

Bridge Company, or any other company, or person, to proceed in the erection of the bridge now being constructed over the Ohio river from the city of Cincinnati, Ohio, to the city of Newport, Kentucky, and the approaches thereto, unless the said bridge shall be so constructed that the channel span of four hundred feet, as now located, shall have under said span a clear headway, at low water, of one hundred feet below any point of said channel span, and in such case no draw shall be required in said bridge; all the other spans of said bridge, which cover the Ohio river, to low-water mark, shall have a clear headway of not less than seventy feet above low-water mark, and the other spans of the said bridge, extending to each shore, may be made of less elevation than seventy feet above low-water mark, to accommodate a regular grade for the approaches to said bridge. And when the foregoing requirements shall have been complied with by the said Newport and Cincinnati Bridge Company, the location of said bridge, its structures, and approaches, shall thereupon be deemed to be legalized, and declared to be lawful structures, and shall be recognized and known as a post-route. The plans for changes in such bridge, made necessary by this act, shall be submitted by said company to the Secretary of War for his approval. And, in the event of the bridge company making the changes provided for in this act, it shall be lawful for the said company, after they shall have made the changes in said bridge, and the approaches thereto, as herein provided, to file their bill in equity against the United States in the circuit court of the United States for the southern district of Ohio, and full jurisdiction is hereby conferred upon said court to determine: first, whether the bridge, according to the plans on which it has progressed at the passage of this act, has been constructed so as substantially to comply with the provisions of law relating thereto; and, second, the liability of the United States, if any there be, to the said company by reason of the changes by this act required to be made; and if the said court shall determine that the United States is so liable, and that said bridge was so being built, then the said court shall further ascertain and determine the amount of the actual and necessary cost and expenditures reasonably required to be incurred in making the changes in the said bridge and its approaches as hereby authorized or required, in excess of the cost of building said bridge and approaches, according to the plan proposed, before the changes required by this act to be made. And the said court is hereby further authorized and required to proceed therein to final decree as in other cases in equity. And it shall be lawful for either party to the said suit to appeal from the final decree of the said circuit court, to the Supreme Court of the United States as in other cases, and the Supreme Court shall thereupon proceed to hear and determine the said case and make a final decree therein, and thereupon, if such decree shall be in favor of said company, the Secretary of the Treasury of the United States shall, out of any moneys in the treasury not otherwise appropriated, pay to the said company such sum of money as shall by the said Supreme Court be so decreed to be paid to the said company: *Provided, nevertheless*, That no money shall be paid by the Secretary of the Treasury to the said company until the Supreme Court of the United States, upon appeal taken as aforesaid, shall render a final decree in the case in favor of said company.

Spans of bridge over the Ohio river from Cincinnati to Newport, Ky.;

no draw if, &c.

Bridge, &c. to be a post-route when, &c.

Plan to be approved by Secretary of War. When the bridge company has made the changes, &c. it may file a bill in circuit court.

Court to decide what.

Appeal to the Supreme Court.

If final decree is in favor of the company, the Secretary of the Treasury to pay the amount of the decree. Proviso.

APPROVED, March 3, 1871.

CHAP. CXXII.—*An Act to incorporate the Texas Pacific Railroad Company, and to aid in the Construction of its Road, and for other Purposes.*

March 3, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John C. Fremont, James L. Alcorn, G. M. Dodge, O. C. French, John D. Caldwell, J. J. Noah, A.

Texas Pacific
Railroad Com-
pany incorpo-
rated.
Corporators.

