

CHAPTER CLXV.

An Act to Incorporate the Northern Pacific Railroad Company.

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

SECTION 1. That William B. Ogden, Nelson K. Wheeler, Joel H. Johnson, John J. R. Pease, John Bradley, Alex. Ramsey, Jesse M. Stone, Franklin Steele and John R. Irvine, and their associates, successors and assigns be, and they are hereby constituted a body corporate and politic, by the name and style of the Northern Pacific Railroad Company, with perpetual succession, and by that name and style shall be capable in law of taking, purchasing, holding, leasing, selling and conveying real estate and property, whether real, personal or mixed, so far as the same may be necessary for the purposes hereinafter mentioned, and in their corporate name may sue and be sued, plead and be impleaded, and to have a common seal which they may alter or renew at pleasure, and may have and exercise all powers, rights, privileges and immunities, which are, or may be necessary to carry into effect the purposes and objects of this act.

CAPITAL STOCK SEC. 2. The capital stock of said Corporation shall be five millions of dollars, and shall be divided into shares of one hundred dollars each; five dollars of each share shall be paid at the time of subscribing.

OPEN BOOKS SEC. 3. The above named persons or a majority of them, are hereby authorized to open books for receiving subscriptions to the capital stock of said Company, which books may be opened at the City of St. Paul, in

the Territory of Minnesota, at Chicago, in the county of Cook, in the State of Illinois, and at the city of New York, within nine months from the passage of this act, or at the city of St. Paul only, if thought advisable, at such places in the cities aforesaid, as may be deemed expedient, by giving thirty days notice in some one of the newspapers published in St. Paul, Chicago and New York aforesaid, of the time and places when said books will be opened, and which said books shall be kept open thirty days, or until the sum of three hundred thousand dollars of the capital stock of said Company shall be subscribed.

SEC. 4. As soon as the aforesaid sum of three hundred thousand dollars to the capital stock of said Company shall have been subscribed, the above named persons or the same number thereof, as shall have given the notice as above required, shall give like notice for the meeting of stockholders, to choose Directors, at some time, at least thirty days thereafter, and at some one of the cities above named and if at such time and place the holders of one-half or more of said stock shall attend either in person or by lawful proxy, they shall proceed to choose from the stockholders, by ballot, fifteen Directors; Provided, that at least one Director shall be a resident citizen of Minnesota, each share of capital stock entitling the owner to one vote, and at such election the persons named in the first section of this act, or those appointed by them, (which power is hereby conferred upon them) or any three of them, if no more be present, shall be Inspectors of said election, and shall certify in writing, signed by them or a majority of them, what persons are elected Directors; and if two or more have an equal number of votes, such Inspectors shall determine by lot which of them shall be Directors to complete the number required, and shall certify the same in like manner; and such Inspectors shall appoint the time and place of holding the first meeting of Directors, at which meeting a majority of Directors so chosen, shall be competent to transact all business of the Company; and hereafter all elections for Directors shall be made annually, at such time and place as may be determined upon and designated by the Board. The said Directors at the first meeting thereof, shall elect one of their number President, and shall appoint a Secretary, Treasurer and such Engineers and other officers as they may think necessary, and shall fix their compensation for services to be rendered, and may require adequate security for the performance of their respective trusts.

Election of Directors

SEC. 5. The Directors may receive payment to the subscriptions to the capital stock, at such time, in such proportion, not exceeding twenty-five per cent. at any one instalment, under such conditions as they shall deem fit, under the penalty of the forfeiture of all previous payments thereon, or otherwise; Provided, they shall never require the payment to be made at any place, out of the counties through which said road shall pass.

Payment of subscriptions

SEC. 6. The said Corporation are hereby authorized and empowered to cause such examination or surveys to be made as shall be necessary to ascertain the most advantageous route whereon to construct a Railroad, and shall cause an estimate to be made of the probable cost thereof, for each mile separately.

Make surveys

SEC. 7. The said Corporation shall commence the Railroad hereby contemplated at some convenient point on the St. Croix Lake or river, upon the line between the State of Wisconsin, and Territory of Minnesota, and shall run from thence upon such line as they may fix and determine, to the cities of Stillwater and St. Paul, in said Territory; thence to St. Anthony on the Mississippi river; thence on the most feasible route to the Western bounds of said Territory, at such point as may be deemed

Where to commence road

most expedient by said Company, with power to build a branch to Red River, at such point as may be deemed advisable.

