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MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES 1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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charge him; whereupon the guardianship of the board shall cease, and he shall be entitled to his earnings, with power to contract for his services, or shall be returned to the custody of his parents, as the board shall direct. (1948) [4164]

4623. Agents—Appointment—Duties—Suitable persons shall be appointed to act as agents of the school. They shall visit the wards of the board, at its direction, and report to it their condition, and any violation of contracts, and shall perform such other duties as the board may direct. They or the superintendent shall provide homes for wards, investigate applications for apprentices, and, on behalf of the board, execute contracts of apprenticeship. They shall be allowed, in addition to their salaries, their necessary traveling expenses, to be audited by the State Board of Control. (1949) [4165]

4624. Record of inmates—The board shall cause to be kept at the home a record, containing the names, ages and residences of all children received; the names, residence, occupation and character, so far as known, of the living parents; the record of military or naval service of the parents, if any, in the force of the United States, with a separate index thereof; the date of reception, and of adoption or indenture, with the name, occupation and residence of the person with whom the child is placed; the date and cause of the cancellation of any contract; the date and cause of discharge; and a brief history of each child during minority. (1950) [4166] (Amended '27, c. 284)

4625. State Board of Control authorized to find homes for children—The State Board of Control is hereby authorized to receive, keep, maintain, train and find homes for such children as the controlling board or other managing authorities of any institution or association which is permitted to receive, find homes for or secure adoption for children under the supervision of the State Board of Control may request. ('13 c. 404 § 1, amended '17 c. 214 § 3) [4167]

Explanatory note—Laws '17, c. 214, § 5 repeals G. S. '13, §§ 4155, 4156, 4158 to 4160, 4162 and 4169.

4626. Visitatorial powers of State Board of Control—The State Board of Control is authorized to visit and investigate the conditions of all children for whom homes have been found by an institution within the State of Minnesota which has or may at any time have been permitted by said board to receive and find homes for dependent children. ('13 c. 404 § 2, amended '17 c. 214 § 4) [4168]

4627. Penalties—Any parent, guardian or other person who shall abduct, conceal, entice, carry away, or improperly interfere with any child committed to the guardianship of said board, or who shall obstruct or interfere with any officer or agent in the performance of any duty imposed by this chapter, shall be guilty of a misdemeanor. (1952) [4170]

88-382, 93+3.

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RAILROAD AND WAREHOUSE COMMISSION

4628 Et seq. 33 — 425

4628. Election, etc.—The general supervision of railroads and express companies doing business as common carriers, and of public warehouses, is vested in a board of three railroad and warehouse commissioners, which shall be known as the "Railroad and Warehouse Commission." At the general election to be held in 1912 there shall be one commissioner elected for a term of four years, and one commissioner for a term of six years and at each biennial election thereafter there shall be one commissioner elected for a term of six years and until their successors qualify. (R. L. § 1953, amended '11 c. 140 § 1) [4171]

1911 c. 140 § 4 repeals inconsistent acts, etc.

4629. Vacancies—Vacancies in the commission shall be filled by the governor until the next general election, when a commissioner shall be elected for the unexpired term. (1954) [4172]

4630. Qualifications—No person in the employ of any railroad company or grain warehouse company, or who owns stocks, bonds or other property therein, shall be eligible as a commissioner; nor shall any such commissioner, during his continuance in office, be interested in any such stock, bonds or other property, or in any contract for the construction, repair or maintenance of any railroad, or accept any employment, office, or retainer under any such company, or participate in any hearing or proceeding in which he has a pecuniary interest. (1955) [4173]

4631. Oath—Bond—Salary—Before entering upon the duties of his office, each commissioner shall take, subscribe and file with the secretary of state an oath as follows:

"I do solemnly swear that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge my duties as a member of the railroad and warehouse commission of the State of Minnesota, according to the best of my ability, and that I am not in the employ of or holding any official relation to, any common carrier or grain warehouseman, nor am I in any manner interested in any stock, bonds or other property of any such common carrier or warehouseman."

He shall also give a bond to the state, to be approved by the governor, in the sum of twenty thousand dollars, conditional for the faithful performance of his official duties. He shall devote his entire time to the duties of the office. His salary shall be four thousand five hundred dollars per annum, payable in the same manner as that of other state officers. (R. L. § 1956, amended '11 c. 140 § 2) [4174]

4632. Removal—Any such commissioner may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office; but before removal he shall be furnished with a copy of the charges against him, and have an opportunity to be heard in defense. (1957) [4174a]

4633. Quorum—A majority of the commission shall constitute a quorum, and the act or decision of a majority shall be deemed the act or decision of the commission. No vacancy in the commission shall impair the authority of the remaining members to exercise all the powers of the commission. (1958) [4174b]

4634. Secretary—Employes—The commission shall appoint a secretary not a member, and such additional help as may be necessary to carry out the provisions of this chapter, and fix their compensation. The commission is authorized to designate one of its employes as warehouse registrar and define his duties, and such warehouse registrar shall give such bond as the commission may require, and as may be approved by the commission. He shall also take, subscribe and file an oath similar to that required of the commissioners, and a like bond, in the sum of ten thousand dollars. All expenses of the commission and its employes, including all necessary expenses for transportation incurred by the commissioners and their employes, under their order, in making any investigation or performing any other duties in any place except St. Paul, shall be allowed and paid by the state on presentation of itemized vouchers therefor, approved by a member of the commission and the state auditor. The commission shall also fix the compensation paid the employes of the Weights and Measures Department upon a graduated scale, based upon efficiency and length of service. (R. L. § 1959, amended '11 c. 140 § 3; '21 c. 382 § 1) [4175]

165–268, 206+396.

4635. Attorneys—The attorney general shall be ex-officio attorney for the commission. He shall institute and prosecute all actions which the commission shall order brought, and shall render the commissioners all advice, counsel and assistance necessary for the proper performance of their duties. The county attorney of any county in which an action is pending, prosecuted, or defended by the direction of the commission shall aid in the prosecution or defense thereof until final determination, when requested by the commission. When necessary, the commission may employ additional counsel to assist the attorney general. (1960) [4176]

40–353, 358, 42+21.

4636. Procedure and office—The commission shall have an official seal, may from time to time make or amend general rules or orders requisite for the order and regulation of proceedings before it, including forms of notices and service thereof, which shall conform as nearly as may be to those in use in the courts, and shall conduct its proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice. Every vote and official act of the commission shall be entered of record, and in its discretion, or upon request of any party interested, its proceedings shall be public. The principal office of the commission shall be in the city of St. Paul, but it may hold sessions elsewhere for the convenience of parties or the public, or to prevent delay or save expense. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties in any part of the state. (1961) [4177]

4637 31 — 300 5494

4637. Duties of Railroad and Warehouse Commission—The commission shall inquire into the management of the business of all carriers and warehousemen subject to their supervision, and shall keep itself informed as to the manner in which the same is conducted, and shall obtain from such carriers and warehousemen all information necessary for the performance of its duties. One of their number shall visit the stations on the lines of each railroad as often as practicable, giving twenty days' notice in the local newspapers of the time and place of each visit, and person-

ally inquire into the management of such railroad business, and at least once each year shall visit every county having a railroad station, and inquire into the management of such railroad business. For this purpose all common carriers and their officers and employes are required to furnish such commissioner with reasonable and proper facilities. Each commissioner, in his official capacity, shall pass free on all railroad trains, and at all suitable times may enter and remain in the cars, offices or depots of any railroad company; and whenever, in the judgment of the commission, any common carrier fails in any respect to comply with the law, or any repairs are necessary upon its railroad, or any reasonable addition to or change of its stations, station houses, or transfer facilities, or change in the mode of operating its road or conducting its business, will promote the security or convenience of the public, or whenever in the judgment of the commission, the operation by any common carrier of one passenger train each way on each and every day, including Sundays, through each county seat station on the line of such carrier will promote the security or convenience of the public, the commission, by a written order, to be served as a summons in civil actions, shall require compliance with such law, or the making of such repairs, additions or change. In case of disobedience of said order, the commission may cause an action to be commenced for the enforcement thereof. (R. L. '05 § 1962; G. S. '13 § 4178, amended '21 c. 259 § 1)

39–231, 234, 39+150; 44–336, 338, 46+559; 76–469, 473, 79+510; 81–87, 90, 83+465.

Order is presumed valid for building at flag station. 123–466, 144+156. Authority to order removal of station building. 124–534, 144+771. Reasonableness of order is a judicial question 130–57, 153+247.

Power to determine whether depot is suitable. 135–21, 153+1090

Power to require agent service at station. 151–405, 186+799.

