

Clerk to report.  
Clerk to keep account of time of jury.

cause the same to be charged to the treasurer; and it is hereby made the duty of the clerk of the court, where a case is tried by jury, to keep the true and correct time occupied by the jury in such case, from the time of its being impaneled to the time when it is discharged, and to tax to each case the amount of jury fees properly chargeable to it under the provisions of this section.”

Approved March 18th, 1874.

## CHAPTER 33.

### EVIDENCE OF HUSBAND AND WIFE.

S. F. 108. An ACT to Repeal Section 3641 of Chapter 1 of Title 22, of the Code [relating to “Evidence”] and to Enact a Substitute therefor.

Code: § 3641 amended.  
When husband and wife may be witnesses against each other. May be witnesses for each other in all cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That section three thousand six hundred and forty-one (3641), of chapter one (1), title twenty-two (22) of the code, be and the same is hereby repealed, and in lieu thereof the following is enacted as a substitute:

“Section 3641. Neither the husband nor wife shall in any case be a witness against the other, except in a criminal prosecution for a crime committed one against the other, or in a civil action or proceeding one against the other; but they may in all civil and criminal cases be witnesses for each other.”

Approved March 18th, 1874.

## CHAPTER 34.

### ESTABLISHMENT OF PUBLIC WAYS TO MINES AND STONE QUARRIES.

S. F. 223. AN ACT Authorizing the Establishment of Public Ways to Lands having Stone and Mineral Thereon. [Additional to Code, Title IX. Chapter 4: relating to “Taking Private Property for Works of Inter-“nal Improvement.”]

Quarry or mine owners may have public way established.  
Same to be fenced.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That any person, copartnership, joint-stock association, or corporation, owning, leasing, or possessing any lands having thereon or thereunder any coal, stone, lead, or other mineral, may have established over the land of another a public way from any stone-quarry, coal, lead, or other mine, to any railway or highway, not exceeding (except by the consent of the owner of the land to be taken) fifty feet in width. When said road shall be constructed, it shall, when passing through inclosed lands, be fenced on both sides by the person or corporations causing said road to be established.

SEC. 2. If the owner of any real estate, necessary to be taken for the purposes mentioned in this act, refuse to grant the right of way, or if such owner and the person, partnership, joint-stock

Proceedings to condemn right of way.

association, or corporation seeking to have such way established, cannot agree upon the compensation to be paid for the same, the sheriff of the county in which said real estate may be situated shall, upon the application of either party, appoint six disinterested freeholders of the county, not interested in a like question, who shall inspect said real estate, and assess the damage which said owner will sustain by the appropriation of said land for such public way, and make *an* report in writing to the sheriff of said county, and if the applicant for such public way shall at any time before entering upon said real estate, for the purpose of constructing such way, pay to said sheriff, for the use of said owner, the sum so assessed and returned to him, as aforesaid, said highway may be at once constru[ct]ed and maintained over and across said premises.

Sheriff to  
appoint  
appraisers.

Their report.

Payment of  
award.

SEC. 3. In proceeding under this act, the application to the sheriff, the duty of commissioners, the time and manner of assessing the damages, the giving of notice thereof to residents and non-residents, the power of guardians to settle and convey, the making and returning of appraisement, the selection of talesmen, the payment of the costs of assessment, the report of the commissioners, the recording thereof, the right of appeal, the proceedings relating thereto, the result of non-user, the rights and duties as to other highways, are and shall be the same as provided in the sections of the code numbered twelve hundred and forty-five to and including twelve hundred and sixty-eight, and the provisions of all of said sections, so far as applicable, are declared to be a part of this act, except that the report of the commissioners, and record thereof, shall confer no title to the applicant for the land taken for the highway, but shall be presumptive evidence of the establishment of such way.

Provisions in  
code: §§ 1245—  
1268 applied to  
this act.

No title con-  
ferred by pro-  
ceedings.

SEC. 4. Any owner, lessee, or possessor of lands having coal, stone, lead, or other mineral thereon, who has paid the damages assessed for highways established under this act, may construct, use, and maintain a railway on such way, for the purpose of reaching and operating any quarry or mine on such land and of transporting the products thereof to market. In the giving of the notices required by this act, the applicant shall state whether a railway is to be constructed and maintained on the way sought to be established; and if it be so stated the jury shall consider that fact in the assessment of damages.

Person con-  
demning may  
establish  
railway.

To be stated  
in notice.

SEC. 5. This act being deemed of immediate importance shall shall take effect and be in force from and after its publication in the State Register and State Leader, newspapers published at Des Moines, Iowa.

Approved March 18th, 1874.

I hereby certify that the foregoing act was published at Des Moines, in *The Iowa Daily State Leader* March 27, and in *The Iowa Daily State Register* March 28, 1874.

JOSIAH T. YOUNG, Secretary of State.