Directors to
make rules

SEC. 8. The Directors of said Company shall have power to make all needful rules and regulations and by-laws, touching the business of said Company, and to determine the number of tracks and railways upon said road, and the width thereof, and the description of carriages which may be used thereon, to regulate the amount of tolls and the manner of collecting the same for such transportation, and to fix the penalties for the breach of any such rules, regulations or by-laws; and to direct the mode and condition of transferring the stocks of said Company, and penalties provided for by the said by-laws, may be sued for by any person authorized thereby, in the name of said Company, and recover in an action of debt, before any Court having jurisdiction of the amount, and the said Company may erect depot houses, and such other buildings and fixtures as the accommodation of those using said road may require.

Construct across
highways, &c

SEC. 9. The said Company may construct the said Railroad across any public or private road, highway, stream of water or water-course, if the same shall be necessary; but the said Company shall restore such road, highway, stream of water or water course, to its former state, or in a sufficient manner so as not to impair the usefulness of said road, highway, water or water course, to the owner or to the public.

Right to enter
upon lands

SEC. 10. The said Company shall have the right to enter upon any lands to survey and lay down said road, not exceeding one hundred feet in width, except in cases where a borrowing pit or waste bank is necessary for the construction thereof, and whenever any lands or material shall be required for the construction of said road, and the same shall not be given or granted to said Company, and the said Company and the owner or owners of said land cannot agree as to the compensation to be paid therefor, the person or persons claiming compensation as aforesaid, or if the owner or owners thereof are minors, insane persons or married women, the guardian or guardians of such minor or minors and insane person, and the husband of such married women, may select for themselves an arbitrator and the Company shall select an arbitrator, and the two thus selected shall choose a third, who shall be sworn and paid by the Company as arbitrators between the parties, and they shall after an examination of the premises, and hearing the proofs and allegations between the parties, render copies of their award, in writing, to each of the parties, from which award either party may appeal to a Court of competent jurisdiction in the county where the land lies, who shall hear and determine the case according to the rights and equities of the parties, and whose decision shall be final; the said damage to be paid by the Company by depositing the amount with the Clerk of the Court in which the case is tried, or by paying the same to the husband or guardian aforesaid.

Fix compensa-
tion

SEC. 11. That when said Company and persons owning land as aforesaid shall not agree to arbitrate the question of damages and compensation as aforesaid, the said Company shall have the power to condemn the land so wanted by them by filing a petition in the Circuit or District Court in the county where the land lies, in term time or vacation, and giving the persons interested in the property required reasonable notice thereof in writing of the time and place of making the application herein provided for; the petitioner in person or by attorney may apply to the Judge of said Court or to the Judge of the County Court to appoint Commissioners to fix the compensation to be made to the parties interested as aforesaid for the right of way over or across said land, and for land required for any of the other

purposes herein expressed, as well to assess the damages which may result from the construction and use of the road or other contemplated works. Upon the hearing of which application, and each of the parties notified as aforesaid as well as those not notified, who may appear, the Judge shall select and appoint three disinterested persons of the County Commissioners to fix compensation and assess the damages, according to the prayer of the petition, and, also, to fix the time of their first meeting. And upon notices given as aforesaid from time to time, or the appearance of parties without notice, the same or other Commissioners shall be appointed to act with reference to parties, as they are notified or appear as aforesaid, until action shall be had with reference to all parties and matters named in the petition. Provided, that reasonable notice of the time and place of making application for appointment of Commissioners shall be five days.

Manner of assessing value

SEC. 12. Notices of the filing of petitions and making applications for the appointment of Commissioners in respect to land owned in whole or in part by infants, shall be served on the guardian, or on the persons with whom they reside, and with respect to lands owned as aforesaid by idiots, lunatics, or distracted persons, on their conservator, if they have any, and if not, then on the person under whose care or charge they may be found; and with respect to lands owned by "femes covert" on the husband as well as on the owner, and notices to non-residents of the county and persons whose names are unknown shall be published in some newspaper in such county or the one nearest thereto for three weeks in succession before the day of making the application aforesaid, and notices so served or published shall be sufficient to authorize the appointment of Commissioners, and their action thereon; Provided, if such Railroad shall be located on land the property of the Territory, the right of way, not exceeding one hundred feet in width is hereby granted to such Company and also for borrowing pits, waste banks, turn tables, depot houses, and other fixtures necessary for the construction and maintenance of said road.

