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SEC. 11. Any person found guilty of violating any Penalty. of the provisions of this act or failing to comply with any requirements thereof shall be, upon conviction, fined not less than twenty-five dollars nor more than one hundred dollars for each offense.

SEC. 12. This act shall take effect and be in force from and after its publication in the official state paper.

Approved February 13, 1901.

Published in official state paper February 15, 1901.

CHAPTER 286.

RELATING TO RAILROADS.

AN ACT concerning railroads and other common carriers, and repealing sections 1332, 1333, 1335, 1336, 1340, 1344, 1348, of the General Statutes of 1889, and all other acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. The executive council shall, before the 1st day of April next, elect three competent persons, Commissioners, how selected. who shall constitute a board of railroad commissioners, and who shall hold their office from the date of their respective elections for the terms of one, two and three years from the 1st day of April next.

SEC. 2. The executive council shall, in like manner, before the 1st day of April in each year thereafter, elect a commissioner to continue in office for the term of three years from said date; and in case any vacancy occurs in said board, by resignation or otherwise, shall in the same manner elect a commissioner to serve for the residue of the term. All votes cast by each member of the executive council for the election of any person to the office of railroad commissioner shall be recorded in a journal kept by them for that purpose, which journal shall be kept open at all times to public inspection.

Appointment
of secretary and
stenographer.

SEC. 3. The said board of commissioners shall have power to appoint a secretary and a stenographer, and to remove either at pleasure.

Qualifications
of commis-
sioner.

SEC. 4. No person owning any bonds, stock or property in any railroad company, or who is in the employment or who is in any way or manner pecuniarily interested in any railroad, shall be eligible to the office of railroad commissioner, secretary, or stenographer to said board. Said railroad commissioners, secretary and stenographer shall be qualified electors of the state. No more than two of the commissioners shall belong to the same political party. Said commissioners, secretary and stenographer shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same. Each of said commissioners shall enter into bonds, with security to be approved by the executive council, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties.

Records of
the board.

SEC. 5. Said board of commissioners shall keep an accurate record of all its official acts, and shall also provide a seal, on which shall be the impression "Board of Railroad Commissioners, State of Kansas. Seal." All process or certificates issued or given by the board shall be attested by said seal. Copies of the record of the board, certified by the secretary and attested with the seal of the board, shall be received in evidence with the like effect as copies of other public records.

Salary.

SEC. 6. Said commissioners shall keep their office in the state-house, in the city of Topeka, and they or either of them may act officially in any part of the state. They shall each receive a salary of two thousand five hundred dollars per annum, and the secretary shall receive a salary of one thousand five hundred dollars per annum, and the stenographer shall receive a salary of twelve hundred dollars per annum, to be paid as the salaries of other state officers are paid; and the said board shall be provided,

at the expense of the state, with necessary office furniture and stationery.

SEC. 7. Said commissioners shall have the general supervision of all railroads operated by steam within the state, and all express companies, sleeping-car companies, and all other persons, companies or corporations doing business as common carriers in this state; and shall inquire into any neglect or violations of the laws of this state by any person, company or corporation engaged in the business of transportation of persons or property therein, or by the officers, agents or employees thereof; and shall also from time to time carefully examine and inspect the condition of each railroad in the state, and of its equipment, and the manner of its conduct and management with reference to the public safety and convenience. Supervision over.

SEC. 8. Any member of said board, while acting in the performance of his official duties, together with such secretary, stenographer, accountant, expert or other agent whose services he deems to be important in the discharge of said duties, shall have the right of passing at all times over all railroads and on all railroad-trains or any part thereof in this state free of charge. Transportation.

SEC. 9. 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 company or corporation, or to examine, under oath or otherwise, any officer, director, agent or employee thereof, or any other person. The commissioners, or either of them, are empowered to issue subpoenas and administer oaths; and any person who may wilfully obstruct said-commissioners, or either of them, in the performance of their duties, or who may refuse to give any information within their 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 less than one hundred dollars nor more than one thousand dollars, in the discretion of the court; the cost of such Power to examine.
Administer oaths.

subpœnas and investigation to be paid by the state, on the certificate of said commissioners.

Notices, how
served on
companies.

