

the county or subdivision in which he was first appointed to another county or subdivision, it shall be his duty to comply with the requirements of section 2 of this act, before he again enters upon the duties of his office.

§ 4. That all acts and parts of acts in conflict with this act be, and the same are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage and approval.

Approved, February 13, 1879.

Railroads.

CHAPTER 46.

AN ACT to amend Chapter Three of Title Two of Part Three of Division Second of the Civil Code, and to provide for the Organization of Railroad Corporations, to regulate the Operation thereof, and to Provide for the Taxation of their Property.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

§ 1. WHO MAY FORM CORPORATION. ARTICLES, WHAT TO STATE.] Any number of persons not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers, or for the purpose of maintaining and operating any railroad already constructed for the like purpose, by making articles of organization in which shall be stated:

1. NAME—The name of the corporation.

2. TERMINI—The place from and to which such railroad is to be constructed, or maintained and operated, as the case may be.

3. LENGTH AND ROUTE—The estimated length of such railroad and the name of each county in this Territory through or into which it is made or intended to be made.

4. STOCK—The amount of the capital stock of the corporation, the number of shares of which it shall consist, and if such stock shall consist of common and preferred stock, the number and amount of each class.

5. DIRECTORS AND THEIR DUTY—The names and residences of the directors of the corporation, who shall manage its affairs for the first year, and until others are chosen in their places, and who shall be not less than five nor more than thirteen in number; and each such person shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit of at least three of the directors therein named, that the signatures thereto are genuine, and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned; and thereupon said articles and affidavits shall be filed in the office of the secretary of the territory, who shall endorse thereon the date of their filing, and record the same. After such filing, a patent under the seal of the Territory, signed by the governor and secretary of the territory, shall be issued in substantially the following form:

To all whom these presents shall come greeting:

WHEREAS, (naming the persons subscribing the articles of organization) have filed in the office of the secretary of the territory certain articles of organization, with a view of forming a corporation to be known as (here insert the name) and with a capital of (here insert the amount) for the purpose of constructing, maintaining and operating or maintaining and operating a railroad from _____ to _____, and having complied with the provisions of the statutes in such cases made and provided; therefore, the Territory of Dakota hereby grants unto the above named persons and their associates, successors and assigns, full authority by and under the said name of _____, to exercise the powers and privileges of a corporation, for the purpose above stated and in accordance with their said articles of organization and the laws of this Territory.

In witness whereof these presents have been attested with the great seal and signed and countersigned by the governor and secretary of the Territory of Dakota, at _____, the _____ day of _____, in the year one thousand eight hundred and _____.

_____, Governor.

_____, Secretary of Territory.

Upon the issue of such patent, the subscribers to such articles, and all persons who shall thereafter become stockholders in such corporation, shall be a corporation by the name specified in such articles, and shall possess all the powers and privileges, and be subject to all the provisions of the law regulating railroad corporations and the provisions of this chapter applicable thereto.

§ 2. DIRECTORS TO OPEN STOCK BOOKS.] When such patent is issued the directors may in case the whole of the capital stock shall not have been before subscribed, open books of subscription to fill up the capital stock, at such place and after giving such notice as they may deem expedient, and may from time to time receive subscriptions until the capital stock is subscribed.

§ 3. MANNER OF ORGANIZING—NUMBER OF DIRECTORS, ELECTIONS, ETC.] There shall be a board of not less than five nor more than thirteen directors of every such corporation to manage its affairs who shall be elected at such time, in such manner, and for such terms, as shall be prescribed by its by-laws, and shall hold their offices until their respective successors shall be chosen. In the election of directors each stockholder shall be entitled to one vote, either in person or by proxy, for every share of stock owned by him for thirty days next preceding such election. Vacancies shall be filled in the manner prescribed by the by-laws. Inspectors of the first elections of directors shall be appointed by the board of directors named in the articles of organization and thereafter as provided by the by-laws. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own name, or as trustee or personal representative, and qualified to vote at the election at which he shall be chosen; and at every election of directors the books and papers of such corporation shall be exhibited to the meeting if a majority of the stockholders present shall require it. If, for any reason, the election of directors shall not have been held at the time fixed therefor by law, the same may be held at any time thereafter on a notice of twenty days. Such election may be called by a majority of the directors, or by the stockholders holding a majority of the stock; but at any meeting at which all the

stockholders shall be present or be represented by attorney or proxy, it shall be lawful to waive notice, and proceed to an election of directors.