Notices, on whom served

SEC. 13. Commissioners appointed as aforesaid, shall be sworn before some officer having power to administer oaths "to faithfully and impartially execute the duties required of them according to their best judgment and understanding, and to make all of their estimates and assessments according to law," and upon being sworn as aforesaid they shall meet at the time and place fixed by the Court and proceed without delay upon view and inspection of the premises, as well as upon hearing the allegations and testimony of the parties interested, to fix the compensation to be made to each party or owner of land to be taken and used as the way on which the road shall be constructed and pass, also, for lands used or taken for any other purpose specified in this act, and, also, estimate and assess the damages sustained by any person or persons, by reason of the construction and use of the work specified in the above petition, taking into consideration and estimating the benefits and advantages to the parties resulting from the construction and use of the road.

Commissioners to be sworn

SEC. 14. The Commissioners shall from time to time as they make decisions with reference to lands embraced in their appointment, make reports in writing, stating separately the compensation to be paid for the right of way, over or upon each lot of land, the compensation to be paid for each lot of land required for any other purpose, and the damages allowed to each owner or party by reason of the construction and use of the improvement or works as aforesaid, a copy of each report so made shall be delivered to each of the parties in trust if requested and the original with a copy of the

Report in writing

order of appointment shall be filed with the Clerk of the Court in which the proceeding is had.

Appeals may be taken
 SEC. 15. Upon the making and filing of any report as aforesaid, any party interested may appeal from the decision of the Commissioners to the Circuit or District Court of the county in which the land lies, upon the party entering into bond with good security in double the amount of the award appealed from, payable to the people of the Territory of Minnesota for the use of all parties interested in the condition, in which bond the action or proceeding appealed from shall be recited with conditions for the due and speedy prosecution of the appeal, and that he or they will pay to satisfy the judgment upon the trial thereof that may be rendered in the premises, and in case the decision, estimate or assessment, as the case may be, shall be affirmed or not increased that the appellant will pay the costs of the appeal and of the subsequent proceedings therein if adjudged so to do by the Court, but if no appeal is taken, the decision, estimates and assessments as reported shall be conclusive upon the parties, and the right and title to that part of each lot or parcel of land required as aforesaid in respect to which no compensation is allowed or damages assessed, should vest in the County Corporation or person in whose behalf the proceeding is had with the right to enter upon and use and apply the same according to the prayer of the petition and right of the case, and the right and title to that part of each tract of land required in respect to which compensation is allowed or damages assessed shall vest in the person or corporation petitioning as aforesaid upon the payment of the compensation and damages so fixed or assessed with the right to enter upon and use and apply the same for the purposes stated in the petition.

Payments to whom made
 SEC. 16. 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 femes covert; third, to conservators of insane persons, and a receipt for such payment shall operate as a confirmation of the action of the Commissioners 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 payments 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 parties entitled to money deposited as aforesaid, shall operate in like manner as receipts for money paid to parties as 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.

Appeals how made
 SEC. 17. 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 guardian, and insane persons no conservator, appeals may be taken by the friends of such parties.

Notices, how given
 SEC. 18. Notices to parties of the filing reports of Commissioners shall be given as is required in respect to applications for the appointment of Commissioners and notices of appeals shall be given by the service of summons upon the appellee, and non-residents of the Territory may be notified by publishing a notice thereof in some newspaper in the said Territory for the three weeks successively prior to the return day of the summons aforesaid.

SEC. 19. The entering upon, taking possession of and applying property, with reference to which Commissioners have reported as aforesaid, shall not be hindered, prevented or delayed by the prosecution of any appeal; Provided, the corporation or person interested in the work or any responsible person in their behalf, will execute and file a bond with the clerk of the Court in which the appeal is pending, binding the person executing the same to pay whatever amount may be required by the order or judgment of the Court in said appealed cause, and also, comply with or conform to any rule or order that the Court may make in relation to the matter in controversy.