4638–4641
248nw 218

4638. Proceedings before commission—How commenced—Proceedings before the commission against any such carrier or public warehouseman shall be instituted by complaint, verified as a pleading in a civil action, stating in ordinary language the facts constituting the alleged omission or offense. The parties to such proceeding shall be termed, respectively, "complainant" and "respondent." (1963) [4179]

4639. Notice to respondent—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue an order directed to such carrier or warehouseman, requiring him to grant the relief demanded, or show cause by answer within twenty days from the service of such notice why such relief should not be granted. Such order, together with a copy of the complaint, shall forthwith be served upon the respondent. (1964) [4180]

4640. Answer—The respondent may file and serve by mail upon the complainant, within twenty days after service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defense. If the answer allege the granting of the relief, the complainant shall within twenty days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. (1965) [4181]

4641. Hearings before Railroad and Warehouse Commission—If the matter be not adjusted to the satisfaction of the commission, it shall set a time and place of hearing, and give at least ten days' notice thereof to each party. The parties may appear either in person or by attorney. The commission shall hear evidence and otherwise investigate the matter, and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation shall forthwith be served upon each party. No proceeding shall be dismissed on account of want of pecuniary interest in the complaint. The commission is authorized to designate by resolution any of its employes to receive and report evidence. Employes so designated shall have power to administer oaths to witnesses, examine witnesses and receive evidence. In any proceedings in which the evidence is received by one commissioner or by an employe so designated, such commissioner or employe shall make a full and complete report thereof to the commission and the commission shall proceed to a determination of the facts and issue its order or recommendation as hereinabove provided. (R. L. § 1966, amended '07 c. 305 § 1; '21 c. 159 § 1) [4182]

Speculative benefits. 160–506, 200+808.

4642. Notices and orders—Service—All notices and orders in proceedings before the commission shall be signed by the secretary. Service may be made of all notices, orders and other papers provided for in this chapter by mail upon any person or firm, or upon the president, general manager or other proper executive officer of any corporation interested. If any party has appeared by attorney, such service shall be made upon such attorney. (1967) [4183]

4643. Witnesses—The commission in any hearing or investigation may require the attendance of witnesses and the production of any books, papers and records. Witnesses shall receive the same fees and mileage as in civil actions. Disobedience of any subpoena in such proceeding, or contumacy of a witness, may, upon application of the commission, be punished by any district court in the same manner as if the proceeding were pending in such court. (1968) [4184]

Punishment for contumacy is not a matter for administrative boards. 131–120, 154+752. Authority to require production of books and papers. 191+1006.

4644. Complaint that rate is unreasonable—Duty of commission—Upon the verified complaint of any person or of any corporation, private or municipal, that any tariff of rates, fares or charges, or any part thereof, or of any classification is unequal or unreasonable, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such tariff of rates, fares or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which shall be substituted for the tariff so complained of. The tariff so made by the commission shall be deemed prima facie reasonable in all courts and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same. (1969) [4185]

Public dock or wharf in Duluth—See 1911 c. 319, being "An act to authorize the leasing of certain land owned by the state of Minnesota situated in the city of Duluth, for purposes of public docks, wharves and warehouses."

Section 3 provides that the dock or wharf shall be open to all the people, and that the commission shall have supervision and control over the rates and charges, and the same power as to such rates which the commission exercises under R. L. c. 28.

69–353, 371, 374, 398, 412, 413, 72+713; 80–191, 197, 83+60; 186 U. S. 257, 22 Sup. Ct. 900, 46 L. Ed. 1151.

Filing complaint with commission charging exaction of unreasonable rates for services. 146–250, 178+604.

Speculative benefits. 160–506, 200+808.

4645. Complaint by attorney general that rate is unreasonable—Duty of commission—The attorney general may, whenever in his opinion the public interest requires, make complaint to the Railroad and Warehouse Commission charging that any rate, schedule of rates or the entire schedule of rates, or any classification, rule or regulations of any carrier is unjust, unreasonable or discriminatory. The commission shall investigate such complaint in the manner provided for the investigation of complaints made under the provisions of section 1969 of the Revised Laws of 1905.

The provisions of this act shall apply to proceedings that are now pending as well as those hereafter commenced. ('11 c. 50 § 1) [4186]

Explanatory note—For R. L. '05, § 1969, see § 4644, herein.

4646. Investigation without complaint—New rates—Notice—The commission shall also, on its own motion, investigate any matter relating to the management by any carrier or warehouseman of its business, or the reasonableness of any or all rates, schedule of rates, fares, charges, rules, regulations or classifications, whenever in its judgment the public interest requires it. If any such rates, schedule of rates, fares, charges, rules, classification or regulations are found unreasonable or discriminatory, the commission shall find what is reasonable under the circumstances, and may make an entire new schedule and adjustment of any or all rates, schedule of rates, fares, charges, rules, regulations and classifications under consideration in such investigation, and its order shall fix the date when such rates, schedule of rates, fares, charges, rules, regulations and classifications shall go into effect. Before making any order under the provisions of this section, the carrier shall have an opportunity to be heard, upon such notice as the commission shall deem reasonable. The rates established under proceedings instituted under this section shall be in force during the pendency of any appeal or other proceeding to review the action of the commission. (R. L. § 1970, amended '11 c. 87 § 1) [4187]

121–499, 142+7.

4647. Investigation of movement of live stock—Regulation of speed—The Railroad and Warehouse Commission shall from time to time investigate the practice of the common carriers with respect to the movement of live stock, and if it ascertains at any time that any common carrier is not moving cars of live stock with proper speed, and with due consideration of the rights and conveniences of shippers, then, upon notice to such carrier, the commission shall prescribe for it the speed at which and the conditions under which cars of live stock shall be moved by it within this state. The speed of trains carrying live stock shall not be fixed at less than twelve (12) miles an hour, if consistent with the proper handling of its traffic by any common carrier involved. The commission's order shall specify the time at which it shall go into effect. This act shall apply to wholly intrastate shipments only. ('11 c. 317 § 1) [4188]

4648. Penalty for failure to comply—Any railroad company failing to comply with any order of the Railroad and Warehouse Commission made under this act, shall be subject to a penalty of fifty dollars ($50) for each and every day of such failure to comply with such order, to be recovered in a civil action brought by the attorney general. ('11 c. 317 § 2) [4189]

4649. Proceedings involving reasonableness of express rates—Citation—Parties—In any proceedings pending before the Railroad and Warehouse Commission involving the reasonableness of express rates, where the commission deem it necessary to inquire into the reasonableness of the charges of the railroad company for carrying the cars, or the business of said express company over its lines of road, the commission may cite such railroad company to appear and become a party to such proceeding within five (5) days after the service of such citation, and in such proceedings the commission may find the reasonableness of the amount paid by the express company to the railroad company for the service furnished, and the findings of the commission shall be prima facie evidence of the facts found. ('11 c. 86 § 1) [4190]

4650–51
228nw 444

4650. Procedure for appeals to district court from orders of Railroad and Warehouse Commission—Any party to a proceeding before the commission, or any party affected by any order thereof, or the State of Minnesota, by the attorney general, may appeal therefrom to the district court of the county in which the complainants, or a majority of them, reside, or in case none of them reside in the state, or in a proceeding commenced by the commission on its own motion without complaint, to the district court of one of the counties in which the order of the commission requires a service to be performed or an act to be done or not to be done by the carrier or warehouseman; or in case of train service, to the district court of one of the counties through which the train runs, at any time within thirty days after service of a copy of such order on the parties of record, as in this chapter provided, by service of a written notice of appeal on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based in case appeals are taken to the district court of more than one county, they shall be consolidated and tried in the district court of the county to which the first appeal was taken. (R. L. § 1971, amended '07, c. 167, § 1; '17, c. 291, § 1) [4191]

4650-51
244nw 57
244nw 61
See 4930

Application extended to '15 c. 152, '21 c. 278.

Court reviews order determining whether unlawful and unreasonable. 130–58, 153+247.

1907 c. 167 § 3 repeals R. L. § 1982 and all other inconsistent acts, etc.

44–336, 46+559; 60–461, 62+826.

160–506, 200+808; 163–274, 203+972, note under § 4835; 167–311, 209+10.

4651
177m 136
225nw 94
4657
4887

4651. Proceedings on appeal—Orders not appealed from—The person serving such notice of appeal shall, within five days after the service thereof, file the same with proof of service, with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions, so far as the same are applicable. The complainant before the commission, if there was one (otherwise the State of Minnesota), shall be designated as complainant in the district court, and the carrier or warehouseman as defendant. No further pleadings than those filed before the commission shall be necessary Such findings of fact shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable it shall be vacated and set aside. Such appeal shall not stay or

4651
167m 311
248nw 220
US Const. Amend. 14

supersede the order appealed from unless the court, upon an examination of said order, and the return made on said appeal, and after giving the respondent notice and opportunity to be heard, shall so direct. If such appeal is not taken, such order shall become final, and it shall thereupon be the duty of the carriers affected to adopt and publish the rates or classifications therein prescribed. And all orders heretofore made, from which no appeal was taken, as provided by law, shall be deemed to have been in full effect for all purposes from the time when the right to appeal from such order expired. When no appeal is taken from an order, as herein provided, the parties affected by such order shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall be no trial of the merits of re-examination of the facts of any controversy in which such order was made, by any district court to which application may be made for a writ to enforce the same. (R. L. § 1972, amended '07 c. 167 § 2) [4192]

69-353, 72+713; 80-191, 83+60. See, also, 60-461, 472, 62+826; 186 U. S. 257, 22 Sup. Ct. 900, 46 L. Ed. 1151; 71-519, 74+893, 358; 80-191, 83+60.

