actually expended by said company in the construction and furnishing of said road and appurtenances, said corporation shall pay semi-annually to the Treasurer of the Territory or future State of Minnesota, and take his receipt for the same, seven per cent. of the said net earnings of said railroad.

Lands may be taken.

Commissioners appointed—their duties.

SEC. 9. Said company may take such lands for the construction of said road as may be deemed requisite by said corporation, but unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, proper compensation for the land so taken, shall be made, which shall be ascertained and determined in the manner following: The said party or parties interested may present to the circuit, or district, or county court of the circuit or district, or county, where said lands or real estate proposed to be taken shall lie, a petition signed by its attorney, or agent, describing with convenient accuracy and certainty, by map or otherwise, the lands or real estate so required to be taken as aforesaid, setting forth the name and residence of each owner or other person interested therein, as owner, lessee, incumbrancer, as far as known to such attorney or agent, or appearing of record and praying the appointment of commissioners, to ascertain the compensation to be made such owners and others interested, for the taking or injuriously affecting such land or real estate as aforesaid. The court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of commissioners of appraisement between said corporation and the owners and persons interested in such lands and real estate, had been given at least ten days previously to such owners personally, or to their agent or attorney, at their residence or on the premises, or by publication thereof for four weeks previous to such application, in any newspaper, printed in the county in which said lands or real estate may be, or if no newspaper be printed in said county, in a newspaper printed at the Capitol of this Territory and also in a newspaper published at the shortest distance within said Territory or State from the place where the land lies; such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county known to such agent or attorney, whereat such notice could be delivered as aforesaid. The court may adjourn the proceedings from time to time, it may direct any future notice thereof to be given that may seem proper, it shall take proofs and allegations of all parties interested touching the regularity of the proceedings, and shall by an entry in its min-

utes, appoint three competent and disinterested persons who shall be free holders of said county, commissioners to ascertain such compensation as aforesaid, specifying in such entry a time and place for the first meeting of such commissioners. The said commissioners before entering upon the duties of their office, shall take the oath required by the laws of this Territory or the future State of Minnesota, and any one of them may administer oaths to witnesses produced before them, and may adjourn from time to time. Whenever they shall meet to hear proofs and allegations, unless by appointment of the court, or pursuant to adjournment, they shall cause ten days previous notice of such meetings to be given to the said owners or parties interested, or their attorney, or agent, and may, each of them issue subpoenas, and compel witnesses to appear and testify; they shall hear the proofs and allegations of the parties, and any three or more of them, after reviewing the premises without fear or favor, or partiality, ascertain and certify the compensation proper to be made to the said owners and parties interested, for the lands or real estate to be taken, as well as all damages accruing to the owner of the lands and real estate aforesaid, taken in consequence of the condemnation of the same, or injuriously affected as aforesaid, may in their discretion assess a separate, reasonable sum in favor of such owners and parties interested, or of any person appointed by the court to appear as attorney for them, for costs, expenses and reasonable counsel fees. They, or a majority of them shall make, subscribe and file with the clerk of the county in which such lands or real estate shall lie, a certificate of their said assessment, in which such lands or real estate shall be described by map or otherwise, with convenient accuracy and certainty. The court upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the State treasury, or other place for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands or real estate, in manner aforesaid, such ascertainment of compensation, with the mode of making it, and such payment or deposit of the same compensation as aforesaid, a certified copy of which rule shall be recorded and indexed in the proper recording office, in like manner and with the like effect as if it were a deed of conveyance from the said owners and parties interested, to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee of all the land and real estate, described in said rule, as required to be taken as aforesaid during the continuance of the corporation, by this or any subsequent act, and may take possession of, and hold, and use the same for the purposes of said road, and shall thereupon be discharged from all claims for any damages, by reason of any matter specified in said petition, certificate or rule of said court. If, at any time, after an attempted or actual ascertainment of compensation, under this act or any other act, or any purchase by, or donation to said corporation of any lands for the purposes aforesaid, it shall appear that the titles acquired thereby to all or any part of such lands for the use of said road, or if the title of said corporation shall fail or be deemed defective, the said corporation may proceed anew to perfect such title, by procuring an ascertainment of the compensation proper to be made to any person or persons, whose title, claim or interest in, or lien upon such land, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any