C. Osborne, Timothy Hurley, C. C. Pool, Silas N. Martin, John M. Corse, George E. Wentworth, Philip H. Morgan, J. D. Cameron, Marshal O. Roberts, James L. Hodges, John Ray, W. Vermilye, Enoch L. Faucher, Charles F. Livermore, Joseph H. Oglesby, John Whytock, Daniel Drew, F. S. Davis, W. Orton, A. C. Babcock, Thomas A. Scott, Samuel D. Hoffman, H. Ramsdale, William H. Jackson, R. C. Parsons, Delos W. Emmons, M. A. Southworth, John H. Hall, G. C. Kinzey, W. P. Clark, James Dart, H. Jacobs, L. T. Smith, W. P. Dole, C. A. Weed, A. P. K. Safford, H. McCullough, Charles Jackson, Elisha Dyer, Alfred Anthony, James Hoy, M. W. Benjamin, H. D. Cooke, Joseph R. West, W. S. Huntington, J. M. Tebbetts, C. C. Leondridge, D. D. Porter, M. Woodhull, Hiram Price, M. C. Hunter, W. T. Walters, J. B. Brownlow, T. A. Morris, Owen Tuller, J. H. Ledlie, R. M. Bishop, Samuel Craighead, D. N. Stanton, Augustus H. Whiting, G. L. Johnston, J. W. Goodland, Powell Clayton, Samuel Tate, W. Bolton, H. Robinson, George Maney, O. H. Bynum, M. Burns, J. C. Goodloe, E. G. Barney, Cyrus Busey, J. W. Forney, J. Lockwood, E. M. Davis, N. Patton, W. Flanagan, G. O'Brien, G. P. Buel, G. H. Gidding, J. J. Newell, E. W. Rice, R. M. Shoemaker, Samuel Sloan, S. W. Morton, J. B. Bowman, L. M. Flournoy, J. J. Hinds, G. R. Weeks, J. T. Ludling, B. C. Gilbert, B. D. Williams, Thomas Olcott, G. A. Fosdick, Harry Hays, P. S. Forbes, John T. Sprague, L. R. Marsh, A. W. Beckwith, J. C. Stanton, Cyrus H. Baldwin, A. J. Hamilton, Rush R. Sloan, Silas C. Colgrove, Samuel D. Jones, N. H. Decker, William N. Leet, B. F. Allen, J. B. Chaves, Augustus Kountze, John N. Goodwin, William S. Rosecrans, Michael Hahn, H. C. Warmouth, J. S. Williams, G. M. Spencer, L. J. Higby, W. C. Kimball, and all such persons as shall or may be associated with them, and their successors, are hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Company, and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and use a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to ship's channel, in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the pur[po]ses of this act.

Powers of cor-
poration.

Route of rail-
road and tele-
graph line.

Texas Pacific
Railroad com-
missioners, to
meet in New
York within, &c.

Notice.

Subscription
books for capital
stock.

SEC. 2. That the persons named in the first section of this act shall constitute a board of commissioners, (twenty of whom shall constitute a quorum for the transaction of business,) to be known as the Texas Pacific Railroad commissioners, who shall meet in the city of New York within ninety days after the passage of this act, at a time to be designated in a notice to be signed by the person first named in the list of incorporators and six of his associates, and to be published for two weeks in, at least, one daily newspaper in New York, New Orleans, and Washington; and, when so met, they may cause books to be opened for the subscription of the capital stock of said company, and when twenty thousand shares, amounting to two millions of dollars, shall have been subscribed, and ten per centum actually paid thereon, in money, to the

treasurer, to be elected by said commissioners, who shall give bond for its safe keeping and payment to the treasurer of the company when organized, then it shall be lawful for such subscribers or stockholders, or a majority thereof, to organize said company in accordance with the provisions of this act, and to elect not less than seven, nor more than seventeen directors, a majority of whom shall be necessary to the transaction of business, and who shall hold their offices for one year and until their successors shall be elected and qualified; and the said directors shall immediately proceed to elect a president, vice-president, secretary, and treasurer; the president and vice-president shall be directors. At all elections for directors, each share of stock shall be entitled to one vote, which may be given by the holders in person, or by proxy, who shall also be a shareholder. The directors shall hold their offices for any term not exceeding three years, as may be provided in the by-laws; and the annual meetings of stockholders shall take place as provided for in said by-laws.

Treasurer, bond.
 Company may organize when, &c.
 Directors. Quorum, term of office, &c.
 Officers.
 Proxies.
 Term of office of directors.
 Annual meetings.

SEC. 3. That the capital stock of the Texas Pacific Railroad Company shall be fixed by the board of directors, at a sum not exceeding fifty millions of dollars, in shares of one hundred dollars; and when the amount is so fixed, it shall never be increased except by consent of Congress. Assessments upon said stock shall only be made by a majority vote of the whole number of directors at a regular meeting, which said assessments shall be paid at the expiration of thirty days after a notice given in one newspaper in each of the cities of Washington, Philadelphia, New York, and New Orleans.

