

SEC. 9. Take effect. That this act shall be in force from and after its publication in the Capital Reporter, and Iowa Republican.

Approved, January 12th, 1853.

I certify that the foregoing act was published in the Capital Reporter, January 19th, and in the Iowa Republican January 22d, 1853.

GEO. W. McCLEARY,
Sec'y of State.

CHAPTER 13.

SWAMP LANDS.

AN ACT to dispose of the swamp and overflowed lands within this state and to pay the expenses of selecting and surveying the same.

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

SECTION 1. Swamp lands—granted to the counties. That all the swamp and overflowed lands granted to the state of Iowa by the act of congress entitled an act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits, approved September 28th, 1850, be, and the same are hereby granted to the counties respectively in which the same may lie, or be situated, for the purpose of constructing the necessary levees and drains, to reclaim the same—and the balance of said lands, if any there be after the same are reclaimed as aforesaid, shall be applied to the building of roads and bridges, when necessary, through, or across said lands, and if not needed for this purpose, to be expended in building roads and bridges within the country.

SEC. 2. If sold by U. S. Whenever it shall appear that any of the lands granted to the state by the aforesaid act of congress, shall have been sold by the United States since the passage of that act, it shall be lawful for the said counties to convey said lands to the purchasers thereof.

Deed—located by warrants. The deed shall be made by the county court as such, and countersigned by the clerk of said court, with the official seal thereof affixed, and on delivering said deed to the purchaser, the county court shall take from him an assignment of all his rights in the premises, and as such assignee, the said court shall be authorized to receive from the United States the purchase money of said land; and whenever any lands embraced by the said act have been located by bounty land warrants, since the passage thereof, it shall be lawful for such county in which the same are situated, to convey the same, in manner aforesaid to the person, or persons, who located said warrant, and take an assignment of the same to the county court which shall thereupon be considered as grantee of the state, and as such may locate said warrant on any of the public lands belonging to the United States, within the limits of said county.

SEC. 3. Agents to examine and report. In all those counties where the county surveyor has made no examinations and reports of the swamp lands within his county, in compliance with the instructions from the governor, the county court shall at the next regular term thereof, after the taking effect of this act, appoint some competent person, who shall as soon as may be thereafter, after having been duly sworn for that purpose, proceed to examine said lands, and make due report, and plats, upon which the topography of the country shall be carefully noted, and the places where

drains or levees ought to be made, marked on the said plats, to the county courts respectively, which courts shall transmit to the proper officers, lists of all said swamp lands in each of the counties in order to procure the proper [31] recognition of the same, on the part of the United States, which lists, after an acknowledgment of the same by the general government shall be recorded in a well bound book provided for that purpose, and filed among the records of the county court.

SEC. 4. County courts care, etc.—election of drainage commissioner. The said lands shall be under the care, and superintendence of the county courts of the counties respectively, in which the same are situated, and at the next April election, there shall be elected an officer to be styled drainage commissioner of the county of _____, who shall within twenty days after his said election, enter into a bond with good security, to be approved by the county court, payable to the people of the state of Iowa, for the use of the inhabitants of the county of _____, in the penal sum of ten thousand dollars, conditioned for the faithful performance of all the duties required of him, or which may hereafter be required of him by law.

SEC. 5. Surveyor—plats—return—valuation—minimum. It shall be the duty of the surveyors in the several counties in this state who have surveyed, or shall survey the said swamp and overflowed lands in their respective counties, to make out plats of all the swamp, and overflowed lands in the several townships, and fractional townships within their counties, noting distinctly upon the same every tract, or parcel of swamp and overflowed land in each township, the quantity, and quality thereof, as to whether the same be first—second—or third rate, and it shall be his duty to return the same as soon as practicable, and in reasonable time to the clerk's office of the county court, and the said court, at some regular term thereafter, or sooner if deemed necessary, shall fix a valuation upon each tract, according to its quality, but in no case shall any of said land be valued at less than twenty cents per acre—and the plat with the description and valuation marked thereon shall be recorded in said book, and filed away among the records of the office.

