

RAILROAD CORPORATIONS.

CHAPTER 105.

REPEAL OF GROSS EARNINGS TAX.

AN ACT to Repeal the Gross Earnings Law Relating to the Levy and Collection of Taxes on Railroad Property.

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

§ 1. REPEAL.] That sections 24 and 25, chapter 46, laws of Dakota, 1879, Thirteenth Legislative Assembly, and chapter 99, laws of Dakota, 1883, Fifteenth Legislative Assembly, and sections 1,571, 1,572, 1,573, 1,574, 1,575 and 1,576, of the Compiled Laws of Dakota, be and the same are hereby repealed, and all acts and parts of acts by said enumerated acts repealed are hereby expressly revived and re-enacted, *Provided*, however, that this act shall in no wise affect the levy and collection of taxes upon the property of railroad companies in this Territory for the year 1888 (eighteen hundred and eighty-eight).

§ 2. EFFECT WHEN.] This act shall take effect and be in force from and after its passage and approval.

Approved January 29, 1889.

CHAPTER 106.

POLICE POWERS TO CONDUCTORS.

AN ACT Giving Police Powers to Conductors of Railway Trains Carrying Passengers.

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

§ 1. POLICE POWERS.] The conductors of all railway trains carrying passengers, while on duty in this Territory are invested with police powers of a sheriff.

§ 2. DELIVER TO NEAREST JUSTICE.] When an arrest is made by any such conductor, he must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, or cause the same to be done, and he shall receive no fees or compensation therefor.

§ 3. EFFECT WHEN.] This act shall have force and effect from and [after] its passage and approval.

Approved, March 5, 1889.

CHAPTER 107.

LEVY AND COLLECTION OF TAXES ON RAILROAD PROPERTY.

AN ACT Providing for the Levy and Collection of Taxes upon Property of Railroad Companies in this Territory.

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

§ 1. PERCENTAGE OF GROSS EARNINGS TO BE PAID IN LIEU OF OTHER TAXES.] In lieu of any and all other taxes upon any railroads, except railroads operated by horse power, within this Territory, or upon the equipment, appurtenances or appendages thereof, or upon any other property situated in this Territory belonging to the corporation owning or operating such railroads, upon the capital stock or business transactions of said railroad company there shall hereafter be paid into the treasury of this Territory an amount equal to a percentage of all the gross earnings of the corporation owning or operating such railroad, arising from the operating of such railroad, as shall be situated within this Territory, both upon Territorial and interstate traffic, in case the railroad company owning or operating

such line shall accept and become subject to this act as hereinafter provided.

Every such railroad corporation or person owning or operating or that may hereafter own or operate any line of railroad in this Territory which shall have accepted this act shall pay to said Treasurer each year "for the first five years" after the approval of this act an amount equal to three per centum of such gross earnings "and for and in each and every year after the expiration of such five years an amount equal to two per cent of said gross earnings," and the payment of such amount annually as aforesaid shall be and is in full of any and all other taxation and assessment whatever upon the property aforesaid.

Said payments shall be made, except as hereinafter provided, one half on or before the 15th day of February, and one half on or before the first day of August in each year. And for the purpose of ascertaining the gross earnings aforesaid an accurate account of such earnings shall be kept by said company. An abstract shall be furnished by said company to the Treasurer of this Territory on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the Treasurer and Secretary of such company, and, for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the Governor of this Territory, or any other person appointed by law, to examine under oath the officers, employes of said company or other persons, and if any person so examined by the Governor or other authorized person shall knowingly or willfully swear falsely, concerning the matter aforesaid, every such person is declared to have committed perjury, and for the purpose of securing to the Territory the payment of the aforesaid per centum, it is hereby declared that the Territory shall have a lien upon the railroad of said company, and upon all property, estate or effects of said company whatsoever, personal, real or mixed, and the lien hereby secured to the Territory shall have and take precedence of all demands, decrees and judgments against said company.

§ 2. WHEN COMPANY SHALL FAIL TO MAKE RETURN.] If any such railroad company having accepted this act shall fail to make return of its gross earnings as aforesaid, or of any part thereof, at the time and in the manner provided by law, and such default shall continue during the period of thirty days, such company shall be subject to a penalty of an amount equal to ten per cent of the tax imposed upon such company by this act, and the Treasurer of the Territory shall forthwith ascertain the amount of such percentage justly due from such company, as near as may be, from such evidence as may be available, and shall thereupon collect such amount so ascertained, together with the said penalty thereon.