§ 4. OFFICERS.] The directors shall appoint one of their number president; they may also appoint a vice president, secretary and treasurer, and such other officers and agents as shall be prescribed by the by-laws of such corporation.

§ 5. STOCK, FORFEITURE OF.] The directors may require any amounts unpaid upon the capital stock to be paid in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board, and the board shall have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice nearest his usual place of residence, at least sixty days previous to the day on which said payment is required to be made, stating that he is required to make such payment at the time and place in such notice specified, and that if he fails so to do his stock and all previous payments thereon will be forfeited for the use of the corporation, such board may declare such stock and previous payments forfeited, and they shall be forfeited accordingly, to the use of the corporation, or such board may in any case enforce payment by action at law.

§ 6. STOCK DEEMED PERSONAL ESTATE.] The stock of every such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed in its by-laws, but no shares shall be transferable until all previous calls thereon shall have been fully paid in.

§ 7. CAPITAL STOCK, HOW INCREASED.] The capital stock of any such corporation may be increased to such amount as may by its stockholders be deemed necessary for the construction or operation of its road, by a vote of the owners of at least two-thirds of all its stock, in person or by proxy, at any annual meeting, or at any meeting called by its directors for that purpose, by a notice in writing to each stockholder, or to be served on him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice, if known, nearest his usual place of residence, at least twenty days prior to such meeting. Such notice

shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon the records of such corporation.

§ 8. WHO SHALL BE LIABLE AS STOCKHOLDERS.] No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholders of such corporation, for any calls or installments on any part paid stock thereof; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, ward or person interested would have been if he had been living, or competent to act, and held the same stock in his own name.

§ 9. POWERS OF CORPORATION.] Every corporation formed under this chapter shall be a body corporate by the name designated in its articles, shall have perpetual succession, shall have the right to sue and be sued, may have a common seal and alter the same at pleasure, and shall also have power:

1. TO MAKE SURVEYS—To cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

2. TO HOLD REAL ESTATE—To take and hold such voluntary grants of real estate and other property as may be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. SAME—To acquire under the provisions of this chapter, or by purchase, all such real estate and other property

as may be necessary for the construction, maintenance and operation of its railroad, and the stations, depot grounds, and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, or sell the same when not required for railroad uses, and no longer necessary to its use.

4. TO LAY OUT ROAD, ETC.—To lay out its road not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel or other material, to take as much land as may be necessary for the proper construction, operation and security of the road, and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for lands taken for the use of the corporation.

5. CONSTRUCTION OF ROAD—Subject to the provisions of section sixteen, to construct its railroad across, along or upon any stream of water, water course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing, or canal, which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road, or turnpike, which it shall touch, intersect or cross, over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon road, or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad, and take land necessary therefor: *Provided*, Such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods.

6. TO CONNECT WITH OTHER ROAD—To cross, intersect, join and unite its railroad with any railroad heretofore or hereafter constructed at any point on its route and upon the grounds of such railroad corporation with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new

railroad shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But no corporation which shall have obtained the right of way and constructed its road at the point of intersection, before the application for the appointment of commissioners may be made, shall be required to alter the grade or change the location of its road, or be required to bear any part of the expense of making and maintaining such crossing.

7. DEPOT GROUNDS, ETC.—To have and use equal room, ground, rights, privileges and conveniences for tracks, switches, sidings and turnouts upon any levee, river bank or front, steamboat or other public landing, and upon any street, block, alley, square or public ground within any street, block, alley, square or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this, may adjust, with other corporations, the ground to be occupied by each with such tracks, switches, sidings and turnouts; and if such corporations cannot agree upon such adjustment, and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined, and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The commissioners provided by law may employ a competent engineer, and define, locate and plat the ground, and assign to each corporation the part for the tracks and other conveniences for each, and may require the removal or purchase of tracks previously laid, so as to justly settle the rights of each corporation upon such ground, and assess the damages to be paid under the law providing for taking real property.