Capital stock.
 Shares. Increase.
 Assessments.

SEC. 4. That the said Texas Pacific Railroad Company shall have power and lawful authority to purchase the stock, land grants, franchises, and appurtenances of, and consolidate on such terms as may be agreed upon between the parties, with any railroad company or companies heretofore chartered by congressional, State, or territorial authority, on the route prescribed in the first section of this act; but no such consolidation shall be with any competing through line of railroads to the Pacific Ocean.

The corporation may purchase, &c. and consolidate with any railroad company;
 limitation;

SEC. 5. That the said company shall have power and authority to make running arrangements with any railroad company or companies heretofore chartered, or that may hereafter be chartered by congressional, State, or territorial authority; also to purchase lands, or to accept donations, or grant of lands, or other property, from States or individuals, for the purpose of aiding in carrying out the object of this company.

may make arrangements with other roads, purchase lands, &c.

SEC. 6. That the rights, lands, land grants, franchises, privileges, and appurtenances, and property of every description, belonging to each of the consolidated or purchased railroad company or companies, as herein provided, shall vest in and become absolutely the property of the Texas Pacific Railroad Company: *Provided*, That in all contracts made and entered into by said company with any and all other railroad company or companies, to perfect such aforesaid consolidation or purchase, the indebtedness or other legal obligations of said company or companies shall be assumed by the said Texas Pacific Railroad Company as may be agreed upon, and no such consolidation or purchase shall impair any lien which may exist on any of the railroads so consolidated or purchased; but said company shall not assume the debts or obligations of any company with which it may consolidate or purchase as aforesaid, to an amount greater than the cash value of the assets received from the same.

Rights, franchises, &c. of the purchased railroads to vest in the Texas Pacific Railroad Company.
 Obligations of other companies to be assumed.

Liens not impaired.
 Limit to amount of debts, &c. to be assumed.

SEC. 7. That the said Texas Pacific Railroad Company shall have power to make and enforce rules and by-laws for the election of its officers and the government and management of the business of the company; and to do and perform all needful and proper things to be done and performed to promote the objects of the company hereby incor-

Rules and by-laws.

porated, not inconsistent with the laws of the United States and the provisions of this charter.

Right of way granted through the public lands, and authority to take materials from adjacent lands.

Extent of grant.

SEC. 8. That the right of way through the public lands be, and the same is hereby, granted to the said company for the construction of the said railroad and telegraph line, and the right, power, and authority is hereby given to said company to take, from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands; and there is also hereby granted to said company grounds for stations, buildings, workshops, wharves, switches, side-tracks, turn-tables, water-stations, and such other structures as may be necessary for said railroad, not exceeding forty acres of land at any one point.

Alternate sections of public lands granted to the corporation;

in the Territories;
in California.

If any of the lands have been disposed of, other lands to be given.

Provision as to lands near the Mexican boundary.

"Mineral" not to include iron or coal.
Grant in California not to exceed, &c.

"Ship's channel" to mean what.

Lands granted and not sold in three years, &c. to be subject to settlement and pre-emption.

Right of way over lands of private persons to be secured according to law of State, &c.

SEC. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for, there is hereby granted to the said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have *not have* been sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of said lands shall have been sold, reserved, occupied, or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections first above named, and not including the reserved numbers. If, in the too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled cannot be selected immediately on the line of said railroad, or in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest the line of said railroad may be selected as above provided; and the word "mineral," where it occurs in this act, shall not be held to include iron or coal: *Provided, however,* That no public lands are hereby granted within the State of California further than twenty miles on each side of said road, except to make up deficiencies as aforesaid, and then not to exceed twenty miles from the lands originally granted. The term "ship's channel," as used in this bill, shall not be construed as conveying any greater right to said company to the water front of San Diego bay than it may acquire by gift, grant, purchase, or otherwise, except the right of way, as herein granted: *And provided further,* That all such lands, so granted by this section to said company, which shall not be sold, or otherwise disposed of, as provided in this act, within three years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands, at a price to be fixed by and paid to said company, not exceeding an average of two dollars and fifty cents per acre for all the lands herein granted.

