

RAILROAD COMMISSIONERS.

CHAPTER 110.

THEIR POWERS AND DUTIES.

AN ACT to Amend An Act Entitled "An Act to Provide for the Establishment of a Board of Railroad Commissioners, Defining their Duties, to Regulate the Receiving and Transportation of Freight on Railroads in this Territory. Passed at the Sixteenth Legislative Assembly of the Territory of Dakota, and Approved, March 6th, 1885.

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

AMENDMENT OF ACT OF 1885.] That Chapter 126 of the General Laws of the Territory of Dakota, passed at the Sixteenth Legislative Assembly of the Territory of Dakota, and approved March 6th, 1885, being "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 and the same is hereby amended to read as follows:

§ 1. APPOINTMENT OF COMMISSION.] The Governor with the advice and consent of the Council, shall biennially 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 office until their successors are duly appointed and qualified. 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. WHO DISQUALIFIED.] No person shall be qualified to hold the office of railroad commissioner, who is the owner of bonds or stocks in any railroad company, or who is in the employment of, or in any manner pecuniarily interested in any railroad or in any railroad corporation, public warehouse or elevator.

§ 3. POWERS.] Said commissioners shall have general supervision of all railroads in this Territory and all freight and passenger transportation and traffic thereon, or connected therewith, and shall

enquire into any neglect or violation of the laws of the Territory by any railroad company, 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 all railway stations and passenger and freight depots and buildings, and the conduct and management of such railroads, with reference to the safety and convenience of the public and the carrying into effect the provisions of this act.

§ 4. FREE PASSAGE.] Such commissioners and their secretary shall have the right of passing, in the discharge of their official duties on all railroads and passenger railroad trains in the Territory, free of charge.

§ 5. RAILROADS REQUIRED TO SHIP WITHOUT DISCRIMINATION.] Any railroad company doing business in this Territory, when requested by any person wishing to ship grain on its road shall receive and transport such grain in bulk, and permit the same to be loaded either on its track adjacent to its depot, or at any warehouse or side track, at any station, without discrimination or distinction as to the manner or condition in which such grain is offered for transportation, or as to the person, corporation, warehouse, elevator or place where, or to which it may be consigned, and shall receive the same, in car load lots, from wagons, sleighs or other vehicles, on their side tracks at any station, the same as when offered from warehouses, elevators, allowing a reasonable time for loading them, and for the purpose of loading the same, shall place the cars in convenient places, easy access by wagon or sleighs or other vehicles, and shall after the same have been loaded, whether at side track, elevator, warehouse or depot without unnecessary delay, proceed to ship the same to the place where the same is consigned.

§ 6. TRACK FROM ELEVATOR TO RAILROAD.] It shall be lawful for the owner or owners of any elevator, warehouse or mill at any station on the line or at the termination of any railroad in this Territory, to construct from such elevator, warehouse or mill, a railroad track to the track of any railroad company, and to connect with the same by switch at his or their own expense, and it shall be the duty of any such railroad company to allow such connection. Such side track and switch shall at all times be under the control and management of and kept in repair by such railroad company, provided, that the party for whose benefit such side track and switch shall be constructed, shall pay to such railroad company the actual cost of maintaining such side track and switch, which payment shall be made monthly, and in case such payment shall not be made as provided, then and in that case the obligations of this section upon said railroad companies shall from and thereafter cease and be inoperative as against them until such costs and expenses are fully paid.

§ 7. DIVISION OF CARS.] When any railroad company doing business in this Territory, shall be unable for any reasonable cause to furnish cars at any railway station, or side track in accordance

with the demands made by all persons demanding cars at such station or side track for the shipment of a car load lot or lots of freight, such cars as are furnished shall be divided daily as equally among the applicants until each shall have received one car, when the balance shall be divided ratably to each shipper in proportion to the amount of daily receipts of grain or other freight, or to the amount of grain offered at such station or side track, provided that every application made in good faith on an earlier day shall be filled before supplying any car to any applicant of a succeeding day.

§ 8. SHORT AND LONG HAUL TARIFFS.] It shall be unlawful for any railroad company doing business in this Territory to charge or receive any greater compensation for the transportation of passengers of like kind or class, or quantity of property under substantially similar circumstances or conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, but this shall not be construed as authorizing any railroad company to charge or receive as great compensation for the shorter as for the longer distance, and no such railroad company shall charge, demand or receive from any person, company or corporation for the transportation of passengers or property a greater sum than it shall at the same [time] demand, charge or receive from any other person, company or corporation for a like service from the same place; it shall be unlawful for any such railroad company, directly or indirectly, by any special rate, rebate, drawback or other device, to charge, collect or receive from any person, company or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of persons or property than it charges, demands, collects or receives from any other person, company or corporation for doing for him or them a like or contemporaneous service in the transportation of like kind of traffic under substantially similar circumstances and conditions.