SEC. 10. Whenever in the judgment of the railroad commissioners it shall appear that any railroad corporation or other transportation company fails in any respect or particular to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling-stock, or any addition to or change of its stations or station-houses, or any change in its rates for transporting freight, or any change in the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said commissioners shall inform such corporation of the improvement and changes which they adjudge to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the commissioners' secretary, with any station agent, clerk, treasurer or any director of said corporation; and if such orders are not complied with, the said commissioners, upon complaint, shall proceed to enforce the same in accordance with the provisions of this act as in other cases. Nothing in this section nor in section 7 shall be construed as relieving any railroad company or other transportation corporation from their responsibility or liability for damage to person or property.

Private cars.

SEC. 11. Subject to such rules, regulations and restrictions as the board of railroad commissioners may prescribe, any person, partnership or corporation engaged in business other than that of a common carrier may own or lease railroad-cars, and may load and bill the same to any railroad point, and all railroad companies and connecting lines to whom any such car is delivered shall receive and transport the same with all reasonable dispatch towards its destination; provided, that such cars shall be constructed in conformity to the rules and regulations of the company to which such application is made, and for such com-

compensation as may be fixed by the commissioners ; and having arrived at its destination it shall be unloaded, and shall be, unless otherwise ordered by the shipper, returned to its starting-point with like dispatch, and shall not be deviated from its route, and shall be in all respects handled the same as a car belonging to any railroad company ; provided, that it may be by said railroad company reasonably loaded upon its return trip, and the owner be allowed a reasonable sum for its use ; and such owner shall be responsible for all necessary repairs.

SEC. 12. Any person, upon written permission given by the board, may exercise, in the same manner and to the same extent as is now enjoyed by railroad companies, the right of condemning and appropriating land and laying out and constructing any spur, switch or railroad-track thereover, and connecting the same with any railroad already constructed ; and the right to use such spur, switch or track shall be public, at rates and on terms and conditions such as the board shall prescribe, if the parties interested cannot agree ; provided, that no such connection shall be made with the main track of any railroad between stations without the consent of such railroad company.

Private spurs
or switches.

SEC. 13. Whenever, in the judgment of the board of railroad commissioners, it is necessary to the convenience or accommodation of the public that two or more roads that cross or run parallel with each other should connect at or near the point of crossing or places of business along such road, for the transfer of cars from one road to another, the board may require the construction of necessary switch connections between such railroads at the points where deemed necessary in the following manner : Said board of railroad commissioners shall serve upon the railroad companies whose roads it is deemed necessary to connect a certified copy of their findings and decision, in which shall be stated the character of connections to be built, whose duty it shall then be to construct such switch connections within such time as the board

Authority to
connect cross
or parallel
roads.

shall prescribe, and the expense of the same shall be borne equally by the companies whose roads so connect or run parallel. If one of said companies shall build the whole of said switch, it may recover one-half of the cost of the same from the company whose duty it was to construct one-half of the switch. The companies whose roads so connect may operate and maintain such switch jointly. Any railroad company failing or refusing to comply with the requirements of the said board in relation to such switch shall be subject to a penalty of five hundred dollars, to be recovered in a civil action in the name of the state.

Application of
railroad to
cross another
line.

SEC. 14. Any railroad company authorized to operate a railroad in this state desiring to cross or unite its track with any other railroad upon the grounds of such other railway corporation shall make application in writing to the board of railroad commissioners, stating the place of crossing or intersection; whereupon the board of railroad commissioners shall fix a day for the hearing of such application, and notify the railway corporations interested, at which time, unless further time be granted by the board, the corporations interested shall be heard in regard to the necessity, place, manner and time of such crossing or connection; and upon such hearing either party, or the board, may call and examine witnesses in regard to the matter; and the board shall, after such hearing and a personal examination of the locality where a crossing or connection is desired, determine whether there is a necessity for such crossing or not, and, if so, the place thereof, whether it shall be over or under the existing railroad, or at grade, and in other respects the manner of such crossing and the terms upon which the same shall be made and maintained; provided, that no crossing shall be made through the yards or over the switches or side-tracks of any existing railroad if a crossing can be effected at any other place that is practicable. If either party shall be dissatisfied with the terms and order made by said board of railroad commissioners, it