The amount so ascertained by the Territorial Treasurer as in this section provided, shall, together with the said penalty thereon be by him entered in the books of his office and such entry when so made

shall stand in the place of the report required by law to be made by such company and shall in all courts within this Territory be evidence of the amount of such tax and penalty and of the other facts stated therein in pursuance of this act.

§ 3. **NEGLECT TO PAY TAXES.**] In case any railroad company which shall have accepted the provisions of this act shall fail or neglect to pay the amount reported at the time and in the manner hereinafter provided, for a period of thirty days after the same shall have become due by the terms thereof, in such case there shall be added to the amount of such tax ten per centum thereof as a penalty for such failure or neglect to pay.

§ 4. **TERRITORIAL TREASURER TO DISTRAIN.**] At any time after the expiration of the period of thirty days after the amount as above provided has become due and payable under the provisions of this act, the Territorial Treasurer or his deputy shall distrain sufficient goods, chattels or other moveable property if found within this Territory to pay the said amount due from such corporation, together with the penalty thereon as hereinafter provided and shall immediately advertise the sale of the same in at least three newspapers published within this Territory, stating the time when, and the place where such property shall be sold; such sale shall take place at some point on the railroad of such delinquent company and at least four weeks notice of the time and place of such sale shall be given; such delinquent company, its successors or assigns may pay in such amount and penalty at any time before the sale of the property distrained as herein provided, and thereupon further proceedings in connection with such distress shall cease and the property distrained shall be delivered to the owner thereof.

§ 5. **LAND SUBJECT TO TAXATION.**] The lands of any railroad company shall become subject to taxation in the same manner as other similar property as soon as the same are sold, leased or contracted to be sold or leased, and on or before the first day of April of each year each railroad company having lands within this Territory shall return to the county clerk of each county within this Territory full and complete lists, verified by the affidavit of such officers of the company having knowledge of the facts, of all lands of such company situated within such county sold or contracted to be sold or leased during the year ending the last day of December preceding, and the list furnished on or before the first day of April, A. D. 1889, in compliance with the terms of this section, shall include a complete list of all lands sold or leased, prior to the last day of December, 1888.

§ 6. **HOW TAXES APPORTIONED.**] The moneys received and collected by the Territorial Treasurer in pursuance of this act shall be disposed of by him as follows: In case the railroad company paying such tax owns no land granted in aid of the construction of its railroad, one-third of the same shall be retained in the Territorial treasury for the use of the Territory, and the remainder shall be

apportioned among the several counties into or through which the railroad or railroads of such companies run, in proportion to the number of miles of main track situated in such counties respectively. In case the railroad company paying such tax owns land granted in aid of the construction of its railroad, then thirty per cent of the tax paid by such company shall be retained in the Territorial treasury for the use of the Territory and forty per cent shall be apportioned among the several counties into or through which the railroad or railroads of such company run, in proportion to the number of miles of main track situated in such counties respectively, and thirty per cent shall be apportioned among the several counties in which lands forming a part of its land grant is situated, in proportion to the number of acres of surveyed and unsold lands in said counties.

§ 7. ANY RAILROAD COMPANY.] Which at the date of the passage of this act owns or is engaged in operating any line or lines of railroad in this Territory, may at any time within thirty days after the passage of this act, by resolution of its board of directors, attested by its secretary, and filed with the Secretary of the Territory, accept and become subject to the provisions of this act, and provided that any railroad company which is now in arrears in the payment of taxes assessed under chapter 99, of the laws of 1883, shall, within thirty days after the passage of this act, pay into the Territorial treasury the full amount of the taxes and interest due under the assessments under said laws of 1883 before they can avail themselves of the provisions of this act, by accepting its terms, including taxes on both Territorial and inter-state earnings. It is further expressly provided that any company failing to strictly comply with the provisions of this act within the term herein provided shall be immediately subject to assessment and taxation in the manner provided for the assessment and taxation of the property of individuals of this Territory and said taxes shall be collected in the same manner as is now provided in cases of the property of individuals. Any company which has not complied with the provisions of chapter 99 of the session laws of 1883 by paying all taxes claimed on gross earnings both Territorial and inter-state, or by filing an account of gross earnings both Territorial and inter-state shall prepare and file such account in the manner therein provided within thirty days from the passage hereof, and pay one half of the entire amount due under the agreement and acceptance herein referred to, for the current year, and also the entire amount of taxes heretofore claimed by the Territory on local and inter-state earnings of such companies but remaining unpaid at the time of filing said account and within thirty days after the passage of this act, or the same shall not apply to such company or companies. The balance of said taxes due for the current year shall be paid to the Territorial Treasurer on or before the 15th day of August, 1889. Any railroad company that may be hereafter organized in this Territory, or that shall hereafter become the owner of or engaged in operating any lines of rail-

