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May 30, 1888.

CHAP. 337.—An act to grant to the Fort Smith and El Paso Railway Company a right of way through the Indian Territory, and for other purposes.

Fort Smith and El Paso Railway Company may construct railway, telegraph, and telephone line through Indian Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Fort Smith and El Paso Railway Company, a corporation created under and by virtue of the laws of the State of Arkansas, be, and the same is hereby, invested and empowered with the right of locating, constructing, owning, equipping, operating, using, and maintaining a railway, telegraph, and telephone line through the Indian Territory;

Location.

said line to begin at a point at or near the city of Fort Smith, on the western boundary of the State of Arkansas, running thence by the most practicable route to a crossing of the Missouri, Kansas and Texas Railroad at a point at or near the town of Savanna, in the Choctaw Nation; thence in a westerly direction to a point at or near Cherokee Town, in the Chickasaw Nation; and thence westerly to a point at or near the southwest corner of the Indian Territory; with the right to construct, use, and maintain such tracks, turnouts, sidings, and extensions hereinafter mentioned as such company may deem necessary and to their interest to construct along, upon the right of way hereby granted; said line to be located in sections of twenty-five miles each, as working sections; and before work is begun on any such section the definite line and location thereof is to be submitted to and approved by the Secretary of the Interior.

Dimension.

SEC. 2. That said corporation is authorized to take and use for all purposes of a railway, and for no other purpose, a right of way one hundred feet in width through said Indian Territory, and to take and use a strip of land two hundred feet in width, with a length of three

Stations.

thousand feet, in addition to right of way, for stations for every ten miles of road, with the right to use such additional ground where there are heavy cuts or fills as may be necessary for the construction and maintenance of the road-bed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be

Provisos.

included in said cut or fill: *Provided*, That no more than said addition of land shall be taken for any one station: *Provided further*, That

To be used for railroad, etc., purposes only.

no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railroad, telegraph, and telephone lines; and when any portion thereof shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall have been taken.

Damages.

SEC. 3. That before said railway shall be constructed through any lands held by individual occupants according to the laws, customs, and usages of any of the Indian nations or tribes through which it may be constructed, full compensation shall be made to such occupants for all property to be taken or damage done by reason of the construction of such railway. In case of failure to make amicable settlement with any occupant, such compensation shall be determined

Appraisement. Referees.

by the appraisement of three disinterested referees, to be appointed one (who shall act as chairman) by the President of the United States, one by the chief of the nation to which said occupant belongs, and one by said railroad company, who, before entering upon the duties of their appointment, shall take and subscribe, before a district judge, clerk of a district court, or United States commissioner, an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to and filed with the Secretary of the Interior within sixty days from the completion thereof; and a majority of said

Substitution.

referees shall be competent to act in case of the absence of a member, after due notice. And upon the failure of either party to make such appointment within thirty days after the appointment made by the President, the vacancy shall be filled by the district

judge of the court held at Fort Smith, Arkansas, or at the district court for the northern district of Texas, or at the district court of Kansas upon the application of the other party. The chairman of said board shall appoint the time and place for all hearings within the nation to which such occupant belongs. Each of said referees shall receive for his services the sum of four dollars per day for each day they are engaged in the trial of any case submitted to them under this act, with mileage at five cents per mile. Witnesses shall receive the usual fees allowed by the courts of said nations. Costs, including compensation of the referees, shall be made a part of the award, and be paid by such railroad company. In case the referees can not agree, then any two of them are authorized to make the award. Either party being dissatisfied with the finding of the referees shall have the right, within ninety days after the making of the award and notice of the same, to appeal by original petition to the district court held at Fort Smith, Arkansas, or the district court for the northern district of Texas, or the district court of Kansas, which court shall have jurisdiction to hear and determine the subject-matter of said petition, according to the laws of the State in which the same shall be heard provided for determining the damage when property is taken for railroad purposes. When proceedings have been commenced in court, the railway company shall pay double the amount of the award into court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railroad.

Compensation.

Witness fees.

Costs.

Appeal.

On deposit of double the award work may begin.

SEC. 4. That said railroad company shall not charge the inhabitants of said Territory a greater rate of freight than the rate authorized by the laws of the States of Texas and Arkansas for services or transportation of the same kind: *Provided*, That passenger rates on said railway shall not exceed three cents per mile. Congress hereby reserves the right to regulate the charges for freight and passengers on said railway and messages on said telegraph and telephone lines, until a State government or governments shall exist in said Territory within the limits of which said railway, or a part thereof, shall be located; and then such State government or governments shall be authorized to fix and regulate the cost of transportation of persons and freights within their respective limits by said railway; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railway or said company whenever such transportation shall extend from one State into another, or shall extend into more than one State: *Provided, however*, That the rate of such transportation of passengers, local or interstate, shall not exceed the rate above expressed: *And provided further*, That said railway company shall carry the mail at such prices as Congress may by law provide; and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

Freight rates.

Provisos.
Passenger rates.

Right to regulate reserved.

Maximum.

Mails.