may appeal to the district court of the county wherein such crossing or connection is sought to be made in the same manner as appeals are allowed from a judgment of a justice of the peace to the district court, and said appeal and all subsequent proceedings shall only affect the amount of compensation, if any, and other terms of crossing fixed by said board, but shall not delay the making of said crossing or connection; provided, the corporation desiring such crossing or connection shall deposit with the county treasurer of the county where crossing or connection is sought to be made the amount of compensation, if any is fixed by said board of railroad commissioners, and shall execute and file with said board a bond of sufficient security, to be approved by any member of said board, to pay all damages and comply with all terms that may be adjudged by the district court. Any railroad company which shall violate or evade any of the provisions of this section shall forfeit, for every such offense, to the person, company or corporation injured thereby, three times the actual damages sustained by the party aggrieved.

SEC. 15. When in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossings without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the board of railroad commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each other at a common grade, either of such roads may apply to the board of railroad commissioners for the permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings

Where rail-
roads cross.

without stopping, and it shall be the duty of said board of railroad commissioners, if the system of works and fixtures which it is proposed to erect by said company are in the opinion of the board sufficient and proper, to grant such permission.

SEC. 16. Any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice in writing to such other railroad company, introduce and erect such interlocking or automatic signals or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving such notice in the construction of such works or fixtures, it shall be lawful for said first company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

Application
for depots,
switches, etc.

SEC. 17. It shall be the duty of the board of railroad commissioners, upon complaint and application by the mayor and council of any city, or the trustee of any township in this state, requesting an order of said board to require any railroad company in this state to construct any depots, side-tracks, switches or other facilities at any point on the line of such railroad, for the convenience and safety of the public in the transaction of business with such railroad and the interchange of business between connecting or parallel railroads at any station, town or city in this state, to investigate such complaint, after giving proper notice to the railroad companies interested; and said commissioners, after such examination, shall make such orders as they shall deem necessary and proper in relation to the construction and maintenance of

such depots, connections, switches or side-tracks as in the judgment of the said board shall be necessary.

Sec. 18. It shall be the duty of said railroad commissioners, upon the complaint and application of any consignor or consignee or of the mayor and council of any city or the trustee of any township, to make an examination of the rate of freight tariff charged by any such company, and of the condition or operation of any railroad any part of whose location lies within the limits of such city or township; and if twenty-five or more legal voters in any city or township shall, by petition in writing, request the mayor and council of such city or the trustee of such township to make the said complaint and application, and the mayor and council or the trustee refuse or decline to comply with the prayer of the petition, they shall state the reason for such non-compliance, in writing, upon the petition, and return the same to the petitioners; and the petitioners may thereupon, within ten days from the date of such refusal and return, present such petition to said commissioners; and said commissioners shall, if upon inquiry and hearing of the petitioners they think that the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and council of any city or the trustee of any township. Before proceeding to make such examination in accordance with such application or petition, said commissioners shall give to the petitioners and railroad company reasonable notice in writing of the time and place of entering upon the same. If upon such examination it shall appear to said commissioners that the complaint alleged by the applicants or petitioners be well founded, they shall so adjudge; and they shall then and there decide what is a reasonable charge for such freights and shall inform the corporation operating such railroad company of their adjudication within ten days, and shall certify to such complainants the result of such adjudication; and such adjudication shall be *prima facie* evidence of what is a reasonable charge in all

Examination
of freight-
tariff rate.

actions for such service. And whenever the board of railroad commissioners shall decide what is a reasonable charge for any freights, based on the classification existing at the time of such decision, no railroad company shall thereafter, without the consent of the commissioners, alter such classification so as in effect to increase such charge as to any class of goods, but such decision as to what is a reasonable charge shall be interpreted according to the classification existing when such decision was made.

Findings made
effective.

