

CHAPTER 31.

RIGHT OF WAY.

AN ACT granting to railroad companies the right of way.

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

SECTION 1. Right of way—may take and use—limit—stations. That any railroad corporation in this state heretofore organized, or that may be hereafter organized, under the laws of this state, may take and hold, under the provisions contained in this act, so much real estate as may be necessary for the location, construction, and convenient use of their road. Such corporation may also take, remove, and use for the construction and repair of said road and its appurtenances, any earth, gravel, stone, timber, or other materials, on or from the land so taken; provided, that the land so taken otherwise than by the consent of the owners, shall not exceed one hundred feet in width, except for wood and water stations, unless where greater width is necessary for excavation, embankment, or depositing waste earth.

SEC. 2. Purchase—without owner's consent. Such railroad corporation may purchase and use real estate for a price to be agreed upon with the owners thereof, or the damages to be paid by such corporation for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the sheriff of the county, where such real estate is situated, in conformity with the provisions of this act.

[59] **SEC. 3. Property of minors, etc.** Whenever any railroad corporation shall take any real estate as aforesaid, of any minor, insane person, or any married woman whose husband is under guardianship, the guardian of such minor or insane person, or such married woman, with the guardian of her husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

SEC. 4. Proceedings in assessing damages—freeholders—report—payment—appeal. If the owner of any real estate over which said railroad corporation may desire to locate their road, shall refuse to grant the right of way through his or her premises, the sheriff of the county in which said real estate may be situated shall, upon the application of either party appoint six disinterested freeholders of said county, not interested in a like question, unless a smaller number is agreed upon by the parties, whose duties it shall be to inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land for the use of said railroad corporation and make report in writing to the sheriff of said county, who shall file and preserve the same, and if said corporation shall at any time before they enter upon said real estate for the purpose of constructing said road, pay to said sheriff for the use of said owner, the sum so assessed and returned to him as aforesaid, they shall be thereby authorized to construct and maintain their railroad over and across said premises, provided that either party may have the right to appeal from such assessment of damages to the district court of the county where such lands are situated within thirty days after such assessment is made. But such appeal shall not delay the prosecution of the work upon said railroad, if said corporation shall first pay or deposit with the sheriff the amount so assessed by said freeholders, and in no case shall said corporation be liable for the cost on appeal, unless the owner of such real estate shall be ad-

judged, and entitled upon the appeal to a greater amount of damages than was awarded by said freeholders. The company shall in all cases pay the costs of the first assessment.

SEC. 5. Notice. The freeholders so appointed shall be the commissioners to assess all damages to the owners of real estate in [60] said county, and said corporation may at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county to grant the right of way as aforesaid, by giving the said owner or guardian five days notice thereof in writing, either by personal service or by leaving a copy thereof at his or her dwelling, with some member of the family over fourteen years of age, having the damages assessed in the manner herein before prescribed.

SEC. 6. Talismen—fees. In case of the death, absence, or neglect, or refusal of any of said freeholders to act as commissioners as aforesaid, the sheriff shall summon other freeholders to complete the panel, and such commissioners shall proceed as directed in the preceding section. Said commissioners shall receive two dollars per day each for their services.

SEC. 7. Nonresidents. If, upon the location of said railroad, it shall be found to run through the land of any non-resident owner, the said corporation may give four weeks' notice to such proprietor, if known, and if not known, by a description of such real estate, by publication in some newspaper published in the county where such lands may be, (if there be any, and if not, in one nearest thereto.) that said railroad has been located through his or her lands, and if such owner shall not within thirty days thereafter apply to said sheriff to have the damages assessed in the mode prescribed in the preceding section, said company may proceed as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners, and upon the payment of the damages assessed to the sheriff for such owner, the corporation shall acquire all rights and privileges mentioned in the fifth section of this act.

SEC. 8. In regard to crossing roads, turnpikes, etc. Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having their rail road pass over or under same; and in such cases said corporation shall put such turnpike, plank road, or other way, as soon as may be, in as good repair and condition as before such alteration.

SEC. 9. Same—proceedings. If the proprietors of said plank road or turnpike, or the trustees or city council having jurisdiction of such ways respectively, require further alterations or amendments of [61] such turnpike, road, or way, and give notice thereof in writing to the agent or secretary of such railroad corporation, and if the parties cannot agree respecting the same, either of the parties may apply to the county judge, who, after reasonable notice to the adverse party, shall make determination respecting such proposed alterations or amendments, and shall award costs in favor of the prevailing party.

SEC 10. Damages. If such railroad corporation shall unnecessarily neglect to make such alterations and amendments thus determined upon by the county judge, the said turnpike corporation, or aggrieved city or township, shall be entitled to their damages for such neglect.

SEC. 11. Temporary ways. Every railroad corporation whilst employed in raising or lowering any turnpike or other way, or in making any other alteration by means of which the same may be obstructed, shall provide and keep in good order suitable temporary ways, to enable travelers to avoid or pass such obstructions.

SEC. 12. May cross canals, roads, etc. Any railroad corporation may construct and carry their railroad across, over, or under any railroad, canal, stream, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct their railroad crossings as not unnecessarily to impede the travel, transportation, or navigation upon the railroad, canal, or stream so crossed: said corporation shall be liable for the damages occasioned to any corporation or party injured by reason of said crossing.

SEC. 13. Bridges. Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct for the purpose of enabling their road to pass over or under any turnpike, road, canal, water course, or other way.

SEC. 14. Liable for damages. Every railroad corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this act, or of any other neglect of any of their agents, or by any mismanagement of their engineers, by the persons sustaining such damages.

SEC. 15. May pass over state lands. Any railroad corporation shall be authorized to pass over, occupy, and enjoy, without payment of damages, any [62] of the school, university, and saline or other lands of this state, provided no more of such lands shall be taken than is required for the necessary use and convenience of such corporation.

SEC. 16. Causeways. When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other adequate means of crossing the same.

SEC. 17. Principal office. Any company organizing under this act shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and change the same at pleasure, giving public notice in some newspaper of such establishment or change, and all process against said company shall be served on the president or secretary, or by leaving a copy at the principal office of the corporation.

SEC. 18. Sign—to give warning. Every company organized under this act shall be required to erect at all points where their road shall cross any public road, at a sufficient elevation from such public road to admit of free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of proximity of the railroad, and warn persons of the necessity of looking out for the cars; and every company neglecting or refusing to erect such sign, shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal.

SEC. 19. Take effect. This act to take effect from and after its publication in the Iowa Capital Reporter and Iowa Republican, published in Iowa City.

Approved, January 18th, 1853.

I certify that the foregoing act was published in the Iowa Capital Reporter and Iowa Republican, on the 9th day of February, 1853.

GEO. W. McCLEARY,
Secretary of State.