8. TO CARRY PERSONS AND PROPERTY—To take and convey persons or property over their railroad by the power or force

of steam or of animals, or by any mechanical power, and to receive compensation therefor; and to do all the business incident to railroad corporations.

9. To **ERECT BUILDINGS**—To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freight and business subject to the statutes in relation thereto.

10. To **ESTABLISH TIME TABLES**—To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor.

11. To **BORROW MONEY**—To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient, and to execute trust deeds or mortgages, or both, as occasion may require on any railroads or parts thereof, constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provision granting, transferring, or mortgaging their railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages, and appurtenances used in connection with such railroads in any manner whatever then belonging to the corporation, or which may thereafter belong to it, as security for any bonds or evidence of debt therein mentioned in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed, or upon foreclosure of any such mortgage, the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section one, with all the powers conferred upon corporations by this act, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities, and advantages mentioned in such instruments which were possessed by such corporation making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale and no fur-

ther, as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of such mortgagor corporation, such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired, to the same extent as if such latter corporation had been named in such law as the grantee thereof.

§ 11. EXTENSIONS, BRANCHES, ETC. HOW TO PROCEED.] Any railroad corporation may, under the provisions of this chapter, extend its road from any point named in its charter or articles of organization, or may build branch roads either from any point on its line of road or from any point on the line of any other road connecting or to be connected with its road, the use of which other road between such points and the connection with its own road, such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making such extension or building any such branch road, such corporation shall by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section one, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the territory, and cause the same to be recorded as provided in said section one. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto to which it would have had if it had been authorized in its charter or articles of organization. But this section shall not be construed to authorize any railroad corporations to consolidate with each other.

§ 12. CHANGING ROUTE OF ROAD. PROCEEDINGS.] The board of directors of every railroad corporation may, by a vote of two-thirds of the whole number, at any time after the route

or any portion of the route of their road, or any extension or branch thereof, or part of their road, or any extension or branch as constructed, if it shall appear to them that the line can be improved thereby; but no railroad shall be so diverted from any county, town, city or village which in its corporate capacity shall have extended aid to such road, either while in the hands of the then present owner or any former person or corporation; and no such alteration shall be made in any city or village after the road shall have been constructed therein unless the same shall have been sanctioned by a vote of two-thirds of the legal voters of such county, town, city or village of such city, or the trustees of such village. Before making any such alteration the board of directors shall designate the route thereof by resolution, to be entered in its records, filed and recorded in the office of the secretary of the territory as provided in the preceding section; thereupon it shall have the same rights and privileges to build such road as altered, as if it were the original line.

§ 13. CONSOLIDATING ROADS] Any railroad corporation may consolidate its stock, franchises and property with any other railroad corporation whether within or without the Territory, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line, with or without branches, upon such terms as may be agreed upon and become one corporation, by any name selected, which, within this Territory shall possess all the powers, franchises and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions of this chapter, and such in addition as such corporations peculiarly possess, or were subject to at the time of consolidation by the laws then in force applicable to them, or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person, or by proxy, at a regular annual meeting thereof, or a special meeting called for that purpose in the manner prescribed in section seven, or by the consent in writing of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied by lists of their stockholders

and the number of shares held by each, duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporations affixed, shall be filed for record in the office of the secretary of the territory, before any such consolidation shall have any validity or effect. Any railroad corporation whose line is wholly within this Territory may lease or purchase the railroad franchises, immunities and all other property and appurtenances of any other railroad corporation when their respective railroads can be lawfully connected and operated together, to constitute one continuous main line with or without branches.

§ 14. CHANGING CORPORATE NAME.] Any railroad corporation may change its corporate name and adopt any other by resolution adopted by the stockholders owning a majority of all the stock thereof, at either a regular annual meeting or a special meeting called for that purpose, in the manner prescribed in section seven. Such changes shall not take effect until a copy of such resolution and of the record of its adoption, certified by the secretary under his hand, and the corporate seal, shall be filed with the secretary of the territory. A like certified copy of such resolution shall be published for three successive weeks thereafter, in any newspaper of general circulation published at the seat of government of the Territory. Every proceeding, act, liability or thing done, undertaken or encouraged by or on behalf of the corporation under its former name shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged.