SEC. 19. In all cases where complaints shall be made in accordance with the provisions of section 18 of this act that an unreasonable charge is made, or that the rates charged for freight are unjust, unreasonable, or extortionate, and the board shall find such complaint to be true, they shall require a modified charge for the service rendered such as they shall deem to be reasonable, and shall certify their findings to the managing officer of the road against which complaint is made; and the rates so determined by the board to be reasonable shall be by the railroad company affected thereby accepted, and posted up in a conspicuous place in each depot on the line of its road that may be designated by said board; and if any railroad company shall fail for a period of ten days to accept such rates and post the same as herein provided in each depot on the line of its road that may be designated by said board, then said board shall cause the rates so determined by the board to be reasonable to be published in the official state paper, and thereupon and after such publication such rates so found shall, in all actions arising in any court in the state, be taken to be reasonable compensation for the services for which they are provided, until the contrary is proven; and all compensation demanded or received by any such railroad company in excess of the rates so determined by the board shall, in any such action, be taken to be unjust, unreasonable, and extortionate, until the contrary is proven. All cases of a failure to comply with the recommendation of the board of

commissioners shall be embodied in the annual report of the board of commissioners to the governor, and the same shall apply to any unjust discrimination, extortion or overcharge by said company, or any other violation of this act by such company.

SEC. 20. No railroad company shall charge or receive a rate in excess of three cents per mile for the transportation of any passenger who is over twelve years of age upon any railroad in this state, nor in excess of half that sum per mile for the transportation of any passenger between the ages of six and twelve years. Each passenger over twelve years of age paying fare shall be entitled to have transported, without any additional charge, baggage not exceeding one hundred and fifty pounds in weight; and each passenger of twelve years of age or under paying fare shall be entitled to have transported, without additional charge, baggage not exceeding seventy-five pounds in weight. In every case where any passenger on any railroad in this state shall fail to present to the conductor or collector upon the train a ticket for his or her journey, it shall be lawful for said railroad company to charge and collect from said passenger, in excess of the regular schedule of fare, the sum of ten cents; provided, however, in such case the conductor or collector shall thereupon issue to the passenger paying the excess of fare a receipt or check for such excess, which amount shall be refunded to such passenger on presentation of such receipt or check to any regular ticket agent of said railway company.

Passenger
rates.

SEC. 21. No railroad company shall charge, demand or receive from any person, company or corporation an unreasonable price for the transportation of persons and property, or for the hauling or storing of freight, or for the use of its cars, or for any privilege of its service afforded by it in the transaction of its business as a railroad company; and upon complaint in writing made to the board of railroad commissioners that an unreasonable price has been charged, such board shall investigate said complaint,

Unreasonable
charges.

and, if sustained, shall make a certificate under their seal setting forth what is a reasonable charge for the service rendered, which shall be *prima facie* evidence of the matter therein stated.

Furnish shipper with cars.

SEC. 22. It shall be the duty of any railroad company, when within its power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons, without discrimination, who may apply therefor in good faith for the transportation of any and all kinds of freight, and to receive and transport such freight with all reasonable dispatch, and to provide and keep suitable facilities for the receiving 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 or loaded cars furnished by any connecting 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 a similar service; and for a failure on the part of any railroad company to furnish cars to any shipper who may in good faith apply therefor, in accordance with the requirements of this section, it shall forfeit to the person damaged thereby the sum of two dollars for each and every day such failure shall continue after the lapse of a reasonable time for the compliance with such application, in addition to the actual damages by him sustained, to be recovered by action in the district court; provided, that no such action shall be brought until such claim has been submitted to the board of commissioners, and until they have determined and certified that in their opinion the claim is well founded, but such certificate shall not be considered evidence as to the merits of the claim; and provided further, that the refusal of the shipper to deposit twenty-five per cent. of the freight in advance shall be deemed conclusive evidence in such an action that such application was not made in good faith.

SEC. 23. If complaint shall be made by any railroad company in this state against any other railroad company in this state on account of failure, neglect or refusal to comply with the provisions of the preceding section, the board of railroad commissioners shall, upon notice to said railroad company, investigate such complaint, and thereupon make such order as in the opinion of said board shall be just and reasonable for the public interests, and may fix in such order a reasonable switching charge for any service required by such order, which switching charge shall be paid by the railroad company receiving the service, and shall not be added to the rate paid by any consignor or consignee interested in such shipment.

SEC. 24. Neither said board of railroad commissioners nor any railroad company shall raise the charge for the transportation of freight on any railroad without first giving sixty days' public notice of such change, in such manner as the commissioners may determine.

Notice of
increased rate.

