

Proof of Service.

CHAPTER 125.

AN ACT to Amend Section 107 of the Code of Civil Procedure.

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

§ 1. CERTIFICATE OF PERSON SERVING.] That section 107 of the Code of Civil Procedure, be and the same is hereby amended by inserting the words "or other officer," after the word "sheriff" in subdivision 1 of said section.

Approved, March 13, 1885.

Railroad Commission.

CHAPTER 126.

AN ACT to Provide for the Establishment of a Board of Railroad Commissioners, defining their duties, and to Regulate the Receiving and Transportation of Freight on Railroads in this Territory.

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

§ 1. APPOINTMENT OF COMMISSIONERS.] The Governor, with the advice and consent of the council, shall bi-ennially appoint three competent persons, who shall constitute a board of railroad commissioners, and who shall hold their office for the term of two years from the first of April next after such appointment. The Governor shall, by appointment, fill any vacancy caused by death, removal or resignation ; said commissioners shall hold their offices until their successors are duly appointed and qualified. No person owning stock, bonds or other property in any railroad company, or who is in the employment of, or who is in any manner pecuniarily interested in any railroad corporation, public ware house or elevator, shall be eligible to the office of railroad commissioner. Said commissioners shall be selected, so nearly as

practicable, one from the southern, one from the central, and one from the northern part of the Territory.

§ 2. POWERS OF COMMISSIONERS.] Said commissioners shall have general supervision of all railroads in the Territory and shall inquire into any neglect or violation of the laws of this Territory by any railroad corporation, its officers, agents or employes doing business therein, and shall from time to time carefully examine and inspect the condition of each railroad in the Territory, and the manner of its conduct and management, with reference to its safety and general relations to the public business of the Territory.

§ 3. DUTY OF COMMISSIONERS.] Whenever in the judgment of the railroad commissioners, it shall appear that any railroad corporation fails in any respect or particular to comply with the laws of the Territory, or its charter, or when, in their judgment, any repairs are necessary upon its road, or any addition to its rolling stock, or any addition or change in its station houses, or any change in the rates of passenger fare or its charges for transporting freight or transferring the same from one road or station to another, or any change in the manner of operating its road and conducting its business, is reasonable and expedient in order to promote security, convenience and accommodation of the public, said commissioners shall inform such railroad corporation of the improvements and changes which they deem to be proper, by notice in writing, to be served by leaving a copy thereof, certified by the commissioners' clerk, with any station agent, clerk or treasurer, or any director of said corporation, and a report of the proceedings shall be included in the report of the railroad commissioners to the legislature. Nothing in this section shall be construed as relieving any railroad company from their present responsibility or liability for damage to persons or property.

§ 4. REPORTS—WHAT TO CONTAIN.] The said railroad commissioners shall, on or before the first Monday in December in each year, make a report to the Governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the workings of the system of railroad transportation in the Territory, and its relation to the general business and prosperity of the citizens of the Territory; and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain as to every railroad corporation doing business in this Territory:

1. The amount of its capital stock.
2. The amount of its preferred, if any, and the amount of its preferment.
3. The amount of its funded debt and the rate of interest.
4. The amount of its floating debt.

5. The cost and present value of its road and equipment, including permanent way buildings and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.

6. The estimated cash value of all property owned by such corporation, with a schedule of the same, not including lands granted in aid of its construction.

7. The number of acres originally granted in aid of construction of its road, by the United States or by this Territory.

8. Number of acres of such land remaining unsold

9. A list of its officers and directors with their respective places of residence.

10. Such statistics of the road and of its transportation business for the year, as may in the judgment of the commissioners be necessary and proper for the information of the Legislative Assembly or as may be required by the Governor. Such report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June 30th.

