

**SEC. 27. State may take improvement off contractors' hands.** The state at any time may have the privilege of taking said improvement off the hands of any contractor, contractors or company herein contemplated, by the payment of all monies due them, over and above the proceeds of the sales of such lands as he or they may have received from the state in payment as above provided.

**SEC. 28. Commissioner and Register to settle claim of mill owners for damages—agreed cases—suits—arbitration.** The said commissioner and register have full power and authority, and it is hereby made their duty, to settle and arrange all claims and demands preferred and presented by any mill owner on said river, for damages or otherwise; but in so doing, shall take into view all of the circumstances of advantage to said mill owners as well as their delays, and to settle such controversies; have the right to make agreed [138] cases for hearing before any court of competent jurisdiction, or to make any other arrangement that they may deem expedient. Suits may be brought against the commissioner by the name of "A. B. commissioner of the public works of the state of Iowa," and such suits may be brought not only for liabilities incurred by himself but also for those for which the late board of public works might have been sued. The commissioner has power in all cases to settle with contractors or other creditors of the Des Moines river improvement fund, and to submit any controversy that may arise on those subjects to an arbitration when the same cannot be settled amicably.

**SEC. 29. May contract for completion of work, etc.** That if the commissioner and register can contract for the completion of the entire improvement below Keosauqua, including the canal below St. Francisville with any company or companies by pledging the entire net proceeds arising from the sale of the lands lying below the Raccoon Forks, and water rents and tolls below Keosauqua, they are hereby authorized so to do, any thing in this act to the contrary notwithstanding.

**SEC. 30. Repeal.** All acts and parts of acts coming in conflict with the provisions of this act are hereby repealed.

**SEC. 31. Take effect.** This act to take effect and be in force from and after its publication in the "Des Moines Republic" and "Keosauqua Jeffersonian."

Approved, February 5, 1851.

Published in Keosauqua Jeffersonian February 17th, and Des Moines Republic, February 13th, 1851.

## [139] CHAPTER 59.

### RIGHT OF WAY.

**AN ACT** granting the Mount Pleasant, Trenton, Deedsville and Brighton plank road and bridge company the right of way.

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

**SECTION 1. Right of way.** That the Mount Pleasant, Trenton, Deedsville and Brighton plank road and bridge company is hereby authorized to lay out their road, between the towns of Mount Pleasant, Trenton, Deedsville and Brighton, on such grounds 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. Roadway—private property.** The quantity of ground to be thus taken shall be merely a roadway, not exceeding sixty feet in breadth; and when private property is thus taken a fair equivalent must be paid therefore before the property can be appropriated by the company.

**SEC. 3. Owner must apply—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.

**SEC. 5. Sheriff to summon jury.** When called upon in either of the above methods, the sheriff must as soon as practicable, summon 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 [140] notice thereof given to the parties or their agents or guardians, unless they are already acquainted with those facts.

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

**SEC. 7. Parties may agree.** 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. Jury assess—deed—appeal—not prevent—costs.** The three jurors so selected 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 to 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 the 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. Purposes.** The right of way acquired by virtue of this act may be retained for any of the purposes contemplated in the articles 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.** The sheriff and jurors are entitled to the same compensation as is provided for in other cases for similar services; and all the expenses caused by the proceedings above authorized must be borne by the company.

**SEC. 12. Take effect—expense of publication.** This act shall be in full force from and after its publication in the "Iowa Observer" and "Iowa True Democrat," [141] papers published in Mount Pleasant. The expenses of publication to be paid by the company.

Approved, February 5, 1851.