SEC. 25. No railroad company shall charge, demand or receive from any person, company, or corporation, for the transportation of any property, or for any other service, a greater or less 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, or upon like conditions and under similar circumstances; and all concession of rates, drawbacks and contracts for special rates shall be open to and allowed all persons, companies and corporations alike; nor shall it charge more for transporting freight 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; nor shall it be lawful to charge a greater freight-rate to haul any class of goods for a shorter distance than for a longer one in the same general direction under like conditions, and over the same system of road in Kansas, except by the consent of the commissioners.

Rates
invariable.

Division of
earnings
prohibited.

SEC. 26. It shall be unlawful for any railroad company to make any contract or enter into any stipulation with any other railroad company running in the same general direction by which either company shall, directly or indirectly, agree to divide, in any manner or proportion, the joint earnings upon the whole or any part of the freight transported over such road; and any violation of this provision shall render the railroad company violating the same liable to a penalty of five thousand dollars for each month for which such earnings are divided, to be recovered for the use of the common-school fund, in the name of the state.

SEC. 27. No railroad company shall be permitted, except as otherwise provided by regulation or order of the board, to change or limit its common-law liability as a common carrier. All railroad companies shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and, so far as practicable, shall state the freight charges over the other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the articles shipped, on payment of the rate charged for the class of freights mentioned in the receipt.

Commission-
ers' annual
report.

SEC. 28. Said 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 working of the system of railroad transportation in this state, and its relations to the general business and prosperity of the citizens of the state, and such suggestions and recommendations in respect thereto as may seem appropriate. Said report shall also contain, as to every railway corporation doing business in this state—

First, The amount of its capital stock.

Second, The amount of its preferred stock, if any, and the condition of its preferment.

Third, The amount of its funded debt, and the rate of interest.

Fourth, The amount of its floating debt.

Fifth, The cost and actual present cash 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.

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

Seventh, A list of all its officers and directors, with their respective places of residence.

Eighth, Such statistics of the road and of its business for the year as may in the judgment of the commissioners be necessary and proper for the information of the legislature, or as may be required by the governor.

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

Such report shall exhibit and refer to the condition of such corporation on the 1st day of July of each year, and the details of its business transacted during the year ending June 30.

SEC. 29. To enable said commissioners to make such report, the president or managing officer of each railroad or transportation company doing business in this state shall annually make to the said commissioners, on the 15th day of September of each year, 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 corporation herein named whose returns shall not be made as herein prescribed by the 15th day of September shall be liable to a penalty of one hundred dollars for each and every day after the 16th day of September.

Railroad's
annual report.

ber that such returns shall be wilfully delayed or refused.

Penalty
for false
testimony.

SEC. 30. Any person who shall wilfully and corruptly swear, testify or affirm falsely to any material matter, upon any oath or affirmation or declaration legally administered in any cause, matter or proceeding before said board or any member thereof, or in any return, answer or report required by this act to be made, shall be deemed guilty of wilful and corrupt perjury, and shall be punished by imprisonment in the penitentiary at hard labor for a term not exceeding seven years.

Connecting
lines.

SEC. 31. The board of railroad commissioners shall enforce its orders for the erection and maintenance of depots, the construction of connections, side-tracks, and switches, and charges for switching between connecting or parallel lines of railroad, as hereinbefore provided for, as provided in the next section.

SEC. 32. For every neglect or refusal of any railroad company, corporation, receiver or person operating any railroad in this state to comply with any order of the board of railroad commissioners of this state made in pursuance of the foregoing provisions, the person or corporation so neglecting or refusing shall forfeit to the state of Kansas, for the benefit of the school fund, the sum of one hundred dollars for each and every day that any such order is neglected or disobeyed after the expiration of thirty days from the date of service of notice on the president, managing officer, superintendent, any member of the board of directors or any station agent or person in charge of any office or station of such company by the board of railroad commissioners of the making of such order, to be recovered by civil action in the name of the state, which action shall be prosecuted by the attorney general in any county having jurisdiction; provided, that upon good cause shown the board of railroad commissioners may extend the time within which such order shall be complied with to such an extent as, in

the opinion of the board, under the circumstances of the particular case, may be necessary or desirable.

SEC. 33. Any railroad company which shall violate Penalty for violation. any of the provisions of this act shall forfeit, for every such offense, to the person, company or corporation aggrieved thereby, three times the actual damages sustained by the said party aggrieved, together with the costs of suit, and a reasonable attorney fee, to be fixed by the court; and if an appeal be taken from the judgment or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional reasonable attorney's fee for services in the appellate court or courts.

