

TITLE 47
MINES AND MINING

CHAPTER 9
RIGHTS OF WAY AND EASEMENTS FOR DEVELOPMENT OF MINES

47-901. RIGHT OF WAY FOR MINING PURPOSES. The owner, locator or occupant of a mining claim, whether patented under the laws of the United States or held by location or possession, may have and acquire a right of way for ingress and egress, when necessary in working such mining claim, over and across the lands or mining claims of others, whether patented or otherwise.

[(47-901) 1876, p. 70, sec. 1; R.S., sec. 3130; reen. R.C. & C.L., sec. 3223; C.S., sec. 5537; I.C.A., sec. 46-801.]

47-902. RIGHT OF WAY FOR MINING PURPOSES -- RAILROADS, DITCHES, AND TUNNELS. When any mine or mining claim is so situated, that for the more convenient enjoyment of the same a road, railroad or tramway therefrom, or ditch or canal to convey water thereto, or a ditch, flume, cut or tunnel to drain or convey the waters or tailings therefrom, or a tunnel or shaft, may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, may require the use or occupancy of lands or mining grounds, owned, occupied or possessed by others than the person or persons or body corporate, requiring an easement for any of the purposes described, the owner, claimant or occupant of the mine or mining claim first above mentioned, is entitled to a right of way, entry and possession for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, in, upon, through and across such other lands or mining claims, upon compliance with the provisions of this chapter.

[(47-902) 1881, p. 266, sec. 1; R.S., sec. 3131; reen. R.C. & C.L., sec. 3224; C.S., sec. 5538; I.C.A., sec. 46-802.]

47-903. ACTION TO CONDEMN RIGHT OF WAY. When the owner, claimant or occupant of any mine or mining claim desires to work the same, and it is necessary, to enable him to do so successfully and conveniently, that he have a right of way for any of the purposes mentioned in the foregoing sections, if such right of way cannot be acquired by agreement with the claimant or owner of the lands or claims over, under, through, across or upon which he seeks to acquire such right of way, he may commence an action in the district court in and for the county in which such right of way, or some part thereof, is situated, by filing a verified complaint containing a particular description of the character and extent of the right sought, a description of the mine or claim of the plaintiff, and of the mine or claim and lands to be affected by such right of way or privilege, with the name of the occupant or owner thereof. He may also set forth any tender of compensation that he may have made, and demand the relief sought.

[(47-903) 1876, p. 70, sec. 3; R.S., sec. 3132; am. 1899, p. 350, sec. 1; reen. R.C. & C.L., sec. 3225; C.S., sec. 5539; I.C.A., sec. 46-803.]

47-904. ISSUANCE AND SERVICE OF SUMMONS. Upon the filing of such complaint the clerk must issue a summons as provided in other civil actions, and

the same must be served in the manner prescribed by law for service in ordinary actions.

[(47-904) 1876, p. 70, sec. 4; R.S., sec. 3133; am. 1899, p. 350, sec. 2; reen. R.C. & C.L., sec. 3226; C.S., sec. 5540; I.C.A., sec. 46-804.]

47-905. APPOINTMENT OF COMMISSIONERS -- TRIAL BY COURT IF COMMISSIONERS NOT APPOINTED. At any time after the service of the summons the plaintiff may upon ten days' notice to the defendant, apply to the district court or the judge thereof for the appointment of commissioners to assess the damages resulting from the grant of such right of way. If upon the hearing of such motion, and the affidavits and proofs offered by the respective parties, the judge shall be of the opinion that the plaintiff has made a prima facie case entitling him to the relief demanded in the complaint, or any part thereof, he shall appoint three commissioners, who must be disinterested persons, residents of the county, to assess the damages resulting to the claims, mines or lands of the defendant. But if such commissioners are not applied for and appointed, or their award is not approved by the judge or court, or if an appeal is taken from their award as hereinafter provided, the action shall be tried and determined by the court, and the provisions of the Code of Civil Procedure applicable thereto shall govern the proceedings therein as in other civil actions. Either party shall be entitled to a jury trial and may move for a new trial and appeal as in other cases.

[(47-905) 1876, p. 70, sec. 5; R.S., sec. 3134; am. 1899, p. 350, sec. 3; reen. R.C. & C.L., sec. 3227; C.S., sec. 5541; I.C.A., sec. 46-805.]

47-906. OATH, VIEW, AND REPORT OF COMMISSIONERS. The commissioners so appointed must be sworn to faithfully and impartially discharge their duties, and must proceed without unreasonable delay to examine the premises and assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way affects the property of more than one person or company, such report must contain an assessment of damages to each company or person.