SEC. 6. Court to time of sale—order of sale of lands. After the surveyors have returned the plats aforesaid, the valuations have been made, and recorded as aforesaid, the said court shall fix upon the proper time for selling said lands, which shall in all cases be at the county seat, and at the court house door of the several counties.—The said courts may order the whole of said lands to be [32] sold, and the sale to be continued from day to day, or they may order a part only of said lands to be sold from time to time, as they may deem expedient, and all such orders, so made by them, shall be entered on record in said book.

SEC. 7. Sale—notice of—contain. The said drainage commissioner shall be notified in writing by the clerk, of all such orders, and within reasonable time thereafter, not exceeding ten days, he shall give at least forty days' notice of the time, and place of sale thereof, by publishing the same in some newspaper printed in the county, or if there be no such newspaper, then by posting up two notices thereof in each election precinct in the county, for the like period of forty days before said day of sale. The said notices shall contain an accurate description of the lands to be sold, and shall specify the time, place, and terms thereof, and that the sale will be at public auction, between the hours of 10 o'clock a. m. and 5 o'clock p. m. of the day fixed therefor, and that the same will be continued from day to day, if deemed necessary.

SEC. 8. Order of sale. In conducting the sales the said commissioner shall sell the same in such order as may be directed by the county court. No tract shall be sold for less than its valuation, and the same shall be cried separately, and long enough to enable any one to bid who desires it.

SEC. 9. Terms of sale—labor. The terms of selling said lands shall be to the highest bidder, for cash, the amount of which, however, may be discharged by the purchaser in labor, to be performed, in manner and according to the terms hereinafter specified.

SEC. 10. Payment—failure—re-offer — penalty — suit — judgment. Upon closing the sales each day—the purchasers shall each pay, or secure the purchase money, according to the terms of sale, or in case of his failure to do so by ten o'clock the succeeding day, the tract purchased shall be again offered at public sale on the same terms as before, and if the valuation shall be bid, the same shall be, stricken off, but if the valuation be not bid, the tract shall be set down as not sold. If sale is not made, the former purchaser shall be required to pay the difference between his bid, and the valuation of the tract, and in case of his failure to make such payment, the drainage commissioner may forthwith institute an action of debt, or assumpsit in his name, for the use of the in- [33] habitants of the proper county, for the required sum, and upon making proof, shall be entitled to judgment, with costs of suit, which when collected shall be applied as other moneys arising from the sale of lands.

SEC. 11. Record—certificate—deed—title. Upon the completion of every sale by the purchaser, the commissioner shall enter the same in a sale book kept for that purpose, and shall deliver to the purchaser a certificate of purchase, stating therein the name and residence of the purchaser—describing the land sold and the price paid therefor, which certificate shall be evidence of the facts therein stated, and when presented to the county court, it shall be the duty of said court to execute to him a deed in fee simple for the land therein described, signed in the official capacity of said court, and countersigned by the clerk of said court, with the official seal thereto affixed, which said deed shall vest in the purchaser an absolute title in fee simple of said lands therein described.

SEC. 12. Reclamation of swamp land—damages. The said county courts shall cause the said lands to be drained by the construction of proper levees and drains necessary to reclaim the same, and when it becomes necessary in the construction of levees and drains to pass through private property, a just compensation shall be made to the owner or owners thereof, if damage has been done such property, to be ascertained in the same manner as provided in the road law now in force in cases of roads.

SEC. 13. Report of lands reclaimable—sections—contract. The surveyors employed to survey and locate said swamp land, shall also report to the county courts all the land in their respective counties which are susceptible of being drained or reclaimed, in all cases where said information cannot be satisfactorily had in some other way, with an estimate of the probable cost thereof, and at some regular term after said reports are received the said courts shall divide all such drainable lands in their counties into sections numbered one, two, three, etc., and whenever there shall be a sufficiency of lands sold to complete one or more sections, the same shall be as soon as practicable put under contract, and operation commenced thereon, and in like manner shall the work progress until the avails of said lands are exhausted or the work completed.