§ 15. RAILROAD CORPORATION SHALL RESTORE STREAM, HIGHWAY, ETC.] Every corporation constructing, owning or using a railroad shall restore every stream of water, water course, street, highway, plank road, toll or wagon road, turnpike or canal, across, along or upon which said railroad may be constructed, to its former state, or to such condition as that its usefulness shall not be materially impaired, and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. When any lands shall be required in order to change any highway, street, turnpike or plank road, toll or wagon road, the same may be condemned, taken, and compensation made in the manner provided by

law; and when taken shall become a part of such highway, street, turnpike or plank road, toll or wagon road, to the same extent as, and by the same tenure, by which the adjacent parts thereof are held.

§ 16. WHEN RAILROAD PASSES OVER HIGHWAY.] When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any highway, street, turnpike or plank road, toll or wagon road, it shall be sufficient to construct the same so as to give a clear passage way of twenty feet, or two passage ways of fourteen feet each.

§ 17. WHAT PROPERTY SHALL BE SUBJECT TO MORTGAGE.] All rolling stock of any railroad corporation organized under the provisions of this act used and employed in connection with its railroad, and all fuel necessary to the operation of the same, are declared and shall be held to be fixtures; and all such property, and all additional rights of way, depot grounds and other real property, acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein, shall be subject to the lien thereof to the same extent as the property therein described, which the corporation owned at the time of its execution.

§ 18. CONVEYANCE OR LEASE, HOW EXECUTED.] Every conveyance or lease, deed of trust, mortgage, or satisfaction thereof, made by any railroad corporation of any franchises, real estate, fixtures, or other real property, in pursuance of law, shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be recorded in the office of the secretary of the territory who shall endorse thereon his certificate thereof, specifying the day and hour of its reception, and the volume and page where recorded, which shall be evidence of such facts. Every such record of any such instrument shall from the time of reception have the same effect as to any property in this Territory described therein, as the record of any similar instrument in the office of a register of deeds may have by law as to property in his county, and shall be notice of the rights and interests of the grantee, lessee or mortgagee by such instrument, to the same extent as if it were recorded in each and all of the several

counties in which any property therein described may be situated.

§ 19. DIRECTORS MAY SET ASIDE MONEYS FOR PAYMENT OF DEBTS.] The board of directors of any railroad corporation may annually, or oftener, as may be deemed expedient, set apart and appropriate a sum of money not exceeding fifty per cent. of its net earnings as resources for any one year, after paying the current expenses of their road in the interest on its outstanding indebtedness, in order to sink, redeem, pay off, cancel or discharge the indebtedness of such corporation; and the said sums so set apart shall be annually applied to the payment and discharge of such debts of such corporation as shall be due, and to the purchase and redemption of the outstanding evidences of indebtedness of such corporation, as the board of directors thereof shall deem most for the interest of such corporation, and for no other purpose.

§ 20. DEFENSE OF USURY PROHIBITED.] No railroad corporation shall be allowed to make the defense of usury against the holder of any bond or other obligation for the payment of money issued by such corporation.

§ 21. DIRECTORS MAY BE CLASSIFIED.] Any railroad corporation may by a vote of a majority in amount of the stockholders present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies to be filled in accordance with the by-laws.

§ 22. ANNUAL REPORT.] Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirty-first day of December, which report shall be verified by the affidavit of the secretary, treasurer and superintendent of the corporation, and shall state:

1. LENGTH OF ROAD, ETC.—The length of the road in operation; the length of single track; the length of double track; the weight of the rail per yard.

2. **CAPITAL STOCK**—The capital stock actually subscribed and the amount paid thereon.

3. **WHOLE COST OF ROAD**—The whole cost of the road showing the amount expended for the right of way, bridging, grading, iron and buildings respectively, and for all other purposes incidental to the construction of such road.

4. **INDEBTEDNESS**—The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness, and the amount due the corporation.

5. **AMOUNT RECEIVED**—The amount received for the transportation of passengers, property and mails, for interest, and from other sources respectively.