SEC. 34. Any railroad company or individual wilfully violating or evading any of the provisions of this act not otherwise herein provided for shall, for each offense, forfeit and pay a penalty of not less than one hundred nor more than five thousand dollars. All Penalties, how recovered. penalties provided for in this act shall be recovered by a civil action, to be instituted and prosecuted in the name of the state, by the county attorney of the county in which the offense has been committed, upon the direction of the board of railroad commissioners. If upon the trial of said action the jury shall find for the plaintiff, they shall assess and return with their verdict the amount of the fine to be imposed upon the defendant, and the court shall render judgment accordingly. All such penalties so recovered shall be paid into the school fund of the county in which such offense has been committed, and the board of railroad commissioners may require the attorney general to assist such county attorney in the prosecution of such action. No bond for costs shall be required of the state in any such action.

SEC. 35. Nothing in this act shall be construed to estop or hinder any person or corporation from bringing suit against any such railroad company for any violation of any of the laws of this state for the government of railroads.

SEC. 36. In any action against any railroad com-

pany for violations of the provisions of this act, the plaintiff may join in the same petition as many different causes of action as he may have against such company arising under this act.

Railroad company defined.

SEC. 37. In construing this act, unless such meaning be repugnant to the context or the manifest intention of the legislature, the term "railroad company" shall include and be construed to mean any incorporated railroad company, or any express or transportation company or other common carrier, or any railroad-bridge company, or any person or persons, lessee, assignee, trustee, receiver, partnership, joint-stock company, or corporation, engaged wholly, partially, jointly or severally in laying out, constructing, owning, operating, using or maintaining any railroad operated by steam, or any portion or part of such railroad line. The word "person" shall include persons, partnerships, joint-stock companies, or corporations.

Orders of commissioners to be obeyed.

SEC. 38. It shall be the duty of every railroad company, and each and every officer, agent and employee of any railroad company, and of each and every person engaged in any capacity in the conduct of the business of a common carrier, to obey all reasonable orders of the board of railroad commissioners made under the authority conferred by this act. In case any railroad company, or any such officer, agent, employee, or person, shall violate or shall refuse or fail to obey any such order lawfully made by said board of railroad commissioners, any person aggrieved thereby may institute and prosecute mandamus proceedings in the supreme court, in the name of the state on the relation of such person, to compel compliance with and obedience to such order; and in any case where, in the opinion of the board of railroad commissioners, the interest of the public requires it, such board shall require such proceeding to be brought, and such proceeding shall then be brought by the attorney general in the name of the state. The practice in such proceedings shall be as in other

cases of mandamus, but the court may control the time of trial without regard to the time the issues are joined. Cases instituted under the provisions of this section may have precedence as to the time of hearing over all other classes of cases except criminal cases. The supreme court shall have discretionary authority to refer any of the issues in any such proceeding to a referee or referees to be appointed by the court for such hearing and findings, and under such rules as the court may direct. In any hearing under the provisions of this section, the orders and determinations of the board of railroad commissioners shall be deemed *prima facie* evidence of the matters therein stated and found. In such action the court may direct the railroad company affected thereby to comply with any part of any rule, order or regulation of the board, and may hold any part of the same unreasonable, and refuse to enforce such part, without affecting the part found to be reasonable and just. Disobedience of any judgment, order or writ of the supreme court in any such proceedings shall be punished as in other cases of contempt. The proceedings in cases of contempt shall be summary in their nature, under such rules as the court shall adopt, and no jury trial shall be required or had therein. In addition to the general powers of the court to punish for contempt, the court shall have power to punish any refusal or failure to obey its orders, made under the provisions of this section, by a fine of not to exceed one thousand dollars for each day after a day to be fixed by the court that such disobedience shall continue, or by imprisonment not exceeding one year, or by both such fine and imprisonment. In any proceeding instituted under the provisions of this section by the attorney general, the costs and expenses on the part of the plaintiff shall be paid out of the general fund of the state, upon approval by the governor, attorney general, and auditor of state. The remedies provided by this section shall not be deemed to exclude or limit any other remedies provided in this act or existing in

Orders of
the court.

virtue of any other statutes or common law, but shall be additional thereto.