§ 9. CHARGES LIMITED.] No railroad company shall charge, demand or receive from any person, company or corporation, an unreasonable price for transportation of property or for the hauling or storage of freights, or for the use of its cars or for any privilege or service afforded by it in the transaction of its business as a railroad company, and shall not demand the payment of freight beyond the point to which the goods or property is consigned by the shipper.

§ 10. POOLING DECLARED UNLAWFUL.] It shall be unlawful for any railroad company, subject to the provisions of this act, to enter into any contract, agreement or combination with any other railroad company or companies, for the division or pooling business of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof, and in case of an agreement for the pooling of their business as aforesaid, each day of its continuance shall be a separate offense.

§ 11. TRANSFERS AT CROSSINGS OR INTERSECTIONS.] And in all cases where any line of railroad shall cross or intersect any other line

of railroad in this Territory, it shall be the duty of the railroad companies owning or operating such crossing or intersecting railroad lines, within sixty (60) days after being required by the order of the railroad commissioners unto them delivered, to provide at such crossing or intersection suitable and sufficient facilities for transferring cars, and for accommodating and (and) transferring passengers and traffic of all kinds or classes from one such line of railroad to the other, and to afford equal and reasonable facilities for the interchange of cars and traffic between their respective lines, provided, however, that no depot building or station house shall be required where, or within one mile of which, there shall not then be a village or settlement containing at least one hundred inhabitants and a post office. The cost of constructing, maintaining and operating all facilities and structures required by this section, or by any such order, shall be borne equally between the railroad companies owning or operating such intersecting lines.

§ 12. TIME TO REMOVE PROPERTY FROM CARS.] Any consignee, or person entitled to receive the delivery of any freight shipped to him in car load lots, by any railroad company, shall have twenty-four hours free of expense after notice of arrival by the company to the consignee or person entitled to receive the same in which to remove the same from the cars of such railroad company, which said twenty-four hours shall be held to embrace such time as the car containing such property is placed and kept by such railroad company in a convenient and proper place for unloading, and it shall not be held to be in a proper place for unloading unless it can be reached with teams or other suitable means for removing the property from the cars, and reasonably convenient to the depot of the company at which it is accustomed to receive and unload merchandise consigned to that station or place.

§ 13. SCHEDULES OF RATES REQUIRED.] Every railroad company subject to the provisions of this act, shall within sixty days after this act shall take effect, print and keep for public inspection, schedules showing the classification, rates, fares and charges for the transportation of passengers and property of all kinds and classes, which such company has established, and which are in force at the time upon its railroad. The schedule shall plainly state the places upon its railroad, between which passengers and property will be carried, and shall contain classifications of freight in force upon the lines of such railroads, a distance tariff, and a table of intersection distances, and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such rates aforesaid, fares and charges. Such schedules shall be printed in large type, and copies for the use of the public shall be kept in every depot or station upon any such railroad in such place and in such form that they can be conveniently inspected. And in cases where passengers or freight pass over lines or roads operated by more than one railroad company, and the sever-

al companies operating such railway lines, establish joint schedules of rates, fares, charges or classification for such lines or roads, such rates, fares, charges or classifications shall be printed and kept in each station of such railroad lines or routes, the same as though such lines were owned or operated by a single railroad.

§ 14. CHANGES IN RATES TO BE PUBLISHED.] No change in the classification shall be made in the rates, fares or charges which have been established and published as aforesaid, by any railroad company in compliance with the requirements of section 15, except after ten days publication by posting in stations, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the change schedule shall go into effect, and the proposed changes shall be shown by printing new schedules or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. And when any railroad company shall have established and published its classifications, rates, fares, or charges in compliance herewith, it shall be unlawful for such company to charge, demand, collect or receive from any person, company or corporation a greater or less compensation for the transportation of persons or property or for any service in connection therewith, than is specified in such published schedule or classification, rates, fares or charges, as may at the time be in force.

§ 15. DUTIES OF COMMISSIONERS TO ENFORCE ACT—COMPLAINTS.] It shall be the duty of any railroad commissioners to personally investigate and ascertain whether the provisions of this act are violated by any railroad company and to visit the various lines of each railroad for that purpose as often as practicable and whenever the facts in any manner ascertained by said commissioners whether by personal investigation or by petition or complaint of any citizen of the Territory, shall in their judgment warrant such prosecution, it shall be the duty of said commissioners to immediately cause suit to be commenced and prosecuted against any railroad company who may violate the provisions of this act.

Any injured person, firm, corporation or association, or any mercantile, agricultural or any manufacturing society, or any body politic or municipal corporation or organization, may make complaint to such railroad commissioners of the violation of any of the provisions of this act by any railroad company, and if it appears upon investigation of the charges contained in said complaint that there is any reason to believe that said railroad company has violated any of the provisions of this act and thereby injured the complainant, it shall be the duty of said commissioners to institute action against such offending railroad company.

§ 16. SUITS AND PROSECUTIONS.] All such suits and prosecutions may be instituted in any county in this Territory through or into which the line of the railroad company violating the act may extend, and no such suit commenced by said railroad commissioners

shall be dismissed except by the consent of the said commissioners and the attorney general.