[34] **SEC. 14. Lettings.** The said county court shall cause the work to be done on the said sections to be let out at public sale to the lowest responsible

bidder, and it shall be the duty of the drainage commissioner, on being ordered by said court so to do, to give at least four weeks' notice of the time and place of such lettings, by putting up notices thereof in six of the most public places in the county, and in case there shall be a newspaper printed in the county, then, by causing a similar notice thereof to be published in the same, for a like period of four successive weeks before the day of such lettings, and the said notices shall contain specifications of the work to be done, to be made out under the direction and control of the county court, provided that two or more counties may reclaim swamp lands in conjunction, and in such case each county shall make payment in proportion to the amount of lands reclaimed in said county.

SEC. 15. Bond. The persons to whom said lettings shall be struck off shall enter into bond, with good security, payable to the said commissioner, for the use of the inhabitants of the county, in the penal sum of double the value of his bid, conditioned for the faithful performance of the work so undertaken by him, according to the specifications thereof, and on a failure to comply with the condition thereof said bond shall be forfeited, and suit brought upon the same to recover damages for non-compliance.

SEC. 16. Paying by labor. The said county courts, in laying off said work into sections as aforesaid, shall make such division thereof as will enable purchasers of land to pay for the same in necessary work, and if said purchasers shall be the lowest bidders at the lettings, the land so purchased shall be paid for in work but if any other responsible person or persons shall be lower bidders, the same shall be struck off to him or them, and the purchasers aforesaid shall be forthwith required to pay for their lands in cash, or credit by giving mortgage and good security for the purchase money, at the discretion of the said drainage commissioner. But no such credit shall be given for a greater length of time than twelve months, and shall draw interest at the rate of six per cent, per annum.

SEC. 17. Sales limited—roads and bridges. The said county courts shall not dispose or sell any more of said lands than shall be absolutely necessary to [35] complete the reclaiming, and draining of the same, and in all cases where there are any lands remaining unsold after the completion of said draining in any county, they shall be expended in the building of roads and bridges through or across said swamp lands, under the direction and superintendence of the drainage commission, and if said lands are not needed for this purpose, then to be disposed of in the construction of roads and bridges within the county.

SEC. 18. Embezzlement. If any drainage commissioner, or other person shall embezzle, or appropriate to their own use any money, bonds, bills, notes, or mortgages belonging to the drainage fund of any county in this state, he, she, or they shall be liable to indictment, and on conviction shall be imprisoned in the penitentiary of this state, for a period not less than one, nor more than five years, and such conviction shall work a forfeiture of office in all cases.

SEC. 19. Private sale—terms. All lands not sold, at public sale as herein provided for, shall be subject to sale at any time thereafter at the valuation, and the clerk of the county court is authorized and required to sell all such lands at private sale upon the terms upon which they were offered at public sale, the money to be paid over to the drainage commissioner, and his receipt taken therefor.

SEC. 20. Accounts verified. The surveyor shall be required to file in the office of the clerk of the county court an affidavit setting forth the number of days he was actually, and necessarily employed, and the number of days that each person [naming such person] was actually, and necessarily employed

by him, and when a team was employed, the number of days such team was actually, and necessarily employed in examining the swamp, and overflowed lands, and in making out plats, and descriptions of the same.

SEC. 21. Payment—charge to drainage fund. When accounts are proved, and filed in such manner as shall be satisfactory to the county courts, the clerk of said court is hereby authorized, and required to issue a county order for the amount thereof, in favor of the persons entitled thereto, or on their written order, the amounts authorized by this act to be paid, are hereby appropriated: provided that the clerk of the county court shall charge the several [36] amounts so paid to the drainage fund of the several counties, and the same shall be a debt due, and owing from such fund to the counties, and it is hereby made the duty of the drainage commissioners, to pay out of the first monies received from the sale of lands, to the treasurers of the several counties, the said amount so charged by the clerk against such drainage fund as aforesaid.