Presumption is in favor of order. 123-466, 144+156.

Burden showing order unreasonable upon appellant. 137-158, 162+1079; 137-341, 163+663.

Appeal does not stay or suspend order. 151-58, 185+964.

The order of the commission having been made and filed before the receivership was inaugurated, and the receivers not having appeared in opposition thereto, the question of enforcement of the order is not for consideration. 213+534.

4652. Order on dismissal in certain cases—Procedure—Whenever in any proceeding pending before it relating to or involving the reasonableness of rates, fares, charges or classifications, the commission shall decide that it has not jurisdiction for the reason that the traffic covered by such rates, fares, charges and classifications is interstate commerce, it shall make an order dismissing the proceeding, stating therein the ground of such dismissal, which order may be appealed from in like manner as other appealable orders of said commission. And if in any such proceeding one of the commissioners shall dissent from the order of dismissal, the question of its jurisdiction shall be certified to the district court of a county to which an appeal might be taken, and thereupon the commission shall notify all parties to the proceeding of such certification, stating the county and date thereof. (1973) [4193]

4653. Filing papers—Effect—When in any such case an appeal is taken or such question certified the commission shall forthwith file with the clerk of the proper district court all papers, pleadings, evidence, and orders in the proceeding, and thereupon such court shall have full jurisdiction to hear and determine the question of the jurisdiction of said commission in reference to the matter appealed from or certified. Such proceeding may be brought on for hearing by either party on ten days' notice, either at a term or in vacation, and shall be heard upon the evidence taken before the commission and such further evidence as may be offered by either party. If the order of the commission is reversed, upon filing a copy of the order of reversal with the commission it shall forthwith proceed to determine the reasonableness of such rates, fares, charges and classification on the merits. (1974) [4194]

4654. Failure to obey order or law—Whenever any such carrier or warehouseman shall fail to obey any law of the state or any order of the commission, the commission or any party interested may, upon verified petition alleging such failure, apply to the district court of the county in which such carrier or warehouseman has a principal office, or into which a line of railroad of such carrier extends, for the enforcement of such law or order or other appropriate relief. The court, upon such notice as it may direct, shall hear such matter as in case of an appeal from an order. On such hearing the findings of fact upon which such order is based shall be prima facie evidence of the matters therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal or equitable, which the nature of the case may require, and may impose a fine of not more than five hundred dollars for each day's failure to obey any writ, process, or order of the court, in addition to all other penalties or forfeitures provided by law. A temporary mandatory or restraining order may be made in such proceeding, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. (1975) [4195]

66-271, 68+1085; 76-469, 475, 79+510.

4655. Trial—The district courts shall be deemed always open for all civil proceedings under this chapter, and any such proceeding may be brought to trial in any county in the judicial district, and shall take precedence of all other matters except criminal cases. Except when there is a constitutional right to a trial by jury, not expressly waived, all such proceedings shall be tried summarily by the court. (1976) [4196]

4656. Incriminating questions—In any proceeding under this chapter, or under any law relating to common carriers or public warehousemen, the court in its discretion may require a witness to answer any question, although his answer may tend to convict him of a crime, but no person so compelled to answer shall thereafter be liable to any prosecution for such crime. (1977) [4197]

4657. Costs and attorney's fees—In any proceeding in district or supreme court under the provisions of this chapter, or under any law relating to common carriers or public warehousemen, whether by appeal or otherwise, the court may order the payment of such counsel fees and disbursements as it deems just and reasonable. (1978) [4198]

4657
177m 136
225nw 94
4651
4887

4658. Proceedings in name of state—All actions or proceedings instituted by the railroad and warehouse commission shall be brought in the name of the state, and shall be prosecuted by the attorney general. (1979) [4199]

4659. Appeals to supreme court—Any party to an appeal or other proceeding in district court under the provisions of this chapter may appeal from the final judgment, or from any final order therein, in the same cases and manner as in civil actions. No bond shall be required from the commission, and no such appeal shall stay the operation of such order or judgment unless the district or supreme court shall so direct, and unless the carrier appealing from a judgment or order fixing rates for transportation of persons or property shall give bond in a sum and with sureties approved by a judge of the court ordering the stay, conditioned that the appellant will refund to the person entitled thereto any amount received for such transportation above the amount finally fixed by the court. Any person paying such excessive charges shall have a claim for the excess, whether paid under protest or not, and, unless refunded within thirty days after written demand made after final judgment, may recover the same by action against such carrier, or such carrier and the sureties on such bond. The appeal may be filed in the supreme court before or during any term thereof, and shall be immediately entered on the calendar and heard upon such notice as the court may prescribe. (1980) [4200]

4659
250— 7

Appeal not operative as stay of judgment. 136-455. 161+164.

4660. Interstate commerce commission—Authority of state commission to institute proceedings—Whenever a resident of this state shall file with the state railroad and warehouse commission a petition directed to the interstate commerce commission of the United States, charging any railroad company or other common carrier doing business in this state, engaged in interstate transportation of freight, with any violation of the interstate commerce act of the United States, setting forth in such petition the facts constituting such violation, said railway commission, if they deem the matter one of public interest, shall file said petition with said interstate commerce commission and thereupon shall appear in said matter in the place of said petitioner and thereafter prosecute the same at the expense of the state. ('05 c. 279 § 1) [4201]

4661. Same—Authority to appear in pending matter—Whenever any matter shall be pending before the interstate commerce commission of the United States, between a resident of this state as petitioner, and any railroad company or other common carrier doing business in this state and engaged in interstate transportation of freights, charging such carrier with any violation of said interstate commerce act, upon application of the petitioner in said matter the state railroad and warehouse commission, in case they deem the questions involved in said matter of public interest, may appear therein and be substituted as a party in place of such petitioner and thereafter such matter shall be prosecuted by such commission at the expense of the state in the same manner as though originally begun by it. ('05 c. 279 § 2) [4202]

4662
223nw 915
4741

4662. Dangerous crossings—Complaints—Hearings—Upon written complaint authorized by a majority vote of the members of the city or village council of any city or village, or by the board of supervisors of any town, or board of county commissioners of any county in this state, or by the commissioner of highways, filed with the railroad and warehouse commission, hereafter called the commission, by the chief executive officer of said city or village, or the chairman of board of supervisors or county commissioners, or the commissioner of highways, as the case may be, that any railroad crossing with any street in said city or village, or town or county road, or state aid road or trunk highway, is dangerous to life and property, and giving the reasons therefor, the commission shall proceed to investigate the matters contained in said complaint, giving the complainant and the railroad company an opportunity to be heard, at a time and place to be fixed by the commission, after such notice as the commission may deem reasonable, Provided, that at least one public hearing shall be held in the town, village or city, in which said crossing is located. ('11 c. 243 § 1, amended '23 c. 134 § 1) [4203]

Section 7 repeals 1907 c. 396.

98-380, 108+261, 120; 98-429, 108+269.

Jurisdiction of commission under 1905 c. 280, as amended by 1907 c. 396 (114-293, 131+330).

In a proceeding in mandamus to compel defendant to provide gates and gatemen for the protection of travelers at certain street crossings, it was error to strike from the answer averments to the effect that other less expensive devices were more effective, and that a viaduct in course of construction would divert from these crossings more than nine tenths of the present traffic. 156-475, 195+452.