11. The average amount of tonnage that can be carried over each road in the Territory with an engine of given power.

§ 5. RAILROAD OFFICERS TO MAKE REPORT.] To enable said commissioners to make such report, the president or managing officer of each railroad corporation doing business in this Territory, shall annually make to the said commissioners, on the 15th day of the month of September, such returns, in the form which they may prescribe, as will afford the information required for their said official report. Such returns shall be verified by the oath of the officer making them, and any railroad corporation whose returns shall not be made as herein prescribed by the 15th day of September shall be liable to a penalty of one hundred (100) dollars for each and every day after the 16th day of December, that such returns shall be willfully delayed or refused.

§ 6. PRINCIPAL OFFICER—SALARY.] The said commissioners shall hold their office at such place as they shall determine; they shall each receive a salary of \$2,000 to be paid as the salaries of their territorial officers are paid, and shall be provided at the expense of the Territory with necessary office furniture and stationery, and they shall have authority to appoint a secretary who shall receive a salary of fifteen hundred (1,500) dollars per annum.

§ 7. OATH AND BOND.] The said commissioners and secretary shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same; and no person in the employ of any railroad cor-

poration, or holding stock in any railroad corporation, shall be employed as secretary. Each of said commissioners shall enter into bonds, with security to be approved by the Governor, in the sum of ten thousand (10,000) dollars, conditioned for the faithful performance of his duties.

§ 8. POWER TO EXAMINE BOOKS.] The said commissioners shall have power, in the discharge of the duties of their office, to examine any of the books, papers or documents of any such corporation, or to examine under oath or otherwise, any officer, director, agent or employe of any such corporation. They are empowered to issue subpoenas and administer oaths in the same manner, and with the same power to force obedience thereto in the performance of their said duties, as belong and pertain to courts of law in this Territory, and any person who may willfully obstruct said commissioners in the performance of their duties, or who may refuse to give any information within his possession that may be required by said commissioners, within the line of their duty, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand (\$1,000) dollars, in the discretion of the court, and the cost of such subpoenas and investigation, to be first paid by the Territory, on the certificate of said commissioners. Said commissioners shall have power, and it is hereby made their duty, in all cases where they find, on due investigation, that any rate charged by any company or corporation is exorbitant, unjust or oppressive, to alter or lower the same, and fix a maximum; no railroad company shall charge or receive from any person a higher rate per ton per mile for one car load of freight than for a greater number of car loads per car.

§ 9. RAILROAD COMPANIES REQUIRED TO FURNISH CARS TO ALL PERSONS, ETC.] It shall be the duty of all railroad corporations doing business in this Territory, upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor for the transportation of any and all kinds of freight, and to secure and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the securing and handling of the same at any depot on the line of its road, and also to receive and transport in like manner the empty and loaded cars furnished by any connecting line of road, to be delivered at any station or stations on the line of its road, to be loaded or discharged, or reloaded and returned to the road so connecting, and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for similar service.

§ 10 SHALL TRANSPORT GRAIN.] Any railroad company doing business in this Territory, when desired by any person wishing to

ship grain over its road, shall receive and transport such grain in bulk within a reasonable time, and permit the same to be loaded either on its track adjacent to its depot, or at any warehouse or side track without distinction, discrimination or favor between one shipper and another, and without discrimination or distinction as to the manner in which such grain is offered for transportation, or as to the person, warehouse, elevator, or the place where or to which it may be consigned. Every railroad company shall permit connections to be made and maintained in a reasonable manner with its track, to and from any warehouse, elevator or mill adjacent to any station on its line, without reference to its size or capacity, where grain or flour is or may be stored; *Provided, however,* That such railroad company shall not be required to pay the cost of making and maintaining said connection, or of the siding or switch-track necessary to make the same; and *Provided, further,* That a majority of the commissioners appointed under this act shall direct such railroad to make such connection and siding. Grain shall also be received from wagons or sleighs in car load lots, the same as when offered from warehouses or elevators, allowing reasonable time for loading the cars, and the cars shall be placed in a convenient place, easy of access.

§ 11. SHALL NOT DISCRIMINATE.] No railroad corporation shall charge, demand or receive from any person, company or corporation, for the transportation of persons or property, or for any other service, a greater sum than it shall at the same time charge, demand or receive from any other person, company or corporation for a like service from the same place, and all concession of rates, rebates, drawbacks and contracts for special rates shall be open to and allowed to all persons, companies and corporations, and they shall charge no more for transporting from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point of equal distance within the Territory.

