

senger train, cause their respective depots or waiting rooms to be open for the reception of passengers; said depots to be kept well lighted and warmed for the space of time aforesaid."

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

Approved April 1, 1891.

CHAPTER 106.

[S. F. No. 699.]

General Laws of 1887, amending Chap. 10—common carriers.

AN ACT TO AMEND CHAPTER TEN (10) GENERAL LAWS ONE THOUSAND EIGHT HUNDRED AND EIGHTY-SEVEN (1887), ENTITLED "AN ACT TO REGULATE COMMON CARRIERS, AND CREATING THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA, AND DEFINING THE DUTIES OF SUCH COMMISSION IN RELATION TO COMMON CARRIERS."

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

SECTION 1. That section eight (8) of Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887) be amended by striking out subdivisions (e), (f) and (g) and substituting therefor the following, to-wit:

Unequal or unreasonable tariff rates.

"(e) That upon complaint, duly verified, of any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, that any part of the tariff of rates, fares, charges or classifications so filed and published, as hereinbefore provided, are in any respect unequal or unreasonable, the commission shall forward a copy of such complaint to the common carrier complained of, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission, and to serve a copy of such answer on the complainant.

Complaint and answer.

"If the common carrier shall change the tariff of rates, fares, charges or classifications as demanded by the complainant within the time specified by the commission, proceedings shall be dropped.

Failure of common carrier to answer or comply, hearing before railroad commission.

"If the common carrier shall refuse or neglect to make such changes, the commission shall set a time and place for a hearing in the matter, of which at least ten (10) days' notice shall be given to the complainant and the common carrier complained of. Such notice shall be served either by mailing a copy thereof to some general officer of such common carrier, or personally by some person directed to do so by the commission.

"For the purpose of such investigation the commission shall have the power to require the attendance of witnesses and the production of all books, papers, contracts, agreements and documents that relate to the matter under investigation, and to that end may invoke the aid of any court in this state, requiring the attendance of witnesses and the production of books, papers and documents, under the provisions of this section.

"Witnesses may be introduced and evidence given by either party at all hearings before the commission.

"After due consideration by the commission of all the evidence produced at such hearing or hearings, the commission shall make its report in writing to the complainant and to the common carrier complained of. If the tariff of rates, fares, charges and classifications so complained of shall be found by the evidence to be unequal or unreasonable, the commission shall state wherein they are unequal or unreasonable, and shall make a tariff of rates, fares, charges and classifications which shall be substituted for the tariff complained of.

Commission to report in writing.

"Such tariff of rates, fares, charges or classifications, so made by the commission, shall be deemed and taken in all courts of this state as *prima facie* evidence that the tariff of rates, fares, charges or classifications so made is equal and reasonable, and such tariff so made shall be in full force and effect during the pendency of any appeal that may be taken in the matter to the courts.

Tariff of rates, etc., made by commission to be accepted as *prima facie* evidence of reasonableness.

"(f) In cases such common carrier shall neglect or refuse, after the time for appeal as hereinafter provided has expired, to adopt such tariff of rates, fares, charges and classifications, so made by the commission, it shall be the duty of the commission to publish such tariff of rates, fares, charges and classifications as they have declared to be equal and reasonable, in such manner as the commission shall deem expedient, and that thereafter it shall be unlawful for such common carrier to charge or maintain a higher or lower rate, fare, charge or classification than that so fixed by said commission, unless and until a court of competent jurisdiction shall have otherwise ordered and decreed."

Common carrier refusing to adopt said rates, commission to publish the same.

SEC. 2. That section thirteen (13) of said Chapter ten (10) of General Laws of one thousand eight hundred and eighty-seven (1887) be amended by striking out subdivision (b) and substituting therefor the following, to-wit:

"(b). Whereupon a statement of the charges so made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the commission, and to serve a copy of such answer upon the complainant. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved

Railroad commission to investigate all complaints against common carriers.

of liability to the complainant only for the particular violation of law thus complained of. If such common carrier shall not satisfy the complaint within the time specified, and if it shall appear to the commission that there is reasonable ground for investigating the matter set out in said complaint, the commission shall name a time and place when and where a hearing will be had before the commission in the matter complained of.

Notice of hearing.

"Notice of all hearings before the commission, not only under this section but under all other sections of this act, where hearings are contemplated, shall be given by the commission or by the secretary of said commission, by causing to be mailed to the complainant in the case a copy of the notice of such hearing at his reputed place of residence, postage prepaid, at least ten (10) days before the day named as the day of hearing in said notice, and also by causing a copy of such notice of hearing to be mailed, at least ten (10) days before the day named as the day of hearing in said notice, properly directed, postage prepaid, to any division superintendent, general or assistant superintendent, general manager, president, vice president or secretary of the common carrier complained of, at the place in the state of Minnesota where the main business of such common carrier is transacted.