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said line may be located, the sum of fifty dollars, in addition to compensation provided for in this act for property taken and damages done to individual occupants by the construction of the railway, for each mile of railway that it may construct in said Territory, said payments to be made in installments of one thousand two hundred and fifty dollars as each working section of twenty-five miles of road is graded: *Provided*, That if the general council of either of the nations or tribes through whose land said railway may be located shall, within four months after the filing of maps of definite location as set forth in section six of this act, dissent from the allowances provided for in this section, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this act shall be determined as provided in section three for the determination of the compensation to be

Additional compensation to tribes.

Provisos.
Appeal of general council as to allowance.

paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: *Provided further*, That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe shall be in lieu of the compensation that said nation or tribe would be entitled to receive under the foregoing provision. Said company shall also pay, so long as said Territory is owned and occupied by the Indians, to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in the said Territory. The money paid to the Secretary of the Interior under the provisions of this act shall be apportioned by him, in accordance with the laws and treaties now in force among the different nations and tribes, according to the number of miles of railway that may be constructed by said railway company through their lands: *Provided*, That Congress shall have the right, so long as said lands are occupied and possessed by said nations and tribes, to impose such additional taxes upon said railroad as it may deem just and proper for their benefit; and any Territory or State hereafter formed through which said railway shall have been established may exercise the like power as to such part of said railway as may lie within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this act.

Award to be in lieu of compensation.

Annual rental.

Taxation.

Maps to be filed.

SEC. 6. That said company shall cause maps showing the route of its located line through said Territory to be filed in the office of the Secretary of the Interior, and also to be filed in the office of the principal chief of each of the nations or tribes through whose lands said railway may be located, and after the filing of said maps no claim for a subsequent settlement and improvement upon the right of way shown by said maps shall be valid as against said company: *Provided*, That when a map showing any portion of said railway company's located line is filed as herein provided for, said company shall commence grading said located line within six months thereafter, or such location shall be void; and said location shall be approved by the Secretary of the Interior in sections of twenty-five miles before construction of any such section shall be begun.

Proviso.

Commencing work.

Employees may reside on right of way.

SEC. 7. That the officers, servants, and employees of said company necessary to the construction and management of said road shall be allowed to reside, while so engaged, upon such right of way, but subject to the provisions of the Indian intercourse laws, and such rules and regulations as may be established by the Secretary of the Interior in accordance with said intercourse laws.

Jurisdiction of courts.

SEC. 8. That the United States circuit and district courts for the northern district of Texas, the western district of Arkansas, and the district of Kansas, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, concurrent jurisdiction over all controversies arising between said Fort Smith and El Paso Railway Company and the nations and tribes through whose territory said railway shall be constructed. Said courts shall have like jurisdiction, without reference to the amount in controversy, over all controversies arising between the inhabitants of said nations or tribes and said railway company; and the civil jurisdiction of said courts is hereby extended within the limits of said Indian Territory, without distinction as to citizenship of the parties, so far as may be necessary to carry out the provisions of this act.

Commencement and completion.

SEC. 9. That said railway company shall build at least four sections, of twenty-five miles each, of its railway in said Territory within three years after the passage of this act, and the remainder thereof within five years, or the rights herein granted shall be forfeited as to that portion not built; that said railroad company shall construct and maintain continually all fences, road, and highway crossings and necessary bridges over said railway wherever said

Fences, etc.

roads and highways do now or may hereafter cross said railway's right of way, or may be by the proper authorities laid out across the same.

Condition of acceptance.

SEC. 10. That the said Fort Smith and El Paso Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian nations any further grant of land, or its occupancy, than is hereinbefore provided: *Provided*, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this act.

Violation to forfeit.

Record of mortgages.

SEC. 11. That all mortgages executed by said railway company conveying any portion of its railroad, with its franchises, that may be constructed in said Indian Territory, shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution, and shall convey all rights and property of said company as therein expressed.

Amendment, etc.

SEC. 12. That Congress may at any time amend, add to, alter, or repeal this act; and the right of way herein and hereby granted shall not be assigned or transferred in any form whatever, prior to the construction and completion of the road, except as to mortgages or other liens that may be given or secured thereon to aid in the construction thereof.

Received by the President, May 18, 1888.

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

CHAP. 338.—An act to revive the grade of General in the United States Army.

June 1, 1888.

Rank of General in the Army revived.

Rank of Lieutenant-General discontinued.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grade of Lieutenant-General of the Army is hereby discontinued and is merged in the grade of General of the Army of the United States, which grade shall continue during the lifetime of the present Lieutenant-General of the Army, after which such grade shall also cease; and the President of the United States is hereby authorized to appoint, with the advice and consent of the Senate, a General of the Army of the United States.

SEC. 2. That the pay and allowances of the General be the same as heretofore allowed for that grade.

Approved, June 1, 1888.

CHAP. 339.—An act authorizing the Secretary of the Treasury to pay certain citizens of Chicago, employees of the custom-house, for extra time service.

June 4, 1888.

Appropriation for certain employees in Chicago custom-house.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the following-named persons or their assigns the amounts hereinafter set forth, to wit:

To A. W. Irwin, the sum of three hundred and seventy-nine dollars and fifty cents.