road in this Territory may accept and become subject to the provisions of this act by filing a resolution of its board of directors in the manner as hereinbefore provided.

In case any such railroad company shall accept and become subject to the provisions of this act, it shall at the time of filing such acceptance render an account of gross earnings, both Territorial and inter-state, in the manner as hereinbefore provided, and shall pay, at the time of rendering such account, all amounts claimed by the Territorial Auditor as tax due on the local and inter-state earnings of such company for the current or any preceding year, and shall thereafter pay an amount equal to 3 per centum of such account as follows: If such acceptance is filed on or before the fifteenth day of February in any year such company shall pay one half of said amount on said fifteenth day of February and the balance on the fifteenth day of August following. Should such acceptance be filed before the fifteenth day of August and after the fifteenth day of February in any year, then an amount equal to 3 per centum of such account shall be paid in full on or before the fifteenth day of August in each year. Thereafter accounts shall be rendered and payment made in the manner provided in this act; *Provided*, that any company failing to promptly and strictly comply with the provisions herein set forth and to pay all sums herein provided to be paid, shall be subject to assessment and taxation in the same manner as individuals.

§ 8. IN CASE OF NON-ACCEPTANCE.] The railroads and property of all railroad companies owning or operating lines of railway in this Territory which companies shall not accept and become subject to the provisions of this act shall not be entitled to the exemption in this act contained, but shall be subject to taxation in such manner as shall be provided by law.

§ 9. REPEAL OR AMENDMENT.] This act shall be subject to repeal or amendment by any future legislature, and nothing herein contained shall be construed as a repeal of any revenue law now in existence, as applicable to any railroad company which shall not accept the provisions of this act as herein provided.

§ 10. EFFECT WHEN.] This act shall take effect and be in force from and after its passage.

Approved March 7, 1889.

CHAPTER 108.

EXPENSE OF RAILROAD COMMISSIONERS.

A BILL for an Act Appropriating Money to Defray the Traveling Expenses of the Railroad and Warehouse Commission.

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

§ 1. APPROPRIATION.] There is hereby appropriated out of any funds in the Territorial Treasury not otherwise appropriated, the sum of three thousand dollars (\$3,000), to defray the traveling expenses of the Railroad and Warehouse Commission for the ensuing two years.

§ 2. EFFECT WHEN.] This act shall take effect and be in force from and after its passage and approval.

Approved, March 8th, 1880.

CHAPTER 109.

AID IN CONSTRUCTION OF RAILROADS.

AN ACT to Enable Townships and Incorporated Towns and Cities to Aid in the Construction of Railroads.

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

§ 1. POWER TO GRANT AID.] That it shall be lawful for any township, incorporated town or city to aid in the construction of any projected railroad in this Territory as hereinafter provided.

§ 2. SPECIAL ELECTION—TAXES.] Whenever a petition shall be presented to the council or trustees of any incorporated town or city or supervisors of any township, signed by a majority of the resident free-hold tax payers of such township, incorporated city or town, asking that the question of aiding in the construction of any railroad be submitted to the voters thereof, it shall be the duty of the trustees or council of such incorporated town or city, or supervisors of such township, to immediately give notice of a special election by publication in some newspaper published in the county, if any be published therein, and also by posting said notice in five public places in such township, incorporated city or town, at least fifteen