Service may be made on an attorney.

"*Provided*, That whenever the complainant or common carrier has appeared by an attorney, thereafter such service may be made upon such attorney. Such service shall be taken and held in all cases to be a legal service; appearance in any case shall be taken and deemed a waiver of any defect in the notice of such hearing or any irregularities of the service thereof.

Commission has power to require attendance of witnesses, etc.

"No complaint shall at any time be dismissed because of the absence of direct damages to the complainant, and for the purpose of this act the commission shall have power to require the attendance of witnesses and the production of all books, papers, contracts, agreements and documents relating to any matter under investigation, and to that end may invoke the aid of any court of this state in requiring the attendance of witnesses and the production of all books, papers, contracts, agreements and documents relating to any matter under investigation, under the provisions of this act."

SEC. 3. That subdivision (d) of section fifteen (15), Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887) be stricken out, and the following be, and the same is, hereby substituted, to-wit:

Right of appeal to district court.

"(d). Any railroad company or common carrier affected by any order of the commission, except administrative orders, made pursuant to section ten (10) of Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887), may at any time within the period

of thirty (30) days after the service of it upon him or it of such order, appeal therefrom to the district court of any judicial district through or into which his or its route may run, by the service of a written notice of such appeal on some member or the secretary of such commission.

“And upon the taking of such appeal and the filing of the notice thereof, with the proof of service, in the office of the clerk district court, there shall then be pending in such district court a civil action of the character and for the purposes mentioned in sections eight (8), eleven (11) and fifteen (15) of Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887), as amended by this act. Upon such appeal, and upon the hearing of any application by the commission or by the attorney general, for the enforcement of any such order made by the commission, the district court shall have jurisdiction to, and it shall, examine the whole matter in controversy, including matters of fact as well as questions of law, and to affirm, modify or reverse such order in whole or in part, as justice may require; and in case of any order being modified, as aforesaid, such modified order shall, for all the purposes contemplated by this act, stand in place of the original order so modified and have the same force and effect throughout the state as the orders of said commission.

Proceedings of court.

“No appeal as aforesaid shall stay or supersede the order appealed from unless the court hearing and deciding such case, upon application and notice to the other party, shall so direct.

Not to stay order appealed from unless specially decided by court.

“The remedies herein provided for shall be in addition to all existing legal and equitable remedies.”

SEC. 4. That Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887) be and the same is hereby amended by adding thereto the following section, to-wit:

“Sec. 22. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the commission made under the provisions of this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh (7th) amendment to the Constitution of the United States, or as provided by section four (4) of the Constitution of this state, it shall be lawful for the commission, or for any company or person interested in such order or requirement, to apply in a summary way, by petition to any district court in any county in this state in which the carrier complained of has its principal office, or in any county through or into which its line of road extends, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court

Violation or disobedience by common carriers of any lawful order—commission to apply to district court for writ of injunction.

shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily and without the formal pleadings and proceedings applicable to ordinary suits further than is necessary in the judgment of the court to clearly define the issues between the parties, and in such manner as to do justice in the premises. To this end the court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing, or on the report of any person or persons, that the lawful order or requirement of said commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such courts to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and, if a corporation, against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee, receiver or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred (500) dollars for every day after a day named in the order that such person or carrier shall fail to obey such injunction or other process, mandatory or otherwise, and such money shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the state treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by an attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final judgment or decree *in personam* and in such court.

Penalty for disobedience of mandatory order or writ.

Right of appeal to supreme court.

“Either party to any appeal, trial or other proceeding had in the district court pursuant to the provisions of this act shall have the right of appeal to the supreme court of the state from any order or judgment of the district court

under the same regulations now provided by law in relation to appeals to said supreme court from orders or judgments of the district court, except that on such appeals security shall not be required when the same is taken by said commission, and except that the return of the district court provided for by section four (4), Chapter eighty-six (86), General Statutes of one thousand eight hundred and seventy-eight (1878), may be filed in the supreme court at any time before or during the next succeeding term of said court after the making of the order or entering the judgment appealed from; and such appeal shall be entered upon the calendar and heard by said supreme court upon such short notice to the respective parties as the court may deem reasonable, with a view to a speedy determination of the same. No appeal to the supreme court shall operate to stay or supersede an order in force at the time the appeal is taken, unless the supreme court shall, upon application duly made and upon such terms as it may deem just, suspend the operation of the order pending the appeal hereinbefore provided for.