Commissioners
appointed—their
duties.

stage of such new proceedings, or of any proceedings under this act, the court or officer to whom the application shall be made, may by a sale in that behalf made, authorize the said corporation if already in possession, and if not in possession, to take possession of and use such premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against said corporation, on account thereof: *Provided*, such corporation should pay a sufficient sum into court, or, give security to be approved by said court, to pay the compensation in that behalf, when ascertained, and in every case where possession shall be authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said commissioners shall be entitled to receive from said corporation a compensation not exceeding five dollars for each day actually employed by them in the discharge of their duties. Such compensation to be taxed and allowed by the court, and which shall be paid by said corporation. If any commissioners so appointed shall die, be unable, or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the court, the proceedings hereby authorized may be had in the District court of any county where the lands lie, and all motions to the District court shall be made at a general or special term thereof, in said county. The said commissioners shall file the said certificate in the office of the Clerk of the District Court of the county where the lands to be affected may lie, and any clerk shall, when presented with an order from the court for that purpose, transfer a certified copy of the same, and the proceeding connected therewith, to the clerk of any other county in which any portion of the lands to be affected may lie, whenever such clerk shall be so required by said corporation, its agent or attorney.

Funds.

Sec. 10. For the purpose of raising funds from time to time, for the construction and completion of said road and the purchase of iron and other materials, to be used thereon, and for other purposes connected with the construction and completion of said road, said company may issue its bonds in such form and for such amounts and at such rates of interest, payable at such time and places as the said board of directors may by their by-laws direct. The payment of said bonds may be secured by a deed of trust or mortgage of the franchise, lands, road and materials belonging to said company or all or either of them: *Provided*, That the faith of the Territory or future State of Minnesota, shall be in no wise pledged for the redemption of said bonds, and that no banking privileges are hereby granted to said company.

Trespass.

Sec. 11. If any person shall carelessly, wilfully, maliciously, or wantonly delay or obstruct the passage of any carriage on said road, or shall place or cause to be placed any material thereon, or in any way trespass upon, spoil, injure, or destroy said road or any part thereof; or any thing belonging or pertaining thereto, or employed or used in connection with their location, survey, construction or management, all persons committing or aiding and abetting in the commission of such trespass or offence, shall forfeit and pay to the said company treble such damages as shall be proved before any court of competent jurisdiction, and shall be imprisoned until the payment thereof, unless sooner discharged by due proceedings of law, and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offence may be committed, and to pay a fine of not less than thirty, nor more than one thousand

dollars, to the use of the people of the Territory and future State of Minnesota; or may be imprisoned in the penitentiary or jail, for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

Sec. 12. Said corporation may construct their said road over or across any stream of water, water course, road, highway, railroad or canal, not, however, in such a manner as to interrupt or impede the navigation of any navigable stream or highway; and all roads or railroads, laid out subsequently to the completion of any part of the said railroad which may cross or intersect the same, shall be laid out and constructed at the point of intersection in a manner that will do the least damage to said Railroad. Whenever the track of said railroad shall cross a road or highway, such road or highway may be crossed at grades or carried under or over said track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road or highway as may be deemed requisite by said corporation, unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid. Compensation shall be ascertained in the manner in this act provided, and duly made by said corporation to the owners and persons interested in such lands. The same, when so taken or compensation made, to become a part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes: *Provided*, That the present or any subsequent Legislature of the Territory or future State of Minnesota, may authorize any railroad or highway to cross or intersect the said railroad, on such terms as will do the least damage to the said railroad company.

Powers to construct road,

Sec. 13. Every conductor, baggage-master, engineer, brakeman or other servant of such corporation, employed in a passenger train or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office, the initial letters or style of the corporation. No conductor or collector, without such badge, shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office, and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage or property.