Railroads to have notice of orders, decisions, or intent to investigate.

SEC. 39. Said board of railroad commissioners shall not make any regulation, order, finding or decision against any railroad company or enter into any investigation affecting any railroad company without giving such railroad company reasonable notice thereof and an opportunity to appear and be heard in respect to the same; and if any railroad company shall be dissatisfied with any regulation, order, finding or decision adopted by said board of railroad commissioners, such dissatisfied railroad company shall have the right, within thirty days after the making or entering thereof, to bring an action against said board of railroad commissioners as defendants in any court of competent jurisdiction to have such regulation, order, finding or decision vacated, and shall set forth in the petition the particular regulation, order, finding or decision complained of and the particular cause or causes of objection to any or all of them, and a summons shall be served upon the secretary of said board as in other cases. Issues shall be formed and the controversy tried and determined as in other civil cases of an equitable nature; and said court may set aside, vacate or annul one or more or any part of any of the regulations, orders, findings or decisions adopted by the said board which shall be found to be unreasonable, unjust, oppressive or unlawful without disturbing others. Either party to said cause, if dissatisfied with the judgment or decree of said court, may institute proceedings in error in the supreme court as in other civil cases, and said court shall examine the record, including the evidence, and render such judgment as shall be just and proper in the premises. In all litigation under this section, the said board shall be entitled to the services of the attorney general in their behalf, and the costs incurred by them shall be paid by the state. All actions brought under this section shall be advanced upon application of either party thereto, and in the hearing

thereof shall have precedence over all other causes except criminal cases, to the end that the same may be speedily heard and finally determined. The institution of any such action by any railroad company shall in no manner interfere with or prejudice the rights of said board or any other parties in interest from availing themselves of the remedies provided in section 38 of this act; but whenever action shall be brought by any railroad company under the provisions of this section within the said period of thirty days, no penalties or forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the regulation, order, finding or decision sought to be vacated or modified in such action until the validity of such regulation, order, finding or decision shall have been finally determined in such action, or shall have been finally determined by the supreme court of Kansas in any proceeding to which said railroad company is a party. Whenever a proceeding brought in the supreme court under section 38 of this act by the attorney general upon the direction of the board of railroad commissioners against any railroad company to compel the compliance with any order of said board of railroad commissioners shall be pending at the same time with an action brought in any district court of the state by such railroad company to vacate such order, the supreme court, upon such fact being made to appear, may stay all proceedings in said district court in said cause, so far as relates to the subject-matter involved in such proceeding in the supreme court, until the final determination thereof by the supreme court; and if said proceedings in the supreme court result in a final decision upon the merits, determining the question of the validity of such order, said district court, upon such fact being made to appear, shall render judgment in accordance with such decision of the supreme court.

SEC. 40. Sections 1332, 1333, 1335, 1336, 1340, 1344 and 1348 of the General Statutes of 1889, and all other

acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

SEC. 41. This act shall take effect and be in force from and after its publication in the official state paper.

Approved February 26, 1901.

Published in official state paper March 29, 1901.

CHAPTER 287.

COUNTIES, TOWNSHIPS AND CITIES PERMITTED TO SELL RAILROAD STOCK.

AN ACT to amend section 1 of chapter 124 of the Laws of 1875, entitled "An act to authorize the county commissioners of any county, the mayor and city council of any city and the trustee, clerk and treasurer of any township to sell railroad or other stock owned by such county, city, or township, and apply the proceeds to the payment of bonds issued therefor."

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That section 1 of chapter 124 of the Laws of 1875, entitled "An act to authorize the county commissioners of any county, the mayor and city council of any city and the trustee, clerk and treasurer of any township to sell railroad or other stock owned by such county, city, or township, and apply the proceeds to the payment of bonds issued therefor," be and the same is hereby amended so as to read as follows: Section 1. That the board of county commissioners of any county, the mayor and city council of any city and the trustee, clerk and treasurer of any township in this state that has heretofore subscribed or shall hereafter subscribe or be entitled to the capital stock of any railroad or other company or corporation in this state, and that has issued or shall issue the bonds of such county, city or township in payment for such stock, and has received or shall receive or be entitled to receive from said railroad or other company or corporation certificates or other evidences of ownership by such county, city or town-