

SEC. 35. Where any such instrument is acknowledged, or proved and certified and recorded in the manner hereinbefore prescribed, and it shall be shown to the court that such instrument is lost, or not within the power of the party wishing to use the same, the record thereof or a transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence without further proof. Deed lost record may be proof.

SEC. 36. Neither the certificate of the acknowledgment or of the proof of any such instrument in writing, nor the record, or transcript of the record of such instrument shall be conclusive, but the same may be rebutted. Not conclusive.

SEC. 37. If the party contesting the proof of any such instrument shall make it appear that such proof was taken upon the oath of an incompetent witness, neither such instrument nor the record thereof shall be received in evidence until established by other competent proof. Incompetent witness.

SEC. 38. The term "real estate," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, and hereditaments, and as embracing all chattles real. Real estate what to include.

SEC. 39. This act shall not be so construed as to embrace within its provisions last wills and testaments. This act to take effect from and after the first day of June next. Not to extend to wills.

Approved January 4, 1840.

[This act was accidentally omitted in the order of its date.]

[Chap. 29.]

AN ACT to incorporate the Philadelphia mill and manufacturing company.

SECTION I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, That* Hugh W. Sample, and such other persons as may associate with him, are hereby incorporated and to be known by the name of "The Philadelphia mill and manufacturing company." Persons incorporated.

SEC. 2. That said Hugh W. Sample and his associates, their heirs and assigns, be and they are hereby authorized to construct a dam across the Des Moines river, opposite or within twenty chains of the town of Philadelphia, in Van Buren county, which dam shall not exceed three feet in height above To construct dam.

common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts and other water crafts, provided said crafts will bear two tons burthen.

To pass all water craft.

SEC. 3. It shall be the duty of the persons authorized in the preceding section of this act, to build said dam, at all times to keep the lock in the same in good repair, and they shall at all reasonable times on the arrival of any boat or other water craft as before specified, pass the same through free from toll, without any unnecessary delay, and any person who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall prove to have sustained by reason of such detention.

Injury to dam a trespass.

SEC. 4. Any person who shall destroy or in any wise injure either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly, and any person who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned at the discretion of the court having jurisdiction of the same.

Wilful injury a misdemeanor.

Not to flow lands.

SEC. 5. Nothing herein contained shall authorize the persons named in this act, their heirs or assigns, to enter upon or flow the lands of any person without the consent of such person, and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the citizens of the vicinity.

SEC. 6. The legislature of this territory or state, may at any time hereafter, alter or amend this act, so as to provide for the navigation of the said river.

Charter when to expire.

SEC. 7. This act shall cease and determine at the expiration of fifty years from its date, unless a future legislature having control of the same should otherwise determine: *And provided further*, That said dam and lock shall be completed within the term of six years from and after its passage.

Meeting.

SEC. 8. The said Hugh W. Sample may, at any time within one year from the passage of this act, call a meeting of said company by giving personal notice to each individual, or by posting up written

or printed notices in five of the most public places in said county, at least one month previous to said meeting; and said company, when so convened, may call one of their members to preside, and may proceed to enact such by-laws, rules and regulations for the government of said company as a majority of them may deem right and proper: *Provided*, Said by-laws do not conflict with the laws of the United States or of this territory.

SEC. 9. All subsequent meetings shall be held in such manner and at such time and place as a majority of said company shall direct. This act to take effect and be in force from and after its passage.

Approved January 7, 1840.

[Chap. 30.]

AN ACT to amend an act entitled "An act to organize the county of Linn and establish the Seat of Justice thereof."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county treasurer of the county of Linn be and he hereby is instructed to pay to Benjamin Nye of Muscatine county, and Richard Knott of Cedar county, the sums due them under the sixth section of an act entitled "An act to organize the county of Linn and establish the seat of justice thereof," approved January 15, 1839.

Approved January 7, 1840.

[Chap. 31.]

AN ACT to authorize Elijah Buel to keep a Ferry.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Elijah Buel of the town of Lyons, Clinton county, his heirs and assigns, are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Lyons, in Clinton county, within the following limits, commencing at the middle of said town on the river, and extending from that point up and down said river one mile each way; and that said Buel, his heirs and assigns have the exclusive privilege of ferrying within said limits for the term of ten years from the taking effect hereof.

SEC. 2. That within two years from the first day of June, eighteen hundred and forty, the said Buel,

^{To procure boats.}