SEC. 10. That when the route of said railroad and telegraph line shall pass through the lands of private persons, or where it may be necessary for said railroad company to take any lands belonging to private persons for any of the purposes herein mentioned necessary to said road, such right of way through or title to such lands shall be secured in accordance with the laws of the State or Territory in which they may be situated.

SEC. 11. That the Texas Pacific Railroad Company shall have power and authority to issue two kinds of bonds, secured by mortgage, namely: first, construction bonds; second, land bonds. Construction bonds shall be secured by mortgage, first, on all or any portion of the franchises, road-bed, or track of said railroad, and all the appurtenances thereto belonging, when constructed or in the course of construction, from a point at or near Marshall, to ship's channel, in the bay of San Diego, in the State of California, as aforesaid. Land bonds shall be secured by mortgage, first, on all or any portion of the lands hereby granted in aid of the construction of said railroad as is provided for in this act; second, on lands acquired by any arrangement or purchase or terms of consolidation with any railroad company or companies to whom grants of lands may have been made, or may hereafter be made, by any congressional, State, or territorial authority, or who may have purchased the same previous to any such arrangement or consolidation: *Provided*, That all the mortgages made and executed by said railroad company shall be filed and recorded in the Department of the Interior, which shall be a sufficient evidence of their legal execution, and shall confer all the rights and property of said company as therein expressed: *And provided also*, That the proceeds of the sales of the aforesaid construction and land bonds shall be applied only in the construction, operation, and equipment of the contemplated railroad line: *And provided further*, That said mortgage shall in no wise impair or affect any lien existing on the property of said company or companies at or before the time of such consolidation.

Corporation may issue construction bonds, secured by mortgage of road;

land bonds secured by mortgage of its lands.

All its mortgages to be filed, &c. in the Department of the Interior.

Proceeds of sales of bonds to apply only to what.

Existing liens not affected.

SEC. 12. That whenever the said company shall complete the first and each succeeding section of twenty consecutive miles of said railroad and put it in running order as a first-class road in all its appointments, it shall be the duty of the Secretary of the Interior to cause patents to be issued conveying to said company the number of sections of land opposite to and coterminous with said completed road to which it shall be entitled for each section so completed. Said company, within two years after the passage of this act, shall designate the general route of its said road, as near as may be, and shall file a map of the same in the Department of the Interior; and when the map is so filed, the Secretary of the Interior, immediately thereafter, shall cause the lands within forty miles on each side of said designated route within the Territories, and twenty miles within the State of California, to be withdrawn from pre-emption, private entry, and sale: *Provided, however*, That the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, "An Act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, and the amendments thereto, shall be, and the same are hereby, extended to all other lands of the United States on the line of said road when surveyed, except those hereby granted to said company.

Patents to issue for lands as twenty-mile sections of road are completed.

General route to be designated in two years, and map filed.

Lands to be withdrawn from pre-emption, &c.

Provisions of pre-emption and homestead acts extended to, &c. 1841, ch. 16, § 10. Vol. v. p. 455. 1862, ch. 75. Vol. xii. p. 392.

SEC. 13. That the president of the company shall annually, by the first day of July, make a report and file it with the Secretary of the Interior, which report shall be under oath, exhibiting the financial situation of the company, the amount of money received and expended, and the number of miles of road constructed each year; and further, the names and residences of the stockholders, of the directors, and of all other officers of the company, the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received from passengers and for freight, respectively, on the road, a statement of the expenses of said road and its fixtures, and a true statement of the indebtedness of said company and the various kinds thereof.

Annual report, when and where to be made, and to state what.

SEC. 14. That the certificates of the capital stock must be signed by
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Certificates of capital stock, how signed, &c.;

bonds and mortgages.

Par value and interest in gold.

Limitation as to bonds.

Other railroads may connect.

No discrimination against.

Rates not to exceed, &c.

Iron or steel rails from American ore.

Corporation to commence construction of road at San Diego and Marshall.

Rate of construction.

Time for completion.

Congress may complete if, &c.

Commissioner to examine road.

Patents to issue.