4663
226nw 470

4663. Report and order—Flagmen, safety devices, etc.—The commission shall decide the matter set forth in the complaint and make a report in writing thereof, including the findings of facts, and make such order as it shall deem proper in the premises, and if said commission shall find said crossing to be dangerous, it may require the railroad company complained of to provide flagmen at such crossing, or adopt such safety device as the commission may deem necessary for the proper protection of said crossing, or it may require the removal of any structure, or structures, or embankment, from the right of way of said railroad company, or it may require said railroad company to construct an overhead or maintain an underground crossing and may divide the cost thereof between the railroad company, the town, county, municipal corporation or state highway department interested, on such terms and conditions as to the commission may seem just and equitable; where the railroad has been constructed or the grade thereof lowered after the laying out of the highway and the railroad tracks are seven feet or more below the natural surface of the ground the commission may require the maintenance of an overhead bridge at least eighteen feet wide with suitable approaches, and may also require the complaining city, village, town or county to remove embankments, or structures from streets or town or county roads as, in its opinion, may be reasonable and necessary to properly protect said crossing. Provided that no highway shall hereafter be laid out over any railroad so as to cross the same at grade until such crossing has been approved by the Railroad and Warehouse Commission. ('11 c. 243 § 2, amended '13 c. 294 § 1; '23 c. 134 § 2) [4204]

4664. Appeal—Order, how enforced—Any railroad company, or the city, village, town or county making the complaint, may appeal from an order of the commission to the district court of the county in which said crossing is located, and in case of such appeal, the same proceedings shall be had as is now provided by law for an appeal from orders of the commission. All orders of the commission shall be enforced by the attorney general. ('11 c. 243 § 3) [4205]

4665. Failure to comply—Penalty—Any railroad company, or any city, village, town or county failing to comply with any order of the commission that is not appealed from, or if appealed from affirmed in whole or in part, shall be liable to a penalty of $50.00 for each and every day of such noncompliance, to be collected in civil action brought by the attorney general. ('11 c. 243 § 4) [4206]

4666. Temporary flagman, etc.—Whenever it shall appear, from any cause, that an unusual number of trains are being operated in, or through any city or village in this state, the commission shall have power, upon complaint made by the city or village council, to compel the installation of a flagman, or flagmen, as the case may be, without a hearing, and such order shall be complied with within five days, provided that such railroad company may remove such flagmen whenever the movements of trains through such city or village assumes normal conditions. ('11 c. 243 § 5) [4207]

4667. Charter powers not abridged—That nothing herein contained shall be construed as repealing, abridging, modifying or in any manner affecting the power contained in the charter of any city or village in this state to require railroads to maintain gates, flagmen or safety devices at public highway crossings therein, or any ordinance, now existing or hereafter enacted pursuant to such power. ('11 c. 243 § 6) [4208]

4668. Inspection of scales—The railroad and warehouse commission shall have power to enforce reasonable regulations for the weighing of cars and of freight offered for shipment in carload lots. All track scales

used by common carriers for the purpose of weighing carload freight shall be under the control and jurisdiction of the commission and subject to inspection, exempt from the jurisdiction of sealers of weights and measures. The entire cost of such supervision and inspection shall be a proper charge against the common carriers interested in or owning the several scales, the same to be paid upon a statement rendered by the commission. All moneys collected shall be credited to the grain inspection fund. ('07 c. 357 § 1) [4209]

4669. Sealing devices for scales—Duty of commission—The railroad and warehouse commission, hereafter called the commission, is hereby authorized and directed to inspect all sealing devices made for the purpose of sealing scales known to be on the market, and to officially approve any device considered by the commission to be a proper and safe device to be used in the sealing of scales. ('09 c. 319 § 1) [4210]

4670. Sealing device, when required—When directed to do so by the commission, any person or company owning and operating a scale under the jurisdiction of the commission is hereby required to install such scale with some sealing device which has the official approval of the commission. ('09 c. 319 § 2) [4211]

4671. Failure to install—Tampering with device—Penalties—Any person or company failing within thirty days after notice to install such sealing device when directed to do so by the commission, shall be subject to a penalty in the sum of one hundred dollars. It shall be a felony for any person to change, break or tamper with, or cause to be changed, broken or tampered with, the sealing device or sealing thereof after the same has been properly installed and inspected by some authorized agent of the commission. ('09 c. 319 § 3) [4212]

4672. Railroad and Warehouse Commission may require scales installed—After an investigation and hearing, upon its own motion, the Railroad and Warehouse Commission is hereby authorized to require the installation of track scales at terminal warehouses where it shall find such installation to be practicable and to be necessary for the prompt and economical weighing of grain and grain products at such warehouses, provided that the expense of such installation shall be borne by the owner of such warehouse. ('21 c. 172 § 1)

4673. Track scales—Powers of commission — The railroad and warehouse commission shall have power to order in and require the installation of track scales used by common carriers at all points in the state where the same are deemed to be necessary, and enforce reasonable regulations for the weighing of cars and of freight.

All track scales used by common carriers for the purpose of weighing carload freight shall be under the control and jurisdiction of the commission and subject to inspection, exempt from the jurisdiction of sealers of weights and measures. The entire cost of such supervision and inspection shall be a proper charge against the common carriers interested in or owning the several scales, the same to be paid upon a statement rendered by the commission. All moneys collected shall be credited to the grain inspection fund. ('11 c. 252, amended '13 c. 129 § 1) [4213]

4674. Carrier to move test car—Every carrier shall transport, move, and switch to any track scale in this state free of charge on the application of the commission or its authorized agent, any test car used by the state in testing track scales. ('11 c. 252, amended '13 c. 129 § 2) [4214]

4675. Equipment for testing track scales—The railroad and warehouse commission, hereinafter called the commission, is hereby authorized to purchase two test cars, to be used in testing track scales, at a cost of not to exceed five thousand dollars each; also erect on some railroad track in or near Minneapolis, St. Paul, or Minnesota Transfer, where a permanent free site can be procured, a master track scale with a building for the same, to be used in testing and verifying the weights of test cars; scales and building not to cost to exceed seven thousand five hundred dollars. ('13 c. 128 § 1) [4215]

Section 2 provides for payment.

4676. Track scales to be installed—The Railroad and Warehouse Commission, hereinafter called the Commission, is hereby authorized to purchase and install a two section master railroad track scale, to be used in proving the correctness of railroad track scale test cars, the Commission also is authorized to repair and extend the present master track scale house and railroad track, and to alter and repair its railroad track scale test cars, at a total cost for all such betterments of not to exceed $20,000.00. ('23 c. 118 § 1)

4677. Cost—The Commission is hereby authorized to pay the cost of the foregoing betterments from the grain inspection fund. ('23 c. 118 § 2)

4678. Weighing coal—Track scales—Powers of commission—The railroad and warehouse commission shall have power to enforce reasonable regulations for the weighing of cars of coal offered for shipment in carload lots in this state, except coal shipped by any person, company or corporation for their own use or consumption.

All track scales now or hereafter used by common carriers or by shippers of coal for the purpose of weighing carload lots of coal shall be under the control and jurisdiction of and subject to inspection by such commission, and such scales over which the said commission assumes control and jurisdiction, shall be exempt from the jurisdiction of sealers of weights and measures. ('11 c. 326 § 1) [4216]

4679. Duty of commission—Such commission shall cause to be weighed all coal shipped in carload lots from any coal dock or coal distributing point in the state of Minnesota, except coal shipped therefrom by any person, company or corporation for their own use or consumption. ('11 c. 326 § 2) [4217]

4680. Weigh-masters and weighers—The commission shall appoint such weigh-masters and weighers as may be necessary to carry the provisions of this act into effect. Such weigh-masters and weighers shall each give bond to the state of Minnesota in the sum of five thousand (5,000) dollars, conditioned for the faithful discharge of his duty, and such weigh-master and weighers shall have authority to carry out and perform their duties hereunder, pursuant to such rules and regulations as shall be prescribed by such commission and shall pursuant thereto control and supervise the weighing of all coal herein required to be weighed by such commission. ('11 c. 326 § 3) [4218]

4681. Fees—The fees for such weighing shall be fixed by the commission and shall be paid by the person, firm or corporation making such shipment. ('11 c. 326 § 4) [4219]

4682. Other sections applicable—All of the provisions of sections numbered 5047-5052, 5054, 5057, 5058, 5060, and all acts and parts of acts amendatory thereof and supplementary thereto, as relating to grain, shall be construed as a part of this act and as relating to coal and coal shipments in carload lots, required to be weighed in accordance with the provisions

of this act, so far as applicable hereto. ('11 c. 326 § 5) [4220]

4683. Stock scales in stock yards—Powers of commission—The railroad and warehouse commission shall have the power to order in and require the installation and maintenance of stock scales at all stock yards in the state where the same are deemed to be necessary, and to fix the capacity of said scales, which said scales shall be for the free use of all patrons of such stock yards, shipping live stock from, into or through such stock yards. ('13 c. 252 § 1) [4221]

Power to prevent discrimination. (122-56, 141+1102.)

