

Take effect.

SEC. 4. This Act being deemed by the General Assembly of immediate importance, shall take effect and be in force from and after its publication in the Iowa Homestead and Iowa Statesman, newspapers published at Des Moines.

Approved March 28th, 1864.

I hereby certify that the foregoing Act was published in the Iowa Homestead —, A. D. 1864, and in the Iowa Statesman April 15th, A. D. 1864.

JAMES WRIGHT, Secretary of State.

CHAPTER 91.

COAL MINES.

AN ACT granting a right of way to open and drain Coal Mines.

Application
for right of
way.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That any person owning or possessing any land underlaid with Coal Mines in any County within this State, who is desirous of mining the said coal, and who shall deem it necessary thereto to have a coal yard and wagon road upon, and entry and drain through and under the surface of any land belonging to any other person, may apply to any Justice of the Peace residing in the Township where the lands are located, or if there be no Justice in said Township, to any Justice in an adjoining Township, for such summons as is herein specified.

Summons.

SEC. 2. The Justice to whom such application shall be made, shall thereupon issue a summons directed to any Constable of the said Township, requiring the owner of said land to appear before him at the time named therein, which shall be in not less than six nor more than fifteen days, to answer said application. Said summons shall designate the land upon which said coal yard and wagon road are desired to be laid out, and through and under the surface of which the said entry and drain are proposed to be made, and shall be served by the Constable in the same manner that civil process, issued by a Justice, is now served; and should it be made to appear to said Justice that the owner of said land is non-resident, then said owner shall be served by publication in the same manner as parties defendant in

Service of
Summons.

Justices' Courts, that are non-residents, are now served.

SEC. 3. On the appearance day a jury of six disinterested persons, possessing the necessary qualifications of jurors of the District Court, shall be selected as follows, viz: two by each of the parties, and two by the Justice, *Provided*, That in case the owner of the lands, his Agent or Attorney, shall neglect or refuse to appear or the owner of said lands shall appear to be a non-resident, then the applicant shall select three jurors, and the Justice three; and the Justice shall thereupon issue his precept to some Constable of the Township, directing him to summon the Jurors selected as aforesaid, to appear forthwith before him. The said Justice shall administer to said Jurors, an oath or affirmation, to well and truly examine into the necessity for the coal yard, and wagon road, and entry and drain applied for; and that if they shall deem the same necessary, that they shall proceed to lay out the same and certify the damages resulting therefrom.

Selection of Jurors.

Justice's precept.

Oath.

SEC. 4. The jury thus qualified and sworn shall personally examine the premises, and after hearing any reasons which may be offered by the parties in regard to the opening of said entry and drain, and making said coal yard and wagon road, if they shall thereupon be satisfied that the opening of the entry and drain, and the making of said coal yard and wagon road are necessary and proper in order to mine said coal, they shall proceed to lay out the same by proper metes and bounds; and if they shall deem it necessary they may call to their aid a competent Surveyor. *Provided*, That in no case shall the entry and drain be more than twenty-five feet in breadth.

Examination of premises.

Laying out.

SEC. 5. The jury shall make a written report which shall be signed by at least four of the jurors, precisely defining the boundaries of said entry and drain, and coal yard and wagon road, accompanied by a plat of the same, and file the same with the Justice.

Report of Jury.

The jury shall also certify the amount of damages, in writing, signed by at least four of the jurors, which shall also be filed with the Justice.

Certificate of damages.

SEC. 6. Either party may appeal from the decision of the jury to the District Court in the county in which the premises are situated, by filing with the Justice within ten days after the jury shall file their report, a bond with two or more sufficient sureties, to be approved by the Justice, in a sum double the amount assessed by the jury, conditioned that the appellant will abide the judgment of the Court, and pay all costs

Appeal.

and damages awarded against him therein, or if the appeal be dismissed, that he will pay all sums for which he would have been liable if no appeal had been taken. The proceedings in the District Court in the appeal, shall be the same as on an appeal in a civil action from a Justice of the Peace, as near as practicable, and costs shall be awarded for or against either party, upon the same rules and conditions as in such appeal of a civil action.

Proceedings
in District
Court.

Transcript
returned to
Clerk.

Record.

Applicant
may proceed
to open.

Condition.

Exclusive use

Damages for
obstructing.

SEC. 7. Upon the expiration of ten days, if no appeal has been taken as herein provided, the Justice shall return a certified transcript of the report of the Jury to the Clerk of the Board of Supervisors, who shall record the same in the book of records of roads and highways of the county.

SEC. 8. Upon the payment of the damages assessed by the jury, and of the costs of the proceedings allowed to the justice, constable, jurors, surveyor and Clerk of the Board of Surveyors, allowing the same fees as nearly as may be, as are allowed in other civil cases, it shall be lawful for the person applying for such summons to enter upon the lands examined by the jurors, and upon which they have assessed said damages, with all necessary implements to open said entry and drain, and make said coal yard and wagon road; *provided*, that if the owner of said lands be a non-resident, the applicant aforesaid shall be permitted to enter upon said premises as aforesaid, upon his depositing the amount of damages assessed, with the Clerk of the District Court, subject to the order of said non-resident owner.

SEC. 9. After such entry and drain are opened, and said coal yard and wagon road are made, it shall be lawful for the applicant to use them for his exclusive benefit, and any person obstructing or in any way injuring said entry and drain, wagon road or coal yard, shall be liable to treble damages in an action brought by the applicant.

SEC. 10. All Acts or parts of Acts conflicting with this Act are hereby repealed.

Approved March 28th, 1864.