Railroad declared to be a

and shall contain an extract from the proceedings of the board of directors fixing the amount thereof, as well as from this act, authorizing such issue. All the bonds and mortgages issued by said company must be signed by the president and secretary, and attested by the seal of said company, and shall contain an extract from the law authorizing them to be issued. The face value of said bonds shall be one thousand dollars in gold, and shall be redeemable at such times, and to bear such rate of interest, payable semi-annually in gold, as may be determined by the directors. The total value of the construction bonds to be issued shall not exceed thirty thousand dollars per mile of said railroad, and the total face value of the land bonds shall not exceed two dollars and fifty cents per acre for all lands mortgaged; the total amount of each to be determined by the board of directors.

SEC. 15. That all railroads constructed, or that may be hereafter constructed, to intersect said Texas Pacific railroad, shall have a right to connect with that line; that no discrimination as regards charges for freight or passengers, or in any other matter, shall be made by said Texas Pacific Railroad Company against any of the said connecting roads; but that the same charges per mile as to passengers, and per ton per mile as to freight, passing from the said Texas Pacific railroad over any of said connecting roads, or passing from any of said connecting roads over any part of said Texas Pacific railroad, shall be made by said company as they make for freight and passengers over their own road: *Provided also*, That said connecting roads shall reciprocate said right of connection and equality of charges with said Texas Pacific railroad: *And provided further*, That the rates charged for carrying passengers and freight, per mile, shall not exceed the prices which may be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific railroads.

SEC. 16. That said road shall be constructed of iron or steel rails manufactured from American ore, except such as may have heretofore been contracted for by any railroad company which may be purchased or consolidated with by the company hereby incorporated, as provided by this act.

SEC. 17. That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall, Texas, as hereinbefore described, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of this act; and to so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion.

SEC. 18. That the President of the United States, upon the completion of the first section of twenty miles, shall appoint one commissioner, whose duty it shall be to examine the various sections of twenty miles as they shall be completed, and report thereon to him in writing; and if, from such report, he be satisfied that said company has fully completed each section of its road, as in this act provided, he shall direct the Secretary of the Interior to issue patents to said company for the lands it is entitled to under this act, as fast as each section of said road is completed.

SEC. 19. That the Texas Pacific Railroad Company shall be, and it is hereby, declared to be a military and post road; and for the purpose of

insuring the carrying the mails, troops, munitions of war, supplies, and stores of the United States, no act of the company nor any law of any State or Territory shall impede, delay, or prevent the said company from performing its obligations to the United States in that regard: *Provided*, That said road shall be subject to the use of the United States for postal, military, and all other governmental services, at fair and reasonable rates of compensation, not to exceed the price paid by private parties for the same kind of service, and the government shall at all times have the preference in the use of the same for the purpose aforesaid.

military and post road.

Transportation for the United States not to be impeded.

Rate of compensation.

SEC. 20. That it shall not be lawful for any of the directors, either in their individual capacity or as members of an incorporated or joint-stock company, to make any contracts or agreements with the said Texas Pacific Railroad Company for the construction, equipment, or running of its road, or to have any interest therein; and all such contracts or agreements are hereby declared null and void, and all money or property received under such contracts or agreements may be recovered back for the benefit of the company by any stockholder.

No director to contract for constructing, &c. any part of the road.

SEC. 21. That any railroad company whose route lies across the route of the Texas Pacific railroad may cross the same, and for the purpose of crossing shall have the right to acquire at the double minimum price all lands, whether of the United States or granted by this act, which shall be needed for a right of way two hundred feet wide through said lands, and for depots, stations, side-tracks, and other needful purposes, not exceeding for such purposes forty acres at any one station.

Railroad companies may cross this road; may have lands, &c.

SEC. 22. That the New Orleans, Baton Rouge, and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect by the most eligible route to be selected by said company with the said Texas Pacific railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public lands per mile, in the State of Louisiana, as are by this act granted in the State of California, to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and pre-emption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: *Provided*, That said company shall complete the whole of said road within five years from the passage of this act.

New Orleans, Baton Rouge, and Vicksburg Railroad Co. may connect with this road and have right of way.

Grant of lands to aid in its construction.

Lands to be withdrawn from market, &c.

Road when to be completed.

SEC. 23. That, for the purpose of connecting the Texas Pacific railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

Southern Pacific Railroad Company may construct a road to connect the Texas Pacific Railroad with San Francisco.

Proviso.

APPROVED, March 3, 1871.