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said sum to be paid to the reporter, notwithstanding section seventeen hundred and sixty-five of the Revised Statutes, or section three of the act of June twentieth, eighteen hundred and seventy-four, chapter three hundred and twenty-eight. R. S., 1765, p. 314. Vol. 18, p. 109.

SEC. 2. That the pay of assistant messengers, firemen, watchmen, laborers, and charwomen provided for in this act, unless otherwise specially stated, shall be as follows: For assistant messengers, firemen, and watchmen, at the rate of seven hundred and twenty dollars per annum each; for laborers, at the rate of six hundred and sixty dollars per annum each; and for charwomen, at the rate of two hundred and forty dollars per annum each. Rate of pay, assistant messengers, firemen, etc.

SEC. 3. That all acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed. Repeal.

Approved, February 26, 1889.

CHAP. 280.—An act granting the right of way to the Fort Smith, Paris and Dardanelle Railway Company to construct and operate a railroad, telegraph, and telephone line from Fort Smith, Arkansas, through the Indian Territory, to or near Baxter Springs, in the State of Kansas. February 26, 1889.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Fort Smith, Paris and Dardanelle 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 from the city of Fort Smith, in the State of Arkansas, through the Indian Territory, to or near the town of Baxter Springs, in Cherokee County, in the State of Kansas, beginning at the said city of Fort Smith, Arkansas; thence running to the Arkansas River, either in the said State of Arkansas, or the Indian Territory, and crossing said river either in the said State or Territory, and thence through said Territory or through said State and Territory, by the most feasible and practicable route, in a northwesterly direction, through the Indian Territory to or near the said town of Baxter Springs, in the State of Kansas, with the right to construct, use, and maintain such tracks, turn-outs, and sidings as said company may deem it to their interest to construct along and upon the right of way and depot grounds herein provided for. Fort Smith, Paris and Dardanelle Railway Company may build railroad, telegraph and telephone line through Indian Territory. Location.

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 for said line of the Fort Smith, Paris and Dardanelle Railway Company, and to take and use a strip of land two hundred feet in width, with the length of three thousand feet, in addition to the 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 on each side of said right of way, or as much thereof as may be included in said cut or fill: *Provided*, That 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. Right of way. Width. Stations, etc. *Proviso.* Not to be sold, etc.

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 Damages.

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 settlements with any occupant, such compensation shall be determined

Referees.

by the appraisement of three disinterested referees, to be appointed, one, who shall act as chairman, by the President, one by the chief of the nation to which said occupant belongs, and one by the railroad company, who, before upon entering the duties of their appraisements, 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 appraisement, 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 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 United States court held at Fort Smith, Arkansas, upon the application of the other party. The chairman of said board shall appoint the time and place of 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 cause submitted to them under this act, with mileage at five cents per mile. Witnesses shall receive the usual fees allowed by the court of said nation. Costs, including compensation of said referees, shall be made a part of the award, and be paid by such railway company. In case the referees do 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, which court shall have jurisdiction to hear and determine the subject matter of the petition, according to the laws of the State of Arkansas, for determining the damage when property is taken for railroad purposes. If, upon the hearing of said appeal, the judgment of the court shall be for a larger sum than the award of the referees, the costs of said appeal shall be adjudged against the railroad company. If the judgment of the court shall be for the same or a less sum than the award made by the referees, then the costs shall be adjudged against the party claiming damages. 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 railway.

Substitution on failure to appoint.

Compensation.

Costs.

Appeal.

Costs on appeal.

Work may begin on depositing double award.

Freight charges.

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 State of Arkansas for services of 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 and 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

Provisos.

Passenger rates.

Regulation.

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.

Maximum.

Mails.

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nation or tribes through whose lands said line may be located, the sum of fifty dollars per mile for each mile of road constructed and maintained in said Indian Territory, in addition to compensation provided for in this act for property taken and damages done individual occupants by the construction of said railway, said payment to be made in installments of five hundred dollars as each ten miles of road is graded: *Provided*, That if the general council of either of the nations or tribes through whose lands 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 allowance hereinbefore provided for, 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 paid to the individual occupants of lands, with the right of appeal to the court 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 such dissenting nation or tribe shall be in lieu of the compensation the said nation or tribe would be entitled to receive under the foregoing provisions. Said company shall also pay, so long as said Territory is 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 and operate in 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 and operated by said 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 additional taxes upon said railroad as it may deem just and proper for their benefit; and any State or Territory hereafter formed, through which said railway shall have been established, may exercise the like power as to such part of said railway as lies within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this act.

Additional compensation to tribes.

Provisos.
Appeal by general councils.

Award to be in lieu of compensation.

Annual rental.

Taxation.

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 subsequent settlement or 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'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.

Maps to be filed.

Proviso.

Grading to begin on filing maps.

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

Employees to reside on right of way.

and regulations as may be established by the Secretary of the Interior in conformity with said intercourse laws.

Litigation.

SEC. 8. That the United States district court for the western district of Arkansas, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, jurisdiction over all controversies arising between said Fort Smith, Paris and Dardanelle Railway Company and the nations, tribes, and individual members of said tribes or nations through whose land or territory said railway shall be constructed. Said courts shall have jurisdiction, without reference to the amount in controversy, over all controversies arising in 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 the same may be necessary to carry out the provisions of this act.

Commencement and completion.

SEC. 9. That said railway company shall build and complete its railway in said Territory within four years after the passage of this act, or the rights herein granted shall be forfeited as to that portion not built; and it shall not be necessary in such case for a forfeiture to be declared by judicial process or legislative enactment, and that said company shall construct and maintain continually all road and highway crossings and necessary bridges over said railway wherever said roads and highways do now or may hereafter cross said railway's right of way or may be by the proper authorities laid across the same.

Crossings.

Condition of acceptance.

SEC. 10. That said Fort Smith, Paris and Dardanelle Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors, and assigns, that will neither aid, advise, nor assist in any effort looking toward the extinguishing or changing the present tenure of the Indians to their lands, 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 conditions mentioned in this section shall operate as a forfeiture of all 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 said road, except as to mortgage or other lien that may be given or secured therein to aid in the construction thereof.

Right of way to Kansas City, Fort Scott and Gulf Railway Company, repealed. Vol. 24, p. 124.

SEC. 13. That an act entitled "An act to authorize the Kansas City, Fort Scott and Gulf Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," be, and the same is hereby, repealed.

Approved, February 26, 1889.

February 27, 1889.

CHAP. 302.—An act for the relief of William S. Rosecrans.

William S. Rosecrans.
May be appointed brigadier-general on retired list.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to nominate, and, by and with the advice and consent of the Senate, to appoint William S. Rosecrans, late a major-general of United States Volunteers, and brigadier-general in the Regular Army of the United States, to the position of