

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.

**SEC. 2. Width of roadway—private property.** The quantity of ground to be taken shall be merely a road-way not exceeding sixty feet in breadth; and when private property is thus taken a fair equivalent must be paid therefor before the property can be appropriated by the company.

**SEC. 3. Owner must apply for jury—deed.** When the proprietor of any land thus taken is legally competent to act for himself, and has received personal notice of the laying out of the road through his land, he must within ten days after receiving such notice, apply to the sheriff of the county in which the land lies for a jury to assess the amount of damages he may sustain, or he shall be held to have accepted of the largest amount of damages offered him by the company, and on the payment or tender of which sum, the company is entitled to a deed for the right of way.

**SEC. 4. Minors, etc.** If the proprietor of the land is a minor or otherwise incompetent to act for himself, or if he has not been personally served with notice of the laying out of the road as aforesaid, the jury aforesaid must be called for by the company.

[73] **SEC. 5. Jury.** When called upon in either of the above methods the sheriff as soon as practicable summons nine persons qualified to act as ordinary jurors as between the parties and who are not interested in a similar question. A time and place must be appointed for the meeting and reasonable notice thereof given to the parties or their agents or guardians, unless they are already acquainted with these facts.

**SEC. 6. Panel.** At the time appointed if the requisite number of qualified jurors do not appear the sheriff must complete that number, the parties then (commencing with the agents of the company,) shall in turn proceed to strike off one juror each until only three remains.

**SEC. 7. Party failing sheriff to strike—agreed case.** If either party fails to strike off jurors in the manner aforesaid, the sheriff shall do the same in his place: but nothing herein contained is intended to prevent the parties from agreeing upon any modification of the proceedings herein prescribed.

**SEC. 8. Damages—deed—appeal—not delay work—proviso.** The three jurors so elected must then proceed to examine the ground and decide upon the amount of damages that should be paid by the company for the right of way aforesaid, upon the payment of which amount the company is entitled to a deed for the right of way provided that; either party dissatisfied with the decision of the jury shall have the right of appeal to the district court of the county wherein said land is situated at any time within thirty days from the making of said decision; but such appeal shall not prevent the prosecution of work upon said road, provided the company shall first have paid or tendered the amount adjudged by said jury, and in no case shall the company be liable for costs on an appeal unless the appellant recover a greater amount of damages than first awarded.

**SEC. 9. Right or way limited.** The right of way acquired by virtue of this act may be retained for any of the purposes contemplated in the article of incorporation of the company, but no other.

**SEC. 10. Agent.** Any of the notices aforesaid if served on an agent of the proprietor of the land are to have the same effect as if served upon the principal.

**SEC. 11. Fees—company pay expenses.** The sheriff and jurors are entitled to the same compensation as is provided for in other cases for similar service; [74] and all the expenses caused by the proceedings above authorized must be borne by the company.

**SEC. 12. Take effect.** This act shall be in full force from and after its publication in the newspapers in the city of Keokuk, the expenses of said publication however to be paid by the company.

Approved February 4th, 1851.