days before said election; which notice shall specify the time and place of holding said election, the line of railroad proposed to be aided, the rate per centum of taxes to be levied and whether the entire per centum voted is to be collected the first year, or one half collected the first year and one half the following year, and the amount of work upon said proposed railroad line required to be completed before said tax shall be paid to said railroad company and where the same shall be performed and to what point said road shall be fully completed and any other conditions which shall be performed before such tax shall become due, collectible or payable, and in no case shall such tax become due, collectible or payable until the road is fully completed to such point as mentioned in the notice. At such election the question of taxation shall be submitted and if a majority of the votes polled be for taxation, then the clerk of the incorporated town, the city clerk, township clerk or clerk of said election, shall forthwith certify to the county auditor or clerk of said board of county commissioners, where there is no county auditor the rate per centum of the tax thus voted by such township, incorporated town or city, the year or years during which the same is to be collected, and the time and terms upon which the same when collected, is to be paid to the railroad company under the conditions and stipulations in said notice, together with an exact copy of the notice under which such election was held which said county auditor or clerk of the county commissioners shall at once cause to be recorded in the office of the register of deeds of the county. When such certificate shall have been made and recorded, the board of county commissioners shall at the time of levying the ordinary taxes next following, levy such taxes as are voted under the provisions of this act as shown by said certificate and cause the same to be placed on the tax lists of the proper township, incorporated city or town, indicating in their order thereupon when and in what proportion the same are to be collected, and upon what conditions the same are to be paid to the railroad company, a certified copy of which said order shall accompany the tax lists. Such taxes shall be collected at the time or times specified in said order in the same manner and subject to the same penalties for non-payment after they are collectible as other taxes, or as may be stated in the petition asking said elections.

§ 3. CONDITIONS OF NOTICE.] The stipulations and conditions contained in the said notice must conform to those set forth in the petition as the same presented to the supervisors of the township, or trustees or council of the incorporated city or town, where the said taxes are proposed to be voted, and the aggregate amount of taxes to be voted or levied under the provisions of this act, in any township, incorporated town or city, shall not exceed three per centum of the assessed value of the property therein respectively.

§ 4. MONEY HOW PAID OUT.] The moneys collected under the provisions of this act shall be paid out by the county treasurer to the treasurer of the railroad company, for which the same was voted upon

the orders of the president or managing director thereof, at any time after the supervisors of such township or trustee or council of such incorporated town or city voting such tax, or a majority of them, shall have certified to the county treasurer that the conditions required of the railroad company and set forth in the notice for the special election at which the tax was voted, have been complied with, and it is hereby made the duty of said township supervisors or trustees or council of such incorporated town or city when the said conditions have been complied with sufficiently to entitle the said railroad company to the amount of such orders, or where the said conditions are fully complied with and performed on the part of the railroad company, to make such certificate.

§ 5. PAYMENT OF TAX BY LABOR.] Nothing in this act shall preclude any tax payer who may contract with a railroad company for which taxes shall have been, or may hereafter be voted under the provisions of this act, to pay his tax thus voted, or any part thereof, in labor on the line of its road, or in material for its construction, or supplies furnished, or money paid for the construction of the road, in pursuance of the terms and conditions stipulated in the notices of election, in lieu of a payment to the county treasurer, from presenting to the county treasurer a receipt from said railroad company duly signed by the president or managing director, specifying the amount of such payment, and having the same credited by the county treasurer on his tax in aid of said railroad, with the effect in all respects as though the same was paid in money to the said county treasurer and when such receipts have been presented and thus credited by the county treasurer, they shall have the same force and validity in his settlement with the board of county commissioners as the orders from the railroad company provided in section four (4) hereof.

§ 6. FAILURE OF RAILROAD COMPANY TO COMPLY.] When taxes have been voted and levied to aid in the construction of any railway within the Territory by any township, town or city under and by virtue of the provisions of this act, and such railway company shall have neglected for the space of six months to comply with the terms of the notice and petition under which such taxes have been voted, and such fact shall be certified to the board of county commissioners of the county wherein such taxes were voted by the supervisors of the township or trustees of the town or city council, it is hereby made the duty of the board of county commissioners to abate and cancel all such taxes on the books of the county, and refund any money in the county treasury to the persons who may have paid the same.

§ 7. EFFECT WHEN.] This act shall take effect and be in force on and after its passage.

Approved, March 8th, 1889.