

large in said counties, or either of them. The electors in each of said counties may vote by ballot at said election "swine at large," or "swine not at large," also "sheep at large" or "sheep not at large."

SEC. 2. **Returns—canvass.** The judges of election shall make returns of said vote so polled, to the clerk of the board of commissioners of each county, at the same time that they make returns of the other votes polled at said election, which said votes shall be canvassed by the clerk of the board of commissioners and justices of the peace at the same time that the other votes cast at said election are canvassed.

SEC. 3. **Decision—notice—owner restrain—damages.** If a majority of the votes cast upon said question in either of the counties, shall be either "swine not at large," or "sheep not at large," or both swine not at large and sheep not at large, the clerk of said county in which said vote is so cast, shall immediately cause public notice thereof to be given by posting up three written or printed notices in each township of said county and from and after the posting up of such notice, every owner of swine and sheep shall restrain his swine or sheep or both, according as said vote shall be, from running at large in said county, and in the event of a failure so to do, he shall be liable for any and all damages done by his swine and sheep, or either of them, so running at large, to be recovered by action of trespass by the party injured.

SEC. 4. **Take effect—proviso.** This act shall take effect and be in force from and [70] after its publication in the "Iowa Capital Reporter," published in Iowa City and the "Democratic Banner" at Davenport: provided, that the counties named in this act shall pay for said publication.

Approved February 3d, 1851.

Published in the Iowa Capital Reporter, February 12th, 1851, and Davenport Banner February 1851.

## CHAPTER 34.

### RIGHT OF WAY.

AN ACT to grant to the Camanche and Council Bluffs railroad company the right of way.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. **Right of way granted—width.** That there be, and is hereby granted to the Camanche and Council Bluffs rail road company, and to their successors and assigns, the right of way for a rail road from Camanche in Clinton county via Dewitt, Tipton, Iowa City and Fort Desmoines, to Council Bluffs on the Missouri river, embracing a strip of land one hundred feet wide, through sections sixteen and other lands which may be owned by the state of Iowa, on which said road may be located and constructed.

*And be it further enacted,*

SEC. 2. **May be procured from residents in writing—need not be acknowledged or recorded—owner refusing—court to appoint freeholders—assess and report—appeal—not delay work—proviso—company to pay costs.** That in obtaining the right of way for said road over and across the lands of individual proprietors, the said company and their assigns, may proceed in the manner following, that is to say: the grant of such right of way, may be procured from individual owners, resident in the county in which said

lands are located, or who have agents, or guardians residents as aforesaid, may be obtained in writing over the hand and seal of such proprietor or of his or her agent or guardian resident as aforesaid, and neither acknowledgement or recording shall be necessary to the validity of such grant. And if the owner of land over which said road may be located, shall refuse to grant the [71] right of way through his or her premises, the judge of the district court of the county in which said premises may be situated, shall on application of either party, appoint three disinterested free holders of the county, whose duty it shall be to inspect said premises and assess the damages if any, which such owner will sustain by the construction of said road; and make report in writing to the clerk of such court who shall file and preserve the same, and if said company or their assigns shall at any time before they actually enter upon said lands for the purpose of constructing said road, pay to said clerk for the use of said proprietor the sum assessed and return to him as aforesaid, they shall thereby be fully justified in constructing and maintaining their said road across said premises doing no unnecessary injury to said lands; provided, that either party dissatisfied with the decision of said freeholders shall have the right of appeal to the district court wherein said lands are situated at any time within sixty days after said decision, but such appeal shall not delay the prosecution of work upon said road; provided, however, the company shall first have paid or tendered the amount adjudged by said freeholders, and in no case shall the company be liable for costs on appeal unless the appellant recover a greater amount of damages than first awarded, but the company shall in all cases pay all the costs made previous to the appeal.

SEC. 3. **Non-residents—same as section 2—rights acquired, etc.** And be it further enacted, that if upon the location of said road, it shall be found to run through the lands of any non-resident proprietor, the said company or their assigns shall give four weeks notice to each proprietor if known, and if not, by a description of such lands by publication in some newspaper printed in Iowa City, that said road has been located through his or her lands, and if such proprietors shall not apply to such district judge within thirty days thereafter to have damages assessed in the mode prescribed in the preceding sections, said company or their assigns shall provide in the same manner to have the damages assessed, as is provided in section second, subject to the same right of appeal, and upon the payment of the damages so assessed, the com-[72] pany thereby shall acquire all rights, privileges and immunities mentioned in this act.

SEC. 4. **Take effect.** This act to take effect by publication and distribution.

Approved, February 4th, 1851.

## CHAPTER 35.

### VALLEY PLANK ROAD COMPANY.

AN ACT granting the Keokuk and Des Moines Valley Plank Road Company the right of way.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION 1. **Right of way—proviso.** That the Keokuk and Des Moines valley plank road company, is hereby authorized to lay out their road between the towns of Keokuk and Birmingham in Van Buren county, by the town of Charleston in Lee county, on such ground as may be deemed suitable for that purpose, including any portion of the public highway, provided the traveling on such highway is not thereby interrupted.