SEC. 22. Pre-emption—appraised value—limitation—time of payment—may pay in labor—failure—to forfeit. Each and every person who on the 28th day of September, 1850, was the owner of any improvement, or who since that date has become the owner of any improvement on any of the said swamp, or overflowed lands, with a view to a residence, and occupation of said land for agricultural purposes, shall have the right to purchase at the appraised value thereof, a quantity of land including his said improvement, to be bounded by the legal subdivisions, not exceeding one quarter section, to consist of the quarter-quarter, half-quarter, or quarter section: provided, that any person claiming the right to purchase under this act, shall within three months after the taking effect of this act file in the clerk's office of the county court of the proper county, a notice of his, her, or their claims, describing the land by its numbers, and proving the facts in relation to such claim, to the satisfaction of such clerk: and provided further, that any person, claiming the right to purchase as aforesaid, shall within twelve months from the day set for selling the swamp lands in the neighborhood in which his improvement is situated, pay to the drainage commissioner the consideration money for the land claimed, or the person so claiming shall be allowed to pay the same in labor, according to the provisions of this act, which payment shall entitle him, her, or them to a deed conveying an estate in fee simple: but in case of failure to make such payment, or to pay in labor as aforesaid, the right to make the purchase shall cease.

SEC. 23. Business—regular terms—special terms—fees. All business in relation to the swamp and overflowed lands, shall be transacted at the regular term of the courts, except on extraordinary occasions, when said county courts shall have power to appoint special terms for the transaction of such business. And the county courts shall have power to allow the drainage commissioners, surveyors, clerks and [37] all others employed, such fees as they may deem just and right, to be paid out of the county treasury and charged to the drainage fund.

SEC. 24. Trespass. It shall be the duty of all constables, coroners, sheriffs, justices of the peace, county surveyors, and grand jurors to take notice of all trespasses committed on such lands, either by cutting timber, or otherwise, and to take all legal steps under the laws of this state, to bring such offenders to punishment.

SEC. 25. Unorganized counties. As soon as any of the unorganized counties of this state become organized, so such of this act as relates to the selecting of the swamp lands by surveyor, and returning the lists thereof to the proper departments, to obtain the necessary sanction thereto on the part of the United

States, shall be in force and effect, and the time of appraising, selling, and draining of the said swamp lands, shall be at the discretion of the county courts respectively.

SEC. 26. Repeal. All acts, and parts of acts now in force in respect to the swamp lands of this state are hereby repealed.

SEC. 27. Take effect. This act to take effect and be in force from and after its publication in the Capitol Reporter and Iowa Republican.

I certify that the foregoing act was published in the Iowa Capital Reporter and Iowa Republican, on the 2d day of February, 1853.

GEO. W. McCLEARY,
Secretary of State.

CHAPTER 14.

PENITENTIARY.

AN ACT supplemental to chapter 187 of the code concerning the Penitentiary of the state, and the government and discipline thereof.

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

SECTION 1. Lease—admit—proviso. That the inspectors and wardens of the Iowa penitentiary or a majority of them be, and they are hereby authorized and empowered to lease or hire out the prisoners to be [48] worked in the shops upon the prison grounds, if they shall deem that the interests of the state will be best promoted by so doing.

SEC. 2. This act to take effect and be in full force from and after its passage.

Approved. January 13th, 1853.

CHAPTER 15.

ESCHEAT.

AN ACT relinquishing an escheat.

Preamble. Whereas, it has been represented to the general assembly of the state of Iowa, and fully made satisfactorily to appear, that on or about the 28th day of August, 1845, one Chauncey Beemen and wife conveyed in fee simple to one George Farnbauer, the east half of the north-west quarter of section twenty, in township No. seventy north, of range No. two west, situated in the county of Des Moines and state of Iowa, except twenty-five acres off of the north-west corner, previously sold to Hiram Wells, and that at the time of said purchase, said George Farnbauer was married to one Kunigunda Farnbauer, and that soon after said purchase, said George departed this life without issue, and leaving said Kunigunda his widow, but leaving no property, except the land above mentioned, that some time in the year 1847 said Kunigunda intermarried with one Christian Prey, and that by said marriage they had one child, to wit, William Prey, who is still living; that some time in 1850 the said Kunigunda departed this life; that said George Farnbauer was an alien and left no collateral relatives in the United