§ 17. ATTORNEY GENERAL'S DUTY.] The attorney general of the Territory of Dakota shall be ex-officio attorney for said railroad commissioners and shall give them such counsel and advice as they may from time to time require, and it shall be his duty to institute and prosecute all actions which said commissioners may deem proper, and he shall render to such railroad commissioners all counsel, advice and assistance which they may require in carrying out the provisions of this act or any law of this Territory.

And the said attorney general may, if he sees fit, call upon the district attorney of the county in which an action is pending and prosecuted by the said attorney general as herein provided, to assist in such county in the prosecution of said action therein, and when so called upon it shall be the duty of said district attorney to render proper and necessary assistance in the prosecution thereof.

§ 18. PROSECUTED IN NAME OF TERRITORY.] Said actions shall be prosecuted in the name of the Territory of Dakota, and the trial thereof be conducted in all respects the same as prosecutions in civil actions, except that the verdict of the jury shall be "guilty" or "not guilty," and except further that several distinct and separate causes of action may be prosecuted in the same action under separate counts and a separate verdict may be required upon each count.

§ 19. COSTS AND EXPENSES PAID BY TERRITORY.] All costs and expenses connected with the trial of actions prosecuted in the name of the Territory of Dakota under the provisions of this act shall be paid and defrayed by the Territory of Dakota and all fines collected hereunder shall be paid into the treasury of said Territory.

An itemized statement of the cost and expenses of each action shall be made by the said attorney general, and when duly verified by him and approved by the trial judge, shall be presented to the Territorial Auditor, who shall make and deliver to each person entitled thereto a warrant upon the Treasurer of the Territory for the amount due him as per the said statement, which shall be paid as other warrants.

§ 20. PENALTY ON RAILROAD CORPORATION—SEPARATE OFFENSES.] Any railroad company found guilty of violating any of the provisions of this act shall be fined in a sum not less than \$1,000 nor more than \$10,000, to which shall be added the costs of action, and each day's refusal or neglect of any railroad company, to do or perform any act required by this act to be done, and each day's commission of any act or thing prohibited by this act shall be taken to be a separate offense and such railroad company may be prosecuted and convicted for each day's offense separately, and the conviction thereof shall not be a bar to the prosecution and conviction of the same on any other day.

§ 21. FINE NOT A BAR TO INDIVIDUAL ACTION.] Such conviction or fine, or the payment of any fine shall not operate as or be a bar to the prosecution of such railroad company by any person, com-

pany or corporation sustaining damage by reason of the violation of any of the provisions of this act, but in addition thereto any person, company or corporation suffering or sustaining any damage by reason of such violation by any railroad company may maintain an action in his or their own name and behalf against such company and in case of a recovery the court shall assess treble damage against such offending railroad company in favor of the party suffering such damage or injury.

§ 22. SUBJECT TO SUIT IN EQUITY.] In addition to the foregoing actions, such railroad companies shall be subject to all actions in equity or chancery now cognizable in the courts of this Territory upon a proper showing.

§ 23. ANNUAL REPORT OF COMMISSIONERS.] The said railroad commissioners shall on or before the first Monday of December, of 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 this Territory and its relation to the general business and prosperity of the citizens of this Territory, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain as to every railroad company 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 cash and present value of its road and equipment in this territory, including permanent way, buildings and rolling stock, all real estate used exclusively in operating the road, and fixtures and conveniences for transacting its business.
6. The estimated cash value of all property owned by such railroad company in this territory with a schedule of the same, not including lands granted in aid of its construction.
7. The number of acres situated in this Territory originally granted in aid of the construction of its said road by the United States or by this Territory.
8. Number of acres of said land remaining unsold.
9. A list of the officers and directors with their respective places of residence.
10. Such statistics of the road and of the transportation and business for the year within this territory 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 the railroad company on the first day of July of such year, and the details of its transportation business transacted during the year ending June 30.
11. The average amount or tonnage that can be carried over

each road within the Territory with one engine of given power.

§ 24. RAILROAD CORPORATION'S RETURNS.] To enable such commissioners to make such report the president or managing officer of each railroad company doing business in this Territory shall annually make to the said commissioners on the fifteenth 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 official returns shall be verified by the oath of the officer making them and any railroad corporation when returns shall not be made as herein prescribed by the fifteenth day of September shall be liable to the penalty prescribed in this act.

§ 25. MAJORITY VOTE DECIDES.] All questions arising in the action of the said railroad commissioners shall be decided and determined by a majority vote.

§ 26. "RAILROAD COMPANY" DEFINED.] The term "railroad company," contained in this act, shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad in whole or in part in this Territory, and the provisions of this act shall apply to all persons, firms and corporations, and all associations and persons whether incorporated or otherwise that shall do business as common carriers upon any of the lines of railroads in this Territory, except street railways, the same as to "railroad companies," hereinbefore mentioned.

§ 27. OFFICE AT WILL OF COMMISSIONERS.] 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 the other 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 \$1,500 per annum.

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

Approved, March 8, 1889.