Badge of office

Sec. 14. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where said road shall cross any other road and be kept ringing or whistling at intervals until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the Territory or future State of Minnesota, and to be liable for all damages which shall be sustained by any person by reason of such neglect. 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 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!* But this provision shall

Bell to be rung, when.

not apply to streets of cities or villages, unless the corporation be required to put up such boards by the officers having charge of such streets. Said company shall construct and maintain a good substantial board or rail fence five and one-half feet high, along said Railroad, in the line of the lands by this act granted them, and shall construct and maintain cattle guards, wherever the same may be necessary, sufficient to keep cattle, sheep, horses and hogs from and off the track of said Railroad, and shall be liable for all damages sustained by any person by reason of any neglect to keep and maintain such fence and cattle guard in good repair.

Map of road.

SEC. 15. 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 obtained for the use of said road, and file the same in the office of the Secretary of the Territory or of the 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 places aforesaid.

Annual statement to be made to the Governor.

SEC. 16. This act, and all grants herein contained, shall be void, unless said company shall render to the Governor of this Territory, on or before the first day of January of each and every year, a statement in writing verified by the oath of the President and Treasurer of said Railroad Company, exhibiting the amount of capital actually expended by said company in the construction of said road, and the machinery therefor, and appurtenances thereunto belonging, the amount of their receipts, and their expenditures during the year, and unless said board of Directors shall be organized on or before the first day of July 1854, and unless said company shall construct and complete, at least fifty miles of the track of said main road from the point on Lake Superior designated in this act as the starting point for said road within three years after the acceptance of this charter as provided in this act, and the whole of said main road within three years thereafter, and the whole of the track of the said main road shall be laid with a rail not less than sixty pounds per yard, and the engines and rolling stock of said road, shall be made in all respects equal to those on the best description of road in the United States; and unless said company shall construct, complete, and maintain and keep in operation a line of telegraph from Dubuque to St. Paul, upon the route of said road within twenty months after the formation of the first board of directors under this act.

Repeal of all former acts.

SEC. 17. All acts or parts of acts that in any manner conflict with this act or the rights and franchises hereby granted, are hereby repealed. *Provided*, Said company accept this charter in manner and form as provided in section 2; *And provided also*, That nothing herein contained shall be so construed as to repeal or in any wise vitiate any charter for the construction of any Bridge across the Mississippi River; and *Provided further*, That the passage of this act shall not vitiate or render void any Railroad charter heretofore granted by the Legislative Assembly of this Territory.

SEC. 18. This act shall be deemed a public act, and shall be in force from and after its passage.

Sec. 19. In case the persons incorporated by this act shall fail or neglect to accept the provisions of the same, and comply with its conditions within the time and in the manner herein prescribed, then the same may be accepted by any other company which shall be approved of by the Governor, Auditor, and Treasurer of this Territory, who upon complying with the terms and conditions of this act, shall be vested with all the rights, powers and immunities conferred upon the corporators herein named, and shall be subject to all the liabilities in the said act set forth in as full, ample and complete a manner as if their names were inserted as corporators in this act.

Non-acceptance
of charter.

N. C. D. TAYLOR,
Speaker of the House of Representatives.
S. B. OLMSTEAD,
President of the Council.

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

W. A. GORMAN.

SECRETARY'S OFFICE,
Saint Paul, March 30th, 1854. }

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

J. TRAVIS ROSSEB,

Secretary of the Territory of Minnesota.

CHAPTER 48.

An act to incorporate the Minneapolis and Lake Minnetonka Plank Road Company.

March 3, 1854.

SECTION

1. Corporators' names and powers.
2. Route of road—how determined.
3. Capital Stock.
4. Directors—their qualifications.
5. Powers to make by-laws.
6. Who shall receive subscriptions.

SECTION

7. Powers of the company.
8. To take possession of lands.
9. Toll gates—by whom erected.
10. Penalty for injury to the road.
11. Debts and liabilities.
12. Violation of charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Joel Bassett, Francis Morrison, Simeon Stevens, Calvin Tuttle, V. P. Spafford, E. Case, L. C. Barber and David Gorham, and such other persons as shall associate with them, and become stockholders pursuant to the provisions of this act, shall be and hereby are created and made a body corporate and politic, in fact and in name, by the name of "The President and Directors of the Minneapolis and Lake Minnetonka Road Company," and by that name they and their successors shall have perpetual

Corporators'
names—their pow-
ers.