

March 2, 1896. **CHAP. 38.**—An Act To grant the Fort Smith and Western Coal Railroad Company a right of way through the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Fort Smith and Western Coal Railroad Company, a corporation created under and by virtue of the laws of the State of Arkansas, be, and the same is hereby, vested and empowered with the right of locating, constructing, equipping, operating, using, and maintaining a railway, telegraph, and telephone line through the Indian Territory, beginning at a point to be selected by said company on the Western boundary line of the State of Arkansas, at or near the city of Fort Smith, Sebastian County, and running thence by the most practicable route through that part of the Indian Territory occupied by and known as the Choctaw Nation, in a south-westerly direction through the counties of Scullyville, Sans Bois, Gaines, and Tobucksy, to a point on the Missouri, Kansas and Texas Railway, in said Choctaw Nation, between McAlester and South Canadian, with a switch from a point on said line to form a connection with the Saint Louis and San Francisco Railway at a point on that railroad, to be located between Cedars Station and the Backbone Tunnel. And with the right to build in the line of said railroad, a bridge across the Poteau River, whose plan of construction shall be first approved by the Secretary of War.

SEC. 2. That a right of way of one hundred feet in width through said Indian Territory is hereby granted to the said Fort Smith and Western Coal Railroad Company, and a strip of land one hundred feet in width with a length of two thousand feet in addition to the right of way is granted for such stations as may be established, but no such grant shall be allowed but once in every ten miles of the road, no portion of which shall be sold or leased by the company, with the right to use such additional grants where there are heavy cuts or fills as may be necessary for the construction and maintenance of the roadbed, not exceeding fifty feet in width on each side of the right of way, or as much thereof as may be included in said cut or fill: *Provided*, That no more than such addition of land shall be taken for any one station: *Provided further*, That no part of the lands herein granted shall be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railway, telegraph, and telephone lines, and when any portion thereof shall cease to be used such portion shall revert to the said Choctaw Nation.

SEC. 3. That before said railway shall be constructed through any lands held by individual occupants according to laws, customs, or usages of the Choctaw Nation through which it may be constructed, full compensation shall be made to such occupant for all property to be taken or damage done by reason of the construction of said railway. In case of failure to make amicable settlement with any occupant, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed by the President of the United States, who, before entering upon the duties of their appointment, shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award. 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 United States district court for the central district of the Indian Territory, sitting at the place nearest and most convenient to the property sought to be condemned, where the case shall be tried de novo. When proceedings have been commenced in court the railway 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. Each of said referees shall receive for his services the sum of four dollars per day for each

Fort Smith and Western Coal Railroad Company granted right of way, Indian Territory.

Location.

Bridge.

Width.

Stations, etc.

Provisos.
Limit for stations.

Reversion, etc.

Damages.

Referees.

Oath, etc.

Appeal.

On depositing double award work may begin.

Expenses.

day they are engaged in the trial of any case submitted to them under this Act. Witnesses shall receive the usual fees allowed by the courts of said Choctaw Nation. Costs, including compensation of the referees, shall be made a part of the award and be paid by said railway company.

SEC. 4. That said railway 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 or transportation of the same kind: *Provided*, That the passenger rates on said railway shall not exceed three cents a 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 shall exist in said Territory, within the limits of which said railway or part thereof shall be located, then such State government shall be authorized to fix and regulate the cost of transportation of persons and freight within their respective limits by said railway. Congress expressly reserves the right to fix and regulate at all times the cost of all transportation by said railway whenever such transportation shall extend into more than one State: *Provided, however*, That the rate of such transportation of passengers, local or interstate, shall not exceed those above expressed: *And provided further*, That said railway company shall carry the mail at such price as Congress may by law provide, and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the Choctaw Nation, through whose lands said railway may be located, the sum of fifty dollars, in addition to the compensation provided for by this Act, for property taken or damaged by the construction of the railway for each mile of railway that it may construct in said Territory, said payment to be made in installments of five hundred dollars as each ten miles of road is graded. Said company shall also pay, as long as said Territory is owned and occupied by the Indians in common, to the Secretary of the Interior the sum of fifteen dollars per annum for each mile of railway it may construct in said Territory. The money paid to the Secretary of the Interior under the provisions of this Act shall be paid over to the Choctaw Nation: *Provided*, That Congress shall have the right, so long as their lands are occupied or possessed by the citizens of the Choctaw Nation in common, to impose such additional taxes upon said railway as it may deem just and proper for their benefit: *Provided further*, That if the general council of the Choctaw Nation shall, within two 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 said Choctaw Nation under the provisions provided in this Act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupants of the land, with the right to 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 to said Choctaw Nation shall be in lieu of the compensation the said nation will be entitled to receive under the provisions of this section. Nothing in this Act shall be construed to prohibit Congress from imposing taxes upon said railway, or any Territory or State hereafter formed through which said railway shall have been established, from exercising the same 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: *Provided, however*, That if said right of way shall pass over or through any land allotted to an Indian in accordance with any law or treaty, it shall be the duty of the Secretary of the Interior to provide for obtaining the consent of said allottee or allottees to said right of way, and to fix the amount of compensation to be paid said allottees for the right of way

Freight charges.

Provisos.
Passenger rates.
Regulation.

Interstate transportation.

Maximum rates.

Mail.

Additional pay to Choctaw Nation.

Annual rental.

Provisos.
Additional taxes.

Appeal by general council.

Award to be in lieu of additional pay.

Taxation.

Survey, etc.

Consent of allottees.

and damages sustained by them by reason of the construction of the road; but no right of any kind shall vest in said railway company to any portion of said right of way passing over or through any such allotted lands until the compensation herein provided for shall be fixed and paid.

Filing maps.

SEC. 6. That said railway company shall cause maps, showing 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 the Choctaw Nation; and after the filing of said maps no claim for subsequent settlement or improvements of right of way shown by said maps shall be valid as against said company: *Provided*, That a map when 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 as to any occupant thereof.

Proviso.
Commencing work.

Employees to reside on right of way.

SEC. 7. That the officers, servants, and employees of said company necessary to the construction, operation, and management of said railway and telegraph and telephone lines shall be allowed to reside, while so engaged, upon the 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 such intercourse laws.

Commencement and completion.

SEC. 8. That said railway company shall build and complete its said railway within three years after the passage of this Act, or this grant shall be forfeited; that said railway 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 out across the same.

Conditions of acceptance.

SEC. 9. That the Fort Smith and Western Coal Railroad Company shall accept this right of way upon the expressed condition, binding upon itself, its successors and assigns, that they will neither aid, advise, or assist toward any effort looking to the changing of or extinguishing the present tenure of the Indians in their lands, and will not attempt to secure from the Indians for the purposes of said railway any further grant of land, or its occupancy, than herein provided, except for the purpose of mining coal: *Provided*, That any violation of the conditions named in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this Act: *Provided further*, That the entire line of said road shall be surveyed and located and said location approved by the Secretary of the Interior before the work of construction shall commence.

Provisos.
Violations to forfeit.

Approval by Secretary of Interior.

Record of mortgages.

SEC. 10. That all mortgages executed by said railway company conveying any portion of its railway, with its franchises, that may be constructed in the Indian Territory shall be recorded in the Department of the Interior, and a 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. 11. That Congress may at any time amend, add to, or alter, or repeal this Act.

Approved, March 2, 1896.

March 2, 1896.

CHAP. 39.—An Act To provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes.

Public lands.
Time limit in suits to annul railroad, etc., grants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section

Vol. 26, p. 1093.