4684. Private scales prohibited—All railroad companies maintaining stock yards at railroad stations within this state shall within ninety (90) days after the passage of this act and thereafter prohibit the installation or maintenance of scales of any kind belonging to any person, corporation or firm other than railroad companies as provided in section one [4221] of this act, and the installation, use and maintenance of such private scales in such stock yards is hereby prohibited. ('13 c. 252 § 2) [4222]

4685. Appointment of weighers—Bond—The railroad and warehouse commission shall appoint at public stock yards such weighers as may be necessary for the purpose of weighing live stock. Every such weigher shall give to the state a bond in the sum of five thousand dollars ($5,000.00) conditioned for the faithful discharge of his duty. ('19 Ex. Sess. c. 40 § 1)

4686. Reports—Certificates — Such weighers shall report daily to the supervisor of stock yards all weights taken by them in such form as he may prescribe. The supervisor of stock yards shall furnish to interested parties a certificate setting forth the number of animals weighed, for whose account weighed, and the actual weight of such animal or animals. Such certificate shall be prima facie evidence of the facts therein certified. ('19 Ex. Sess. c. 40 § 2)

4687. Fees—The Commission shall prescribe the fee necessary to cover the cost of supervision and weighing to be assessed and collected in such manner as the Commission may prescribe. All moneys so collected shall be deposited in the state treasury and known as the "Live Stock Weighing Fund," and paid out only on order of the Commission and the Auditor's warrant. The interest from such deposits of said moneys shall be credited on the 1st day of each month of such fund, and notice of the amount of such interest shall be sent to the commission. ('19 Ex. Sess. c. 40 § 3, amended '21 c. 146 § 2)

4688. Weighers' qualifications — No such weigher shall during his term of service be in any manner interested in the handling, shipping, purchasing or selling of live stock, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any live stock exchange or organization of like character. ('19 Ex. Sess. c. 40 § 4)

4689. Bonds filed—All bonds required by this act shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal. ('19 Ex. Sess. c. 40 § 5)

4690. Appointment may be revoked—Upon written complaint filed with the commission, charging any such weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charge, and if it be sustained, shall remove such officer. ('19 Ex. Sess. c. 40 § 6)

4691. Penalty—Any person not duly appointed and qualified, who shall assume to act as such weigher, shall be guilty of misdemeanor and be punished by a fine of not less than fifty dollars nor more than one hundred dollars. ('19 Ex. Sess. c. 40 § 7)

4692. False weights or certificates—Penalties—Any weigher who shall knowingly or carelessly weigh any live stock improperly, or give any false certificates of weight, or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. ('19 Ex. Sess. c. 40 § 8)

4693. Terms prohibited—Any person who is not connected with the state weighing department is hereby prohibited from using the term "supervisor of weights" or "state weigher," any representation of the seal of the state, or any other words or device calculated or tending to indicate that the certificate or receipt is issued under state authority, or to otherwise deceive or mislead the public or any person interested, when issuing certificates or receipts purporting to show the weight of live stock.

Any person found guilty of violating any of the provisions of this section shall be guilty of a misdemeanor. ('19 Ex. Sess. c. 40 § 9)

4694. Interference with supervisor or weigher—Any person or corporation who shall obstruct any state supervisor or weigher in the performance of his official duties by preventing his proper access to the scales used in the weighing of live stock or otherwise, shall forfeit to the state one hundred dollars for each offense. ('19 Ex. Sess. c. 40 § 10)

4695. Water in stockyards—Powers of commission—The railroad and warehouse commission shall also have power to order the railroad company to furnish water for the use of stock at all stockyards in the state, where the same is deemed to be necessary. ('13 c. 252 § 3) [4223]

Explanatory note—Laws '13, c. 252, § 4 (G. S. '13, § 4224) provides that the act shall not apply to any state or any railway company in this state where the question of the installation of a stock scale at the stock yards of such railway company at such station is in litigation upon appeal to the supreme court of the state of Minnesota, until after the final determination of such legislation by said supreme court.

125-129, 145+801.

4696. Sanitary watering and feeding troughs at stockyards—Every stockyard at a terminal market in the state of Minnesota at which livestock is received or shipped shall be provided with sanitary watering troughs of iron, concrete or other sanitary material, and, every yard, pen or enclosure at any such terminal in which hogs are received or shipped shall, in addition to the watering troughs above specified, be provided with feeding troughs, within six months after the passage of this act. ('19 c. 231 § 1)

4697. Violation a misdemeanor—Any firm, person or corporation violating the provisions of this act shall be deemed guilty of a misdmeanor and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $100 for each thirty days' continuance of such violation and it shall be the duty of the railroad and warehouse commission to see that the provisions of this act are enforced, and it may specify the size and number of each kind of troughs to be provided for the different stock yards in the state.

And shall enforce the use of such troughs. ('19 c. 231 § 2)

4698. [Repealed.]

This section consists of section 3 of Laws 1911, c. 313, § 3 (G. S. 1913, § 4228). It was repealed by Laws 1913, c. 344, § 1. See note to § 4699, infra. Sections 1 and 2, of Laws 1911, c. 313, (G. S. 1913, §§ 4226, 4227), were omitted from Gen. St. 1923.

4699. Freight over connecting lines to be transferred in certain cases—Joint through rates—Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars if in carload lots, and with or without change of car or cars if in less than carload lots, whenever the distance from the place of shipment to destination, both being within this state, is less over two or more connecting lines of railway than it is over a single line of railway, or where the initial line does not reach the place of destination; and it shall be the duty, upon the request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in carload lot or lots, and, with change of car or cars if it be in less than carload lots, from the place of shipment to destination, whenever the distance from the place of shipment to destination, both being within this state, is less than the distance over a single line, or when the initial line does not reach the point of destination, for a reasonable joint through rate. This section shall not apply to interurban railways operated by electricity, except as to freight or cars transported over two or more such interurban railways having similar equipment so as to make it physically practicable to comply with the provisions of this section. ('13 c. 344 § 1) [4229]

Section 3 repeals 1911 c. 313.

Commission without authority to fix a joint rate (133-413, 158+627; 139-56, 165+870).

4700. Powers and duties of commission—Notice and hearing — Schedule of rates — Revising rates — The board of railroad and warehouse commission shall, within ten days after this act takes effect, notify in writing every railway company owning or operating a railway within this state that it will, upon a day named in such notice, which day shall not be more than thirty days after giving said notice, take up for investigation the subject of establishing joint through rates, as herein provided, between the railway lines in this state. It shall also give a similar notice, directed "To whom it may concern," and so publish the same, that it will have general circulation throughout the state. All corporations, partnerships and persons interested in the subject may present themselves at the hearing and be heard, under such rules and regulations as the board may prescribe. At the end of the investigation, which shall be carried on with all due diligence, the said board of railroad and warehouse commission shall make and publish a schedule of joint through railway rates for such traffic and on such routes as in its judgment the fair and reasonable conduct of business requires shall be done by carriage over two or more lines of railway, and will promote the interests of the people of this state. In the making thereof, and in changing, revising or adding to the same, the board shall be governed as nearly as may be by the preceding sections of this chapter, and shall take into consideration, among other things, the rates established for shipments within this state for like distances over single lines, the rates charged by the railway companies operating such connecting lines for joint inter-state shipments, and the increased cost, if any, of a joint through shipment as compared with a shipment over a single line for like distances. In establishing such rates for shipments in less than carload lots, in cases where at the connecting point or points in the line of shipments the connecting railways have not and are not required to have a common station or stopping place for loading or unloading freight, the board shall make such lawful regulations as in its judgment will be fair and just respecting the transportation of such freight from the usual unloading place of one railway to the usual loading place of the other. The joint through rates thus established shall be promulgated by mailing a printed copy thereof to each railway company affected thereby and shall go into effect within ten days after they are so promulgated; and from and after that time an official printed schedule thereof shall be prima facie evidence, in all courts of this state, that the rates therein fixed are just and reasonable for the joint transportation of such freight between the points and over the lines described therein. The said board shall deliver a printed copy of said schedule to any person making application therefor. The share of any railway company of any joint through rate shall not be construed to fix the charge that it may make for transportation for a similar distance over any part of its line for any single rate shipment or the share of any other joint rate. The board, upon such reasonable notice as it may prescribe, may, upon its own motion or upon the application of any person, firm or corporation interested therein, revise, change or add to any joint through rates fixed or promulgated hereunder; and any such revised, changed or added joint rates shall have the same force and effect as the rate or rates originally established. The said board is empowered to authorize upon proper hearing, any railway company whose line connects the point of shipment with the point of destination but requires a longer haul than the joint haul over which a joint rate has been established, to charge the joint rate without affecting the charge upon any other part of its line, except that the charge for a like kind of property must not be greater for a shorter than for a longer distance over its railroad, all of the shorter haul being included within the longer. This section shall apply to interurban railways and their connection with ordinary steam railways. ('13 c. 344 § 2) [4230]

4701. Railroad and Warehouse Commission to investigate rates of railroads—Whenever in its judgment the public interest requires it, the Railroad and Warehouse Commission is hereby authorized, either upon its own motion or upon written complaint, to institute an investigation for the purpose of determining whether the maximum rates, prescribed by any law of the state of Minnesota, to be charged by any railroad company owning, operating or using a line of railroad wholly or partly within the state of Minnesota, for the intrastate transportation of passengers and their ordinary baggage, are under the then existing conditions reasonable. All railroad companies whose rates are involved in such investigation shall have such notice thereof as the commission shall deem reasonable and shall have an opportunity to be heard therein. For the purposes of such investigation the commission may require the attendance of witnesses and the production of books, records, papers, and documents. If upon such investigation the commission

shall find that such maximum rates, so prescribed, are *so low as to be unreasonable, they shall make an order* prescribing a schedule of reasonable maximum rates and shall fix the date when the same shall become effective. The rates so prescribed by the commission shall on said date supersede the rates prescribed by such law and shall thereafter be the lawful maximum *rates for such services, unless and until changed by the* further order of the commission. The rates so prescribed shall be in force during the pendency of any appeal or other proceeding to review the action of the commission. ('21 c. 408 § 1)

4702. Terms of connection with manufactories, etc. —If the owner of any manufactory, warehouse, dock, wharf, mill, coal yard, stone quarry, or brick or lime kiln entitled to connection with any railroad, and the carrier operating such railroad, fail to agree upon the terms for such connection, upon petition of either party, and proper notice to the adverse party, the com*mission shall fix such terms by proceedings as herein* provided in case of complaints to it and subject to appeal as in such cases. (R. L. § 1983, amended '13 c. 367 § 1) [4231]

Previously amended by 1913 c. 289.

