

## A BILL

FOR AN ACT TO AMEND CHAPTER 4, TITLE X, OF THE CODE OF 1873, AND TO REPEAL CERTAIN PORTIONS OF SAID CHAPTER, AND TO ENACT SUBSTITUTES THEREFOR; RELATING TO ASSESSMENT OF DAMAGES FOR RIGHT OF WAY.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa:*

2     Sec. 1254. Either party may appeal from such assessment of damages to either the  
3 circuit or the district courts of the county in which the land in question is situated, within  
4 thirty days after the assessment is made, by giving the adverse party, or, if the party is a  
5 corporation, its agent or attorney, and the sheriff of said county, a notice in writing, to be  
6 served as an original notice, that such appeal has been taken, and the court to which it is  
7 taken. The said sheriff shall thereupon file a certified copy of so much of the appraisement  
8 as applies to the part appealed from and stated in said notice, and said court shall thereupon  
9 take jurisdiction thereof, and try and dispose of the same without any further pleadings, and  
10 in the manner of ordinary proceedings as modified herein. The owner of the land shall be  
11 the plaintiff, and the adverse party shall be the defendant.

12     Sec. 1255. An appeal shall not delay the prosecution of the work upon said railway, if  
13 the said corporation or party intending to construct said railway as the owner thereof, either  
14 pays or deposits with the said sheriff the full amount assessed by the said commissioners  
15 within three days after the filing of the report of said commissioners with said sheriff; and  
16 upon payment of the said sum, or the deposit thereof, it shall be to the use of the party en-  
17 titled thereto; but the said sheriff shall not pay over said sum to any party entitled thereto  
18 after the service upon him of a notice of appeal, but shall retain the same until the final de-  
19 termination of the said cause.

20     Sec. 1256. An acceptance by the land owner of the damages awarded by the commission-  
21 ers to him or her, or any part thereof, upon any particular tract of land, shall bar the right  
22 of appeal as to the damages on said particular tract, but shall not affect other tracts to which  
23 said acceptance was not intended by him or her to apply.

24     Sec. 1257. Upon said certified copy of said appraisement so appealed from, being filed

25 with the clerk of said court, as provided in section 1254 of the Code of 1873, and docketed  
26 as in cases in ordinary proceedings, the clerk of said court shall place the same on the trial  
27 calandar, as provided in said Code relating to ordinary proceedings, and the rules of court  
28 in force in relation thereto: and the said appeal shall be assigned for trial by the court in  
29 the same order as in cases in ordinary proceedings. When said cause is reached for trial,  
30 according to said assignment, the court shall direct a jury to be drawn and impaneled as  
31 for a trial in ordinary proceedings: *provided*, that before a juror is accepted he may be sub-  
32 jected to the same challenges, both for cause and peremptorily, as are now authorized in civil  
33 proceedings, and in addition thereto must be sworn and examined as to his knowledge of the  
34 values of real estate in the county where the said land in controversy is situated, and if the  
35 said juror shall disclose under oath that he has no knowledge of said values, said fact shall  
36 be a reason for challenge for cause. No juror shall be accepted who has any interest in a  
37 like question of damages then pending in the courts of said county, or on appeal to the su-  
38 preme court. The said jury being impaneled, the court shall, in writing, instruct the said  
39 jury, defining their duties as such jurors, and giving to said jury such legal rules as to the  
40 measure and circumstances of damages as will enable the said jury to find the necessary facts  
41 in a verdict. When said written instructions are thus submitted, the said jury shall proceed  
42 to the premises concerned in the appeal and view the same, accompanied by the county sur-  
43 veyor, if the court so direct; and after having examined said premises, shall return to the  
44 said court without any unnecessary delay, and, under the direction of said court, shall delib-  
45 erate and agree upon their verdict, in a room provided for that purpose, in charge of a  
46 bailiff of the court, and subject to the same rules as apply to the deliberation of juries in  
47 civil actions, and for like causes upon a failure to agree, may be discharged and a re-trial  
48 had. The right to intervene, as in ordinary proceedings, is hereby given to any party coming  
49 within the provisions of section 2683, of the Code of 1873. During the examination of said  
50 premises, neither of the parties, nor their attorneys, shall be present, and no testimony of  
51 any kind, except plats of the premises, shall be introduced; and during the pendency of said  
52 cause before the said jury, the court shall not permit any argument of any kind to be made  
53 to said jury, and any party violating this provision shall pay the costs of a re-trial of the  
54 cause granted on that account. Exceptions to the written instructions of the court must be  
55 filed in writing, in open court, within three days from the time the same are submitted to the  
56 jury, unless the court, for some cause, adjourn before the expiration of the said three days, in  
57 which case the said exceptions may be filed with the clerk, and a copy of the same served on  
58 the adverse party. The right of appeal is reserved to either party, to the supreme court.

59 Upon the trial of any intervention herein, the same shall be as in ordinary proceedings; and  
60 the rules of evidence, and those relating to trial, and the order of trial and appeal, shall be  
61 the same as in ordinary proceedings. The said intervention shall neither delay nor interfere  
62 in any way with the trial of the question of damages in said appeal, and shall be separately  
63 tried.