

CHAPTER 70.

DRAINING.

AN ACT relating to draining.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That any person owning or possessing any land lying in any county within this State, who is desirous of draining such land, and who shall deem it necessary in order thereto, to cross the lands belonging to any other person, in case the owner of such land shall refuse to permit such crossing, may apply to any justice of the peace residing in the township where such lands shall lie, for such summons as is herein specified.

The right to drain across the land of another may be enforced by applying to a Justice of the Peace.

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 the said land to appear before him, at the time named in the summons, not less than six nor more than fifteen days, to answer such application, defining the same, and designating the lands through which it is proposed to open said drain.

Justice shall issue a summons.

SEC. 3. On the appearance day a jury of six disinterested persons, possessing the qualifications of jurors of the District Court, shall be chosen by the parties in this manner: Two by each one of the parties, and two by the four thus chosen. The said justice shall administer to the said jurors, an oath or affirmation, well and truly to examine and certify to the damages which shall result from the crossing and opening of said drain.

A Jury shall be chosen by the parties, who shall assess damages.

SEC. 4. The jury thus qualified and chosen shall personally examine the premises, hear any reasons that may be offered in regard to the crossing and opening of said drain, and estimate the value of any improvement which may be destroyed by such crossing.

SEC. 5. If the jury be satisfied that the crossing of such drain is necessary and proper, they shall so certify by inquisition in writing, and shall also certify in like manner, the amount of damages which, in their judgment, would accrue from the crossing and opening of such drain.

SEC. 6. Either party may appeal from the decision of the jury to the District Court of the county in which the premises are situated, by filing with the justice, within ten days of their decision, a bond to be approved by the justice, in a sum double the amount assessed by the jury,

The right of appeal to the Dist. Court.

provided that the appellant will abide the judgment of said Court, and pay all costs 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 nearly 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.

Upon payment of damages and cost a drain may be forced.

Damages to a public highway.

Drain may be kept open.

SEC. 7. Upon the payment of the damages assessed by the jury and of all the costs of the proceedings, allowing to the justice, constable and jurors the same fees as nearly as may be as are allowed to such persons for services in other civil cases, it shall be lawful for the person applying for such summons, to enter upon the lands which such drain shall cross, with all the necessary implements to open such drain; Provided that if such drain open upon a highway, such applicant shall be held responsible to the road supervisor for all damages done to such highway.

SEC. 8. After such drain shall have been opened, it shall be lawful for the said applicant to enter upon said lands for the purpose of cleaning out the same in such manner as to preserve the original dimensions thereof; and any person obstructing, or in any way injuring said drain, shall pay said applicant *treble* damages assessed by the jurors for such injury.

Approved, March 27th, 1862.

CHAPTER 71.

PROBATE RECORD.

AN ACT in relation to County Court Records.

SECTION. 1. *Be it enacted by the General Assembly of the State of Iowa,* That hereafter the County Judge of each County in this State shall keep an additional Probate Record Book, in which he shall keep a record as follows: showing

County judge shall keep a separate and complete probate record.

FIRST—The name of every deceased person whose estate is administered upon, and who dies seized of any real