“If the matters involved in such order or requirement of said commission are founded upon a controversy which at common law would entitle the party to a trial by jury, as provided by the seventh amendment to the Constitution of the United States, or by section four (4), article one (1) of the Constitution of this state, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said commission, as provided in subdivision (b) (as amended hereby) of section thirteen (13) of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the district court of any judicial district in this state, in which the carrier complained of has its principal office or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and such court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty (20) nor more than forty (40) days from the time of said order fixing said time of trial; and it shall be the duty of the sheriff of the county in which such proceeding is pending to forthwith serve a copy of said petition and of said order upon the common carrier complained of, and it shall be the duty of such person or common carrier to file his or its answer to said petition within ten (10) days after the service thereof, as aforesaid. Upon the trial of said cause the findings of fact of said commission as set forth in its report shall be *prima facie* evidence of the matters therein stated, and if either party, being entitled to a trial by jury, as in this act provided, shall demand a jury, or shall omit to waive a jury, the court shall by its order direct the sheriff to select, in the presence of the parties or their attorneys,

Where matters in controversy entitle party to a jury trial, petition to district court may be made for summary trial.

Proceedings before the court for selection of jury.

from the number of persons qualified to serve as jurors in the county, thirty (30) such persons as he shall deem most indifferent between the parties, and the complainant or petitioner shall first strike off one of the names so selected, and the opposite party shall strike off one, until each shall have struck off eight (8). The sheriff shall then make a copy of the names of the remaining fifteen (15) persons and deliver the same to the clerk of said court, who shall thereupon issue and deliver to such sheriff a *venire facias*, with the names in said list contained, annexed thereto, and such sheriff shall summon the persons named according to the demand of such writ; and upon the trial of the cause the jury so selected shall be called as they stand upon their panel, and the first twelve (12) of them who shall appear and are not challenged for cause, or set aside by the court, shall be the jury, and shall be sworn to try the issues joined in said cause or proceedings; *Provided*, That if a sufficient number do not appear for the trial of said cause the court shall cause talesmen to be called as in other cases. If the judgment of a district court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fees, which shall be collected as part of the costs in the case.

"For the purpose of this act, excepting its penal provisions, the district courts of this state shall be deemed to be always in session."

SEC. 5. That Chapter ten (10) General Laws of one thousand eight hundred and eighty-seven (1887) be and the same is hereby amended by adding thereto the following section, to-wit:

"Sec. 23. Any of the district courts of this state shall have jurisdiction upon the relation of any person or persons, firm or corporation, alleging such violation by such common carrier of any of the provisions of this act, and all acts amendatory thereof, as prevents the relator from having traffic moved by said common carrier at the same rates as are charged or upon terms and conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ of *mandamus* against said common carrier demanding such common carrier to move or transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ; *Provided*, That nothing in this act shall be construed as repealing or modifying subdivision (b) of section seven (7) of Chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887).

"*Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory *mandamus* may issue, notwithstanding such question of fact is undetermined, upon such terms as to se-

Jurisdiction of any district court recognized to issue *mandamus* to common carrier to move or transport traffic, etc.

Peremptory *mandamus* may issue, pending determination of facts.

curity, payment of the money into court or otherwise, as the court may think proper, pending the determination of the question of fact.

“Provided, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or of any act amendatory thereof.”

SEC. 6. That section twenty-two (22) of Chapter ten (10) of General Laws of one thousand eight hundred and eighty-seven (1887) be and the same is hereby made section twenty-four (24) of said chapter.

SEC. 7. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 15, 1891.

CHAPTER 107.

[H. F. No. 61.]

AN ACT TO AMEND SECTION SEVENTY-NINE (79) OF CHAPTER THIRTY-SIX (36) OF THE GENERAL STATUTES OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-EIGHT (1878), AS AMENDED IN CHAPTER FORTY-ONE (41) OF GENERAL LAWS OF ONE THOUSAND EIGHT HUNDRED AND EIGHTY-SEVEN (1887).

Amending Chap. 41, General Laws of 1887, as amending Chap. 36 of the General Statutes—school tax apportionment.

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

SECTION 1. That provision first (1st) of section seventy-nine (79) of Chapter thirty-six (36) of the General Statutes of one thousand eight hundred and seventy-eight (1878), as amended in Chapter forty-one (41) of General Laws of one thousand eight hundred and eighty-seven (1887), be amended to read as follows:

“Provided, First, that no district shall receive from the apportionment, in any given year, an amount greater than that appropriated by the district from its special tax and local one (1) mill tax levied in that year.”

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

Approved March 24, 1891.

Not to exceed the amount of special tax and local one mill tax in any one year.