6. **AMOUNT OF FREIGHT**—The amount of freight, specifying the quantity in tons or other usual mode of measurement.

7. **AMOUNT PAID OUT**—The amount paid for the repairs of the road, buildings, engines and cars respectively; for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employes; the aggregate amount paid for salaries of officers, and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

8. **AMOUNT OF LOSS**—The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

9. **DIVIDENDS**—The number and amount of dividends and when made, and in what manner such dividends have been paid.

10. **AMOUNT SINKING FUND**—The amount appropriated to sinking fund, and the manner in which the same has been applied, and the total amount then held by such sinking fund.

11. **PERSONS KILLED**—The number of persons killed or injured, the causes thereof, and whether passengers or persons employed by the corporation.

12. **MANNER OF ACCIDENTS**—Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation, and whether such person is retained in the service of such corporation. The secretary of

each railroad corporation shall mail to every stockholder thereof, whose postoffice address is known, a copy of its annual report, and shall file a certified copy thereof with the secretary of the territory on or before the first day of February in each year.

§ 23. POWERS OF CORPORATION TO ENTER UPON LANDS.] Every railroad corporation incorporated under this act has power and is authorized to enter upon any land for the purpose of examining and surveying its railroad, and to take, hold and appropriate so much real estate as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for buildings, stations, work shops, depots, machine shops, switches, side tracks, turn tables, snow defenses and water stations; all materials for the construction of such road and its appurtenances, and the right of way over adjacent land sufficient to enable such corporation to construct and repair its road and the right to conduct water to its water stations, and to construct and maintain proper drains—and may obtain the right to such real estate by purchase or condemnation in the manner provided by the law.

§ 24. MAKE RETURN OF EARNINGS TO TERRITORIAL TREASURER.} Every railroad corporation organized under the provisions of this act, and every person or corporation operating a railroad in this Territory, except railroads operated by horse power, shall on or before the 10th day of February in each year make and return to the treasurer of this Territory, in such form and upon such blank as shall be furnished by him, a true statement of the gross earnings of their respective roads, for the preceding calendar year; the number of miles operated by each such corporation or person, and the gross earnings per mile during such year. Every such railroad corporation or person operating a railroad in this Territory shall pay to the said treasurer two (2) per centum of the gross earnings of such railroad each year for the first five years after said railroad shall be or shall have been operated in whole or in part; and three (3) per centum of the gross earnings of such railroad for each and every year after the expiration of said five years. One-half of such amount shall be paid at the time that the report to the treasurer of the territory hereinbefore

provided is made, and one half on or before the tenth day of August in each year; and for the purpose of verifying and ascertaining the accuracy of any such report of gross earnings made to the treasurer of the territory, the governor or any other person by law appointed, shall have power to examine the books and papers of said corporation, and to examine under oath the officers and agents of said corporation and other persons; and if any person so examined shall knowingly or willfully swear falsely, or if any officer attesting such report shall knowingly and willfully swear falsely in relation thereto, every such person shall be subject to the pains and penalties of perjury. The percentage of gross earnings hereinbefore specified to be paid in pursuance of the provisions of this section shall be in lieu of all other taxation of the road bed, right of way, station or depot grounds, track, rolling stock, water stations, water tanks, turn tables, engine houses, machine shops, depots and necessary buildings, tools, machinery, material for repairs, gravel beds, furniture, telegraph instruments and lines, and fuel of such railroad corporation used in or incident to the operation of such railroad. All property of railroads not above enumerated, subject to taxation, shall be treated in all respects, in regard to assessment, equalization and taxation, the same as similar property belonging to individuals, whether said lands are received from the general government or from other sources. One-third of the sums so received by the treasurer of the territory, shall remain in the territorial treasury, to be used in the same manner as other revenues of the Territory, and the other two-thirds of said sums shall be apportioned by the treasurer of the territory to the several counties, into or through which railroads respectively run, in proportion to the number of miles of main track of railroad in each such county, and shall be paid by him to the treasurers of the counties so entitled thereto; and any person making or causing to be made, or filed, any false statement required in this section, shall be deemed guilty of a felony, and on conviction thereof shall be punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both such fine and imprisonment; and the jurisdiction to try and punish any such offense pro-

vided in this section shall be in any county where such false statement is made or caused to be made, and also in the county where such false statement is filed or caused to be filed.