115–51, 131+859.

Requiring railroad to provide side tracks to an ad*jacent industry (135–323, 160+866).*

4703. Common carrier to report on or before March 31, and December 31, of each year—Every carrier subject to supervision of the commission shall annually, on or before March 31st, unless additional time be granted, file with the commission a report verified by such carrier, or by its president, vice president, treasurer, comptroller, auditor, or receiver, in such form as the commission may prescribe, covering the year ending December 31st preceding said date and showing in detail the amount of capital stock issued; the amount and manners of payment therefor; the *dividends paid; the surplus fund, if any; the number* of stockholders; the funded and floating debts, and the interest paid or due thereon; the cost and value of all the carrier's property, franchises and equipments; the number of employes and officers, and the salary or wages paid each class; the amount expended for improvements, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all other sources; the operating and other expenses; the balance of profit or loss; and a complete exhibit of the financial operations of the year, with an annual balance sheet, the amount of land received as grants from the state and from the United States; the amount of such land sold and the average price received per acre; the amount unsold and its average appraised value per acre; information in regard to rates and regulations concerning fares and freights; agreements, arrangements or contracts with express, telegraph, sleeping and dining car companies, fast freight lines, and other common carriers, with copies of such contracts, agreements or arrangements; and such other matters as the commission may require, and the commission may prescribe a uniform system of accounts and the manner of keeping the same, and may designate from time to time to what account any items shall be charged. Any such carrier failing to comply with the provisions of this section, or with any order of the commission made thereunder shall forfeit, for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. (R. L. § 1984, amended '07 c. 410 § 1; '17 c. 17 § 1) [4232]

4704. Accidents and wrecks to be reported to commission—It shall be the duty of every railroad company operating a line of railroad in this state to report *all accidents, wrecks or casualties occurring in this* state to the railroad and warehouse commission. This is intended to include all accidents, wrecks or casualties occurring in the operation of trains or engines on said line or lines of railway within this state, and all other accidents or casualties of whatever nature as *may be required under rules adopted by the commis*sion. Any reports to the commission herein required shall not be for public inspection. All accidents or wrecks occurring in the operation of trains or engines involving loss of life or personal injury, shall be immediately reported to the commission by telegraph or *telephone message, and the company shall forthwith* send a written report in detail giving full particulars available in such form as the commission may require. All other accidents, including accidents resulting in personal injury or death, other than train accidents, shall be reported to the commission on the first day of each month, covering the *preceding month.* ('05 c. 122 § 1, amended '07 c. 290 § 1) [4233]

4705. Duty of commission—Biennial report—Whenever any report is made to the commission involving a wreck, accident or casualty, and the commission deems it necessary, it shall forthwith examine into the causes and circumstances of the same, and it shall thereupon be the duty of the commission to order such railroad company to comply with any reasonable requirement prescribed by the commission, calculated to prevent the recurrence of any such wreck, accident or casualty, and it shall be the duty of the commission to report to the legislature biennially a summarized statement of all wrecks, accidents or casualties reported, together with a recommendation of such additional legislation as it deems proper for the greater protection of passengers and employes of railroad companies. ('05 c. 122 § 2, amended '07 c. 290 § 2) [4234]

4706. Penalty for violation—Every person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or shall suffer both such fine and imprisonment in the discretion of the court. ('05 c. 122 § 3) [4235]

4707. Reports of commission—The commission shall report to the governor annually on or before December 1, and at other times if required by him, their doings for the preceding year, with such facts, statements, and explanations as will show the actual working of the system of railroad transportation of the state, in its bearings on the business and prosperity of the people, and such suggestions relative thereto as it shall deem proper. It shall also biennially recommend to the governor any amendment of the railroad and warehouse laws which it shall deem desirable, and, when directed by the governor, shall investigate any matter subject to its supervision, and report thereon. All such reports shall be transmitted by the governor to the legislature as soon as practicable. (1985) [4236]

4708. Remedies cumulative — Attorney's fees — Nothing in this chapter shall be construed to abridge or limit the duties and liabilities of common carriers or warehousemen, or the remedies now existing at common law or by statute, and the provisions of this chapter are in addition thereto. Any common carrier or warehouseman who shall do or cause to be done any act in this chapter forbidden, or fail to do any act therein enjoined, or who shall aid or abet in any such

act or neglect, shall be liable in damages to any person injured thereby; and in any action for such damages the plaintiff, if he recover, shall be allowed by the court a reasonable attorney's fee, to be taxed and allowed in addition to statutory costs. (1986) [4237]

Discrimination in tolls (121–488, 149+134). Common law remedies retained; statutory one is additional (127–182, 149+135). Carrier's civil liability not affected (138–102, 164+80).

4709. Violations of law — Penalty — Any common carrier or warehouseman who shall do, or attempt to do, any act forbidden by this chapter, or shall fail to do anything therein required of him, or shall wilfully suffer or permit any such unlawful act or omission, when no specific penalty is imposed therefor, if a natural person, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five hundred dollars, nor more than five thousand dollars for the first offence, and not less than five thousand dollars nor more than ten thousand dollars for each subsequent offence; and, if such carrier or warehouseman be a corporation, it shall forfeit to the state for the first offence not less than twenty-five hundred dollars nor more than five thousand dollars, and for each subsequent offence not less than five thousand dollars nor more than ten thousand dollars, to be recovered in a civil action. All fines and forfeitures collected under the provisions of this chapter shall be paid into the state treasury to the credit of the general revenue fund. (1987) [4238]

40–353, 42+21.

4710. Construction of chapter—The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient transportation facilities, and substantial justice between shippers and passengers and common carriers, and the commission shall at all times do everything within the scope of its powers to secure such ends, and to facilitate commerce and the safety, convenience, and comfort of passengers and employees. (1988) [4239]

122–56, 141+1102; Power to provide depot facilities (123–466, 144+156). Order not to be disturbed unless in excess of powers (124–534, 144+771). No express statutory authority to order railroads to construct a joint or union station at intersection of roads (152–294, 188+329).

4711. Orders prima facie evidence—In any action or proceeding brought to enforce any order of the commission, or when such order is brought in question in any of the courts of the state, it shall be prima facie evidence of the facts therein stated. (1989) [4240]

4712. Detailed statement to be furnished on or before June 30 of each year and to cover period prior to December 31, preceding—The railroad and warehouse commission, hereinafter called the commission, is hereby authorized, at all times, to keep up the physical valuation of the railroad properties of this state, and to that end all railroad corporations under the supervision of the commission are required to furnish to the commission on June 30th of each year, unless further time be granted by the commission, and at such other times as the commission may require, a detailed statement showing changes in the physical conditions of its properties in this state and the elements of cost entering into such changes in both debits and credits of such property, and the distribution of the debits and credits, whether charged to operating or capital accounts, verified by the president, chief engineer, general auditor or comptroller, in such manner and form as the commission may prescribe, covering the year ending December 31st next preceding. ('09 c. 147 § 1, amended '13 c. 125 § 1; '17 c. 22 § 1) [4241]

4713. Powers of commission—The commission shall have the authority to examine all books, contracts, vouchers, receipts and all other papers or documents that it may deem necessary for the purposes of this act. ('13 c. 125 § 2) [4242]

4714. Penalty for noncompliance—Any such corporation failing to comply with the provisions of this act or any order of the commission made thereunder, shall forfeit for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. ('13 c. 125 § 3) [4243]

4715. Accounts of railroads—Duties and powers of commission—What shall be shown—It shall be the duty of every railroad doing both intrastate and interstate freight business in this state, to keep its accounts so as to show, as far as practicable, the earnings derived from, and the expenses incurred in, handling such intrastate business in Minnesota. The railroad and warehouse commission shall have power, and it is hereby made its duty to prescribe the form in which such accounts shall be kept, and it may require such accounts for each operating division of such railroad wholly or partly within this state. In addition to all other information on the subject, such accounts shall show the total cost of operating the through trains, and the total cost of operating the local or distributing trains, on each operating division wholly or partly within this state, during the fiscal year to be fixed by said commission, and also the total number of tons of revenue and non-revenue freight, and the number of said tons of each carried one mile on said through trains and on said local trains respectively, and the number of said tons and ton miles of revenue and non-revenue freight carried on through or local trains, which are exclusively intrastate business. Said accounts shall also show the gross tons and ton miles made by through and local trains on said divisions. ('11 c. 327 § 1) [4244]