[(47-906) 1876, p. 70, sec. 6; R.S., sec. 3135; reen. R.C. & C.L., sec. 3228; C.S., sec. 5542; I.C.A., sec. 46-806.]

47-907. SETTING ASIDE REPORT. For good cause shown, the judge may set aside the report of such commissioners and appoint three (3) other commissioners whose duty shall be the same as above mentioned.

[(47-907) 1876, p. 70, sec. 7; R.S., sec. 3136; reen. R.C. & C.L., sec. 3229; C.S., sec. 5543; I.C.A., sec. 46-807.]

47-908. RIGHTS UPON PAYMENT OF DAMAGES. Upon the payment of the sum assessed as damages as aforesaid, to the persons to whom it is awarded, or a tender thereof to them, then the person petitioning as aforesaid, is entitled to the right of way prayed for in his petition, and may immediately proceed to occupy the same and erect thereon such works and structures, and make therein such excavations, as may be necessary to the use and enjoyment of the right of way so awarded.

[(47-908)1876, p. 70, sec. 8; R.S., sec. 3137; reen. R.C. & C.L., sec. 3230; C.S., sec. 5544; I.C.A., sec. 46-808.]

47-909. APPEAL FROM COMMISSIONERS' AWARD -- BOND. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten (10) days after the filing of the report of the commissioners. A written notice of such appeal must be served upon the appellee in the same manner as summons is served in civil actions. The appellant must file with the clerk of the court to which the appeal is taken, a bond with sureties to be approved by the clerk in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant will pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

[(47-909) 1876, p. 70, sec. 9; R.S., sec. 3138; reen. R.C. & C.L., sec. 3231; C.S., sec. 5545; I.C.A., sec. 46-809.]

47-910. TRIAL ON APPEAL. An appeal brings before the district court the necessity of the right of way or easement for the successful and convenient working of the mining claim and the amount of damages; and upon such appeal the case must be tried anew, and either party is entitled to a jury.

[(47-910) 1876, p. 70, sec. 10; R.S., sec. 3139; reen. R.C. & C.L., sec. 3232; C.S., sec. 5546; I.C.A., sec. 46-810.]

47-911. EFFECT OF APPEAL -- BOND AND DEPOSIT OF DAMAGES. The prosecution of an appeal from the award of the commissioners or from the judgment of the district court does not hinder, delay or prevent the plaintiff from exercising all the rights and privileges granted by the award or judgment, if he deposit with the clerk of the district court the full amount of the damages awarded or adjudged the defendant, and execute and deliver to the clerk a bond with sufficient sureties to be approved by the clerk, in an amount to be fixed by the judge of the district court, conditioned to pay to the defendant any additional amount, over and above the amount so deposited that the defendant may recover, and all costs to which he may be entitled under the provisions of this chapter. At any time after such deposit and before the final determination of the action the defendant may, upon demand, receive from the clerk the amount so deposited, but his acceptance of the same or any part thereof, shall bar any further prosecution of the appeal, and shall be deemed an acquiescence and consent to the award and judgment, and the defendant shall not be entitled to any costs subsequent to the judgment.

[(47-911) 1876, p. 70, sec. 11; R.S., sec. 3140; am. 1899, p. 350, sec. 4; reen. R.C. & C.L., sec. 3233; C.S., sec. 5547; I.C.A., sec. 46-811.]

47-912. COSTS OF APPEAL. If the defendant recover judgment against the necessity of the easement, or for fifty dollars (\$50.00) more damages than the plaintiff has tendered him as provided in the next section, or for fifty dollars (\$50.00) more damages than the commissioners or judgment of the district court awarded him, he shall recover the costs of the appeal, otherwise he must pay all such costs.

[(47-912) 1876, p. 70, sec. 12; R.S., sec. 3141; am. 1899, p. 350, sec. 5; reen. R.C. & C.L., sec. 3234; C.S., sec. 5548; I.C.A., sec. 46-812.]

47-913. COSTS OF PROCEEDINGS. The costs and expenses of proceedings under the provisions of this chapter, except as herein otherwise provided, must be paid by the party making the application: provided, that if the applicant before the commencement of such proceedings has tendered to the parties owning or occupying the lands or mining claims, a sum equal to or more than the amount of damages recovered, all of the costs and expenses must be paid by the party or parties owning the land or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

[(47-913) 1876, p. 70, sec. 13; R.S., sec. 3142; reen. R.C. & C.L., sec. 3235; C.S., sec. 5549; I.C.A., sec. 46-813.]