

§ 942-3. Condemnation of land

Where any company, the right of way to which is granted by sections 687a, 687a-2 to 687a-5,¹ and 942-1 to 942-9 of this title and sections 607a and 615a of title 16, shall in the course of construction find it necessary to pass over private lands or possessory claims on lands of the United States, condemnation of a right of way across the same may be made in the following manner: In case the owner or claimant of such lands or premises and such company can not agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in Alaska; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court of such appraisal, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds with sufficient surety or sureties for the payment of any costs that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee, as well as its own. And the payment into court for the use of the owner of claimant, of a sum equal to that finally awarded shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintaining and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the Territory, or subject to any legal disability, the court may appoint a proper person who shall give bonds with sufficient surety or sureties, for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceeding shall be had in reference to the appraisal of the premises to be taken, and with the same effect as has been already described. And the title of the company to the land taken by virtue of this section shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case it shall be necessary for the said company to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in the manner described for the purpose of ascertaining the value of, and acquiring a title to, the same; and the

¹ See References in Text note below.

court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or nonappearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred. It shall be competent for the legal guardian of any infant, or any other person under guardianship, to agree with the said company as to damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, and said guardian shall have full power to make and execute a conveyance thereof to the said company which shall vest the title thereto in the said company.

(July 2, 1864, ch. 216, §3, 13 Stat. 357; May 14, 1898, ch. 299, §4, 30 Stat. 410.)

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

REFERENCES IN TEXT

Sections 687a and 687a-2 to 687a-5 of this title, referred to in text, were repealed by Pub. L. 94-579, title VII, §§703(a), 704(a), Oct. 21, 1976, 90 Stat. 2789, 2792.

CODIFICATION

The first sentence of this section to the colon is from section 4 of act May 14, 1898, which, as originally enacted, provided that the condemnation might be made in accordance with section 3 of act July 2, 1864. The remainder of this section is from section 3 of act July 2, 1864, incorporated herein for convenience of reference. The proviso of section 4 of act May 14, 1898, is classified to section 942-4 of this title.

Section was formerly classified to section 413 of Title 48, Territories and Insular Possessions.

SAVINGS PROVISION

Repeal by Pub. L. 94-579 insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

§ 942-4. Filing preliminary survey, map and profile of road

Any company mentioned in sections 687a, 687a-2 to 687a-5,¹ and 942-1 to 942-9 of this title and sections 607a and 615a of title 16, by filing with the Secretary of the Interior a preliminary actual survey and plat of its proposed route, shall have the right at any time within one year thereafter to file the map and profile of definite location and such preliminary survey and plat shall during the said period of one year from the time of filing the same have the effect to render all the lands on which said preliminary survey and plat shall pass subject to the right of way mentioned in section 942-3 of this title.

(May 14, 1898, ch. 299, §4, 30 Stat. 410.)

¹ See References in Text note below.