§ 25. PENALTY FOR NEGLECTING REPORT.] If any railroad corporation or person operating a railroad in this Territory shall neglect to make such report to the treasurer, or to pay in the several sums of money hereinbefore specified, or any part thereof, as hereinbefore provided, such company or persons shall absolutely forfeit to the Territory the sum of ten thousand dollars, to be recovered in an action brought in the name of the Territory; and such neglect shall also be a cause of forfeiture of all the rights, privileges and franchises obtained under any law of this Territory, under which said railroad has been constructed or is operated. Any such corporation or person at any time before the final judgment of forfeiture of such rights, privileges and franchises is rendered, may be permitted to make the return and pay the amount herein provided for, to the court in which the action is pending, upon such terms as the court may direct.

§ 26. AMENDMENT TO CIVIL CODE.] Section 450 of the Civil Code, is amended by inserting after the word "corporation" in the first line thereof, the words "organized in this Territory or chartered by or organized under the laws of the United States, or any state or territory."

§ 27. CORPORATION ORGANIZED OUTSIDE THIS TERRITORY, HOW TO PROCEED BEFORE ENTERING TERRITORY.] Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this Territory at any point, may extend its railroad into this Territory from any such point or points to any place or places within the Territory, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section one, and file a copy of such record, certified by the president and secretary in the office of the secretary of the territory, and cause the same to be re-

corded as provided in said section one. Thereupon such corporations shall have all the rights and privileges to make such extension or build such branch, and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this act.

§ 28. REGULATIONS CONCERNING RECEIVING AND SHIPMENT.] All railroad corporations organized under the provisions of this act, and all persons or corporations operating a railroad in this Territory, who shall receive or transport grain in bulk or otherwise, shall deliver the same to any consignee thereof or any elevator or public warehouse to which it may be consigned, at any regular station on said road, and shall receive grain for shipment from any elevator or public warehouse situated upon or adjacent to any station or depot ground of such railroad: *Provided*, Such consignee, or the elevator or public warehouse can be conveniently reached by any track owned, leased or used by such corporation; and all such corporations or persons shall permit connections to be made with their track so that such consignee, elevator or warehouse can be conveniently reached by the cars of such corporation or person: *Provided, however*, That such corporation or person shall not be required to pay the cost of making and maintaining such connection, or of the siding or switch track necessary to make the same.

§ 29. PROVISIONS OF FORMER LAWS REPEALED, AND TO REMAIN OPERATIVE.] All the provisions of chapter 3 of title 2 of part 3 of division second of the Civil Code, so far as the same relate to railroad corporations that are in conflict with the provisions of this act, and all the provisions of said chapter imposing additional restrictions, limitations, duties and liabilities upon the stockholders; or officers of railroad corporations, than are imposed by the provisions of this act, are hereby repealed, except sections four hundred and seventy-four to four hundred and eighty-five inclusive, of article nine of said chapter, which sections shall be operative and binding upon every railroad corporation operating a railroad in this Territory, as well as those organized under the provisions of this act, and except sections four hundred and fifty to four hundred and fifty-nine inclusive, of said chapter, which shall

be and remain in force, except as modified by the provisions of this act.

§ 30. REPEALING CLAUSE.] Section twelve hundred and fifty-seven (1257) of the Civil Code, and sections six hundred and forty-two (642) and six hundred and fifty-six (656) of the Penal Code, are hereby repealed.

§ 31. This act shall take effect and be in force from and after its passage and approval.

Approved, February 18, 1879.

Recording Instruments.

CHAPTER 47.

AN ACT to amend Section Six Hundred and Forty-seven of the Civil Code.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

§ 1. LETTERS PATENT AND RECEIVER'S RECEIPTS.] That subdivision three of section six hundred and forty-seven of the Civil Code, is amended to read as follows: "3. Letters patent from the United States and final receiver's receipts from United States land offices, may be recorded without acknowledgment or further proof."

Approved, February 22, 1879.