4716. What accounts shall show—Said accounts shall also show the total revenue and non-revenue train and engine miles, and the total revenue and non-revenue car miles (said non-revenue car miles to be shown loaded and empty separately) produced by such railroad in the state on said operating divisions, and also the number of each of the above train, engine and car mileages produced in handling said through trains and in handling said local trains, also the total locomotive miles produced in switching on each division, and such further information relating to the income or cost of the intrastate business, as said railroad and warehouse commission may require. Said commission may also require such accounts to be kept with reference to the intrastate passenger business of such carrier, and the train, car and engine mileage incurred in the passenger business in this state as it shall deem necessary. ('11 c. 327 § 2) [4245]

4717. Milling in transit—Power of commission to adjust credits where mill destroyed—Whenever it shall be made to appear to the railroad and warehouse commission that any flouring mill situated at a railroad station in this state, having "milling in transit" railroad rates, has been destroyed by fire or other casualty without the fault of the owner or operator thereof, and that at the time of the destruction of such mill the person, firm or corporation operating the same was entitled to ship the products of said flouring mill to a designated terminal point in this state on "transit" arising out of the prepayment of the through rate to such terminal point on grain billed from some station in this state to such terminal, but delivered at said mill in transit to be ground, and the products thereof forwarded to such original terminal instead of the

grain itself, said railroad and warehouse commission may, upon such reasonable notice as it may fix, hear the claims of such transit creditor and transit debtor with reference thereto, and after having found the facts said railroad and warehouse commission may, by order, permit the use of such transit by the owner in payment of the transportation of grain or its products from other flouring mills or elevators on the lines of such railroad to the same terminal point, provided that if the shipment in which such transit shall be used covers a greater distance than that from said destroyed mill to said terminal point, regular rates must be paid for such additional distance, and if the shipment in which it shall be used covers less than such original distance, transit for the original distance shall, nevertheless, be applied thereon. ('11 c. 98 § 1, amended '13 c. 17 § 1) [4246]

4718. Passenger trains not to be discontinued without the consent of railroad and warehouse commission—No company operating any line of railroad by steam in this state as a common carrier of passengers shall discontinue the operation of any of its regularly scheduled intrastate passenger trains unless written application has been filed with the Railroad and Warehouse Commission for authority so to do and an order has been made by said Commission granting such authority. No such order shall be made until a hearing has been had and the Commission finds that by the discontinuance of such passenger train the public will not be deprived of reasonably adequate service. ('23 c. 214 § 1)

4718-1. Telephone, telegraph, electric light power, and other electric wires crossing or paralleling lines of railroads, interurban railways or other public utilities—Regulations by railroad and warehouse commission for construction, maintenance and operation—The Railroad and Warehouse Commission shall, within six months after this act takes effect, determine and promulgate reasonable regulations covering the maintenance and operation and also the nature, location and character of the construction to be used where telephone, telegraph, electric light, power, or other electric wires of any kind cross, or more or less parallel the lines of any railroad, interurban railway or any other public utility, and, to this end, shall formulate and from time to time issue general regulations covering each class of construction, maintenance, and operation of such electric wire crossing, and (or) parallel, under the various conditions existing; and the Commission upon the complaint of any person, railroad, interurban railway or other public utility claiming to be injuriously affected or subjected to hazard by any such crossing or paralleling lines constructed or about to be constructed, shall, after a hearing, make such order and prescribe such terms and conditions for the construction, maintenance and operation of the lines in question, as may be just and reasonable. ('25, c. 152, § 1)

4718-2. Same—Enforcement of orders and regulations—The Railroad and Warehouse Commission shall see that the provisions of the preceding section are enforced, and for that purpose shall have power to cause the removal or reconstruction of such telephone, telegraph, electric light, power or other electric wires of any kind crossing or paralleling such other lines and not in accordance with the orders, rules and regulations issued by said Commission. ('25, c. 152, § 2)

RAILROADS AND COMMON CARRIERS.

4719. Railroad and Warehouse Commission authorized to co-operate with Interstate Commerce Commission—The Railroad and Warehouse commission is hereby authorized to co-operate with the Interstate Commerce commission for the purpose of harmonizing state and federal regulation of common carriers within the State of Minnesota to the extent and in the manner deemed advisable by the Railroad and Warehouse commission; and for such purpose the State Commission may approve or establish freight rates which depart from the distance principle now required by state law, to the extent necessary in its judgment to harmonize state and interestate rates or to remove discrimination created or which may be created by orders of the federal commission. ('23, c. 50, § 1; amended '27, c. 405, § 1)

4720. *Same — Joint hearings* — The Railroad and warehouse commission may conduct joint hearings with the Interstate Commerce commission within or without the State of Minnesota. ('23, c. 50, § 2; amended '27, c. 405, § 2)

4721. Same—Participation in proceedings before Interstate Commerce Commission—The Railroad and Warehouse commission is hereby authorized to appear and participate in any proceeding pending before the Interstate Commerce commission when it considers such appearance and participation advisable and in the interest of the people of the State of Minnesota. ('23, c. 50, § 3; amended '27, c. 405, § 3)

4722. Common carriers defined—The term "carrier," as used in this chapter, shall include all common carriers engaged in the transportation of persons or property between places within this state by railroad, or partly by railroad and partly by water, when both are used under a common control, ownership, management, or arrangement for such carriage, without regard to the motive power, whether such carrier owns or operates the line or lines over which such passengers or freight are transported, or carries the same over the lines or in the cars of any other company as an express or transportation company, but shall not include street railways so far as relates to the carriage of persons or property wholly within the limits of any municipality or municipalities. (1990) [4247]

A corporation authorized to own and operate suburban street railways held a common carrier (101–132, 112+13).

Operating over private stub lines constitutes a common carrier as much so as over main lines (129–122, 151+974).

4723. Railroads, etc., defined—The term "railroad," as used in this chapter, shall include all bridges or ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned, or operated under a lease or other contract; and the term "transportation" shall include all instrumentalities of shipment or carriage. (1991) [4248]

Railroads comprehensive as common carriers (129+22, 151+974).

4724. Common carriers required to furnish water and sanitary drinking cups—Every person, company, corporation or receiver thereof, operating any railroad in the state of Minnesota is hereby required to provide and furnish upon every car used for the transportation of passengers within the state of Minnesota, without charge to the passengers, a suitable quantity of pure drinking water and a sufficient number of individual sanitary drinking cups or fountain and to provide one cup for each passenger so carried; pro-

vided, this act shall not apply to electric suburban cars running on city streets; provided, this act shall not apply to suburban electric cars running in part on city streets. ('19 c. 335 § 1)

4725. How cups shall be contained—Such cups shall be contained in a suitable holder or receptacle, which shall be placed in a convenient location in each car, and shall be kept in a sanitary condition. ('19 c. 335 § 2)

4726. Violation a misdemeanor—Any person, company, corporation or receiver thereof, operating any railroad in the state of Minnesota violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense, and the use of any one car for the transportation of passengers within this state without being so equipped shall constitute a separate offense for every day or part of a day so used. ('19 c. 335 § 3)

4727. Certain sections not applicable to certain railroad companies—That the provisions of sections 2003, 2004, 2006, 2025, 2026, 2027, 2028, 2029, 2030 and 2035 of chapter 28, Revised Laws of Minnesota 1905, chapter 173 of the General Laws of Minnesota 1909, and chapter 382 of the General Laws of Minnesota 1909, shall not apply to any railroad company operating mainly for the purpose of handling passengers, baggage, express and mail, and operated partly over a privately owned right-of-way and partly over highways, but the said railway companies shall furnish just, reasonable and adequate accommodation and service, and the railroad and warehouse commission of this state is hereby vested with power and authority to determine, prescribe and enforce such just and reasonable regulations for and of such railway companies. ('11 c. 336 § 1) [4249]

Explanatory note—For R. L. '05, §§ 2003, 2004, 2006, 2025 to 2030 and 2035, see §§ 4762, 4763, 4765, 4872, 4874, 4885 to 4888 and 4907, herein.

For Laws 1909, c. 173, see §§ 4901, 4902, herein.