Appeals not to hinder taking possession

SEC. 20. Appeals shall bring before the Court the question decided upon or reported on by the Commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the said questions shall be submitted to and tried by a Jury as other appeal cases, the Jury to swear well and truly to try the cause and in fixing the compensation or assessing damages they will be governed by the provisions of the law under which this trial is had. The Jury shall find and state the amount, if anything, which shall be paid as compensation for right of way, the amount, if any thing, to be paid for lands required for any other purpose, and the amount, if anything, assessed or allowed as damages, making the verdict conform to the question and facts in the case.

Trials of appeal by Jury.

SEC. 21. Upon verdicts rendered by Juries, judgment shall be entered declaring that upon the payment of compensation and damages, or either, as the case may be, then the right and title to the same for which the compensation is to be made, or on account of which damages are allowed shall vest in the corporation or persons petitioning as aforesaid, with the right to enter upon, use and apply the same for the purpose stated in the petition, or if the verdict is that no compensation shall be made in money or damages allowed in the premises, the like judgment shall be entered, and verdicts and judgments entered as aforesaid shall be final and conclusive between the parties. The costs of all proceedings under the act, except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeals shall be paid as the Court may direct. Any two of the Commissioners may act and execute all the duties required by this act.

Judgment entered.

SEC. 22. The aforesaid Company shall have power to consolidate the capital stock of said company with the Chicago, St. Paul and Fond du Lac Railroad Company, in Wisconsin on the river St. Croix, upon such terms and conditions as the two companies may agree upon, and the two companies when consolidated shall be managed and under the control of the Board of Directors of both companies acting jointly until the first election of directors of said consolidated company, when the stockholders of the 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 shall have all the rights, privileges and franchises conferred on them 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 Secretaries of the States through which said road passes, and also a like copy in the office of the Secretary of Minnesota.

Consolidate with other roads

SEC. 23. The said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its

Borrow money

appendages, and to issue bonds for the payment thereof in the usual form ; such bonds not to exceed in the aggregate at the period of the completion of said road, three-fourths of the whole amount actually expended on said road and its appendages aforesaid ; and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds or other papers, for any liability that it may incur in the construction or equipment of said road.

Grants of land SEC. 24. The fee simple of all lands granted along the line of said road, or otherwise, by the Congress of the United States, for the purpose of aiding in the construction of said road, may be directly granted to said company, and shall be vested in or transferred to said company, and said company is hereby authorized to receive a title thereto, and is hereby empowered to transfer just and proper portion of said lands, from time to time, and to convey in fee simple or otherwise, as soon and as often as five miles of said road shall be constructed and completed, and the track thereof shall be put in running order, and this grant shall not become void, nor this company be dissolved by the non-completion of the entire extent of said road, but shall be good and valid, to all intents and purposes for the parts or portions of said road completed, and the said company shall continue and survive to that extent and no more. Provided, that if any land shall be appropriated for said road by Congress or by any act of the Legislature, provision shall be made by law, for a suitable resulting interest to the Territory or future State, in proportion to the quantity of land granted and the length of the road in the Territory or State.

**Pass over other
railroads** SEC. 25. This company shall have 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 the same with their 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.

**Construct Rail-
road,** SEC. 26. The said company shall commence the construction of said road within two years from the passage of this act, and shall complete the same as fast as the means of the company will admit of, but they shall complete the same from the river St. Croix aforesaid, to St. Paul within four years from the passage of this act.

Carry mail SEC. 27. The said company shall carry and transport the mail of the United States on such terms as may be agreed upon and all such freight and passengers as may be offered, if required so to do, on the terms usual with like railroad companies.

Take effect SEC. 28. This act shall be and remain in force for the full term of fifty years from and after the passage of this act, providing all of the terms and conditions required by this act shall be complied with by said company.

CHARLES GARDNER,

Speaker of the House of Representatives.

JOHN B. BRISBIN, *President of the Council.*

APPROVED—March first, one thousand eight hundred and fifty-six.

W. A. GORMAN.

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

J. TRAVIS ROSSER, *Secretary of Minnesota Territory.*