§ 12. CHARGES SHALL BE REASONABLE.] No railroad company shall charge, demand or receive from any company or corporation an unreasonable price for the transportation of persons or property, or for the handling or storage of freight, or for the use of its cars, or for any privilege or services afforded by it in the transaction of its business as a railroad corporation, and shall not demand the payment of freight beyond the point to which the goods or property is consigned by the shipper.

§ 13. PENALTY FOR EXTORTION.] Any railroad corporation which shall violate any of the provisions of this act as to extortion or unjust discrimination, shall forfeit for every such offense to the person, company or corporation aggrieved thereby, three times the actual damage sustained or overcharges paid by the said party

aggrieved, together with costs of suit and a reasonable attorney's fee, to be fixed by the court, and if an appeal is taken from the judgment, or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional attorney's fee for service in the appellate court or courts therefor. And in all cases where complaint is made in accordance with the provisions of section 14 hereinafter provided, that an unreasonable charge or regulation is made, the commissioners shall require a modified charge or regulation, such as they shall deem reasonable, and in all cases of a failure to comply with the recommendations of the commissioners, shall be embodied with the report of the commissioners to the Legislature, and shall apply to any unjust discrimination, extortion or over charge by said company, or other violation of law.

§ 14. DUTY OF COMMISSIONERS ON COMPLAINT.] Upon complaint of the mayor and alderman of any city, or board of county commissioners, or of the trustees, or supervisors of any town or township, of the freight tariff charged, or of any injustice to the public, growing out of any rule or regulation of a railroad company, it shall be the duty of the commissioners, in case they deem the case just and reasonable, to proceed to make examination, first giving the petitioners and corporation reasonable notice in writing of the time and place of entering upon the same. If upon examination it shall appear to said commissioners that the complaint of the petitioners is well founded, they shall so find, and shall inform the corporation operating such railroad of their adjudication within ten days, and shall also report their action to the Governor as provided in this act. All sleeping car companies, express companies and telegraph companies doing business in this Territory shall make such reports of their business as the railroad commissioners may require; and said commissioners shall have the same authority over and supervision of all sleeping car companies, express companies and telegraph companies doing business in this Territory, as over railroad corporations.

§ 15. PROVISIONS OF THIS ACT TO GOVERN.] All railroad companies operating any lines of road in this Territory are hereby declared subject to the provisions of this act, and the commissioners herein provided for are authorized and it is made their duty to enforce its provisions in the courts of this Territory; and it is made the duty of the district attorney, or in case of his neglect or refusal, the attorney general, to prosecute any and all violations of its provisions upon complaint being made by said commissioners.

§ 16. THIS ACT HOW CONSTRUED.] Nothing in this act shall be construed to estop or hinder any person or corporation from bringing suit against any railroad company for any violation of the laws of this Territory for the government of railroads.

§ 17. All acts and parts of acts inconsistent with this act are hereby repealed.

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

Approved, March 6, 1885.

CHAPTER 127.

AN ACT to Amend an act entitled "An act to Provide for the Establishment of a Board of Railroad Commissioners, Defining their Duties and to Regulate the Receiving and Transportation of Freight on Railroads in this Territory," approved March 6, A. D. 1885.

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

§ 1. PROVISION REPEALED.] Section eight (8) of an act of the Legislative Assembly of this Territory, approved March 6, A. D. 1885, entitled "An act to provide for the establishment of a Board of Railroad Commissioners, defining their duties and to regulate the receiving and transportation of freight on railroads in this Territory," is hereby amended by striking out the following words: "Said commissioners shall have power and it is hereby made their duty in all cases, where they find on due investigation that any rate charged by any company or corporation is exorbitant, unjust or oppressive, to alter or lower the same, and fix a maximum.

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

Approved, March 13, 1885.