For Laws 1909, c. 382, see §§ 4879, 4880, herein

4728. Construction of railroads—All steam railroads shall be of the standard gauge of four feet eight and one-half inches, and shall be substantially and safely constructed. (1992) [4250]

4729. Interlocking devices—That whenever in the judgment of the railroad and warehouse commission it is necessary for the public safety, said commission may require, at all railroad crossings, junctions and drawbridges in said state, the establishment of interlocking devices, or such other safety appliances as are necessary for the protection and safety of the traveling public. Where two or more railroad companies are interested, the division of the expense of installing, maintaining and operating said interlocking plant or safety device shall be agreed upon by the respective companies required to install the same; in case they cannot agree, then such division shall be determined by the railroad and warehouse commission after a hearing. ('07 c. 276 § 1) [4251]

4730. Block signal system—Approval by commission—The commission may require any railroad company on any part of its line or lines operated in this state, to install and operate a "block signal system" or any other device or appliance that in its judgment will best promote the public safety. Whenever any railroad company proposes to install in this state any interlocking plant, block signal system, or other safety appliance, on any part of its system, it shall first submit the plans to the commission for approval and after the same is installed, have the commission inspect same and issue a certificate before the plant is operated. ('07 c. 276 § 2, amended '11 c. 322 § 1) [4252]

4731. Penalty for violation—Any railroad company neglecting to comply with any order of the commission made under this act, shall be liable to a penalty of twenty-five dollars for each day such neglect shall continue, to be recovered in a civil action in the name of the state and paid into the general fund of the state treasury. ('07 c. 276 § 3) [4253]

4732. Construction of switches—In order to guard against accidental injuries to employees and others, every railroad company shall properly adjust, fill, block, and guard all its frogs, switches, and guard rails. Any such company violating this section, in addition to its liability to any person injured or to his legal representatives, shall forfeit to the state not less than five hundred dollars nor more than two thousand dollars; and such violation shall be deemed a separate offence for each period of thirty days that the same shall continue. (1993) [4254]

49–488, 52+133; 58–540, 60+669.

4733. Signs at crossings—Every such company shall maintain, wherever any of its lines crosses a public road, a proper and conspicuous sign indicating such crossing. Any such company failing to comply with any requirement of this section shall forfeit to the town or municipality having charge of such road ten dollars for each day that such failure continues. (1994) [4255]

42–247, 44+7; 43–524, 46+74.

Record examined in reference to collision between train and automobile at highway crossing and held: Province of jury, on conflicting evidence, to determine whether statutory signals were given. 159–308, 199+3.

A person in attempting to cross a railroad track in a vehicle is not necessarily guilty of contributory negligence if he fails to stop to look before so doing. 164–335, 205+213.

4734. Width of crossings and grades—Every such company shall construct and maintain in good repair and free from snow or other obstruction, wherever any of its lines shall cross a public road, sufficient crossings, consisting of:

1. Sufficient grades, extending the full width of the highway or that part thereof graded or used for travel, on each side of said right of way, and of such slope as may be deemed necessary by the officers having charge of the public road.

2. A plank covering of the same width, securely spiked, extending the full length of the ties, the planks not more than one inch apart, the flangeways between the planking and the rails not more than two and one-half inches in width, the surface of the planking on a level with the top of the rails; the flangeway edge of the plank in any such crossing hereafter built shall be suitably faced or otherwise protected with metal, and whenever any existing crossing is rebuilt or the flangeway planks thereof are renewed, the flangeway edge of such planks shall be similarly faced or protected by metal.

3. In municipalities such grades and planking shall extend the full width of the street, or of that part thereof graded or used for travel, and like planking shall be placed between all tracks which are not more than fifteen feet apart, and a suitable sidewalk shall be constructed by said company to connect with and correspond to said walks constructed and installed by the municipality or by owners of abutting property, but cement or concrete construction shall not be required in track space actually occupied by the railroad ties if some substantial and suitable sidewalk material is used in lieu thereof. In case of roads newly established, such crossings shall be constructed within

thirty days after the service on the nearest station agent or section foreman of such company of a notice, signed by the proper officer or officers having charge of such road, that such crossing is required. (R. L. '05 § 1995, amended '13 c. 78 § 1; '19 c. 468 § 1; '21 c. 152 § 1) [4256]

43–524, 46+74; 55–223, 56+820; 67–213, 69+898; 89–139, 94+439.

211+477.

Cost of extending new street across railroad tracks placed upon company (124–107, 144+464).

Common law duty is a continuing one, and the exercise of the police power is valid and not an assumption to levy a local tax (130–480, 153+879). Approach construed (136–164, 161+506). Liability for negligence in maintenance of a crossing (143–227, 173+440). City vested with police power to compel railroad to continue street under, across or over tracks in finished condition (148–91, 180+925, Subd. 2. 154–350, 191+819).

In an action for death by wrongful act, where it is claimed that deceased slipped and fell in front of a train, on negligenly permitted accumulations of ice and cinders on a crossing, recovery denied because of the absence of proof showing that deceased was on the crossing when he was struck by the engine pilot. 158–401, 197+842.

A pedestrain who attempts to pass through a narrow opening between standing cars at the time when moving cars in plain sight are about to come against them is guilty of contributory negligence. 164–512, 205+440.

A person about to cross a railroad track must use his senses alertly to discover whether he will be endangered by the movement of trains or cars. 164–512, 205+440.

The finding that the accident resulted from negligence on the part of defendant was not justified by the evidence and the court acted correctly in so ruling. 165–30, 205+633.

The negligence of the driver of an auto is not imputed to his guest or passenger; and whether the plaintiff's intestate, who was killed at a railroad crossing while riding as a guest or passenger, was negligent, was for the jury. 165–141, 206+43.

The circumstances of a crossing collision between an automobile and a passenger train held to show as a matter of law contributory negligence on the part of the chauffeur and his companion. 166–118, 207+26.

The presumption of due care on the part of one run down and killed by box cars being pushed across a grade crossing, without the customary protection to travelers of a person at the crossing or on the front car, was not so rebutted that the court was warranted, as a matter of law, to hold decedent guilty of contributory negligence 167–135, 208+539.

Defendant's negligence and the contributory negligence of the driver of plaintiff's automobile, wrecked in a collision with defendant's train, were for the jury. 212+600.

Action for personal injuries sustained in a collision between a railway train and a truck driven by plaintiff at a railway crossing. The undisputed facts conclusively show that plaintiff was chargeable with contributory negligence. 212+946.

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4743 8

4735. Crossings—Change of grade—Every railroad company in this state shall keep well planked and in a safe and passable condition every crossing over any public highway, and whenever any such railroad company shall have changed or raised the grade of its tracks at any such crossing it shall also grade the approaches on each side so as to make the approach and crossing of such tracks safe and easy for teams with loads and other vehicles. ('11 c. 329 § 1) [4257]

143–227, 173+440; 148–91, 180+925.

153–401, 197+842, note under § 4734.

4736. Where more than one track—Whenever any such railroad companies have more than one track, crossing such highways, it shall be unlawful to raise or maintain one such track at a higher grade than the other tracks and shall cause all such tracks to be raised or lowered to about the same level so as not to endanger the safe passage of teams and other vehicles over such tracks at such crossings. ('11 c. 329 § 2) [4258]

4737. Penalty for violation—Every railroad company who shall refuse or neglect to comply with the provisions of section two for the space of thirty days after having been notified in writing by any town or county board so to do, shall be guilty of a violation of this act and shall be subject to a fine of fifty dollars for each day thereafter that such crossing is left in such dangerous and unsafe condition, and each such day shall constitute a separate offense against this act. ('11 c. 329 § 3) [4259]

4738. Duty of county attorney—The county attorney of any county shall have power to proceed in court for the collection of such fines, together with all costs and disbursements on the part of the town or county making such complaint, together with one hundred dollars attorney's fees for each such prosecution. ('11 c. 329 § 4) [4260]

4739. Powers of town and county boards—If any railroad company shall refuse or neglect to provide for the grading and planking of any such crossing as provided in section one of this act, for the space of thirty days after written notice has been given such railroad company by any town or county board, such town board or county board may proceed to cause such grading and planking to be done and charge the cost of same to such railroad company and proceed to collect the same by an action at law, together with all costs and disbursements and one hundred dollars attorney's fees. ('11 c. 329 § 5) [4261]

211+477.

4740. Farm crossings—Any such company constructing a railroad so as to leave parts of any farm on different sides of such road shall construct a proper farm crossing at some place convenient for such farm. (1996) [4262]

39–8, 38+627; 42–75, 78, 43+785; 76–506, 79+516; 79–398, 82+670; 80–24, 82+1085; 96–202, 104+960.

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4741. Railroad crossings to be protected—The Railroad and Warehouse Commission of its own motion may investigate and determine whether any railroad crossing over any street or public highway, now or hereafter established and traveled, or to be traveled, in this state, is, or will be when opened to public travel, dangerous to life and property, or either, and may order the same protected in any manner it may find reasonable and proper, including requiring the company to separate the grades. ('19 c. 434 § 1, amended '21 c. 500 § 1)

The absence of a flagman at a railroad crossing, where usually one is stationed, a traveler knowing that one is usually there, is a fact favorable to the traveler in determining his contributory negligence, though it does not relieve him from care for his safety. 164–52, 204+571.

4742. Hearing—The commission shall give the railroad company interested such notice as it deems reasonable of said investigation, and an opportunity to be heard before any order is made. ('19 c. 434 § 2)

4743. Inconsistent acts repealed—All laws and parts of laws inconsistent therewith are hereby repealed. ('21 c. 500 § 2)

4743¹
Et seq.
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4743-1. Crossings of railroads, streets and public highways—Definitions—When the term "grade crossing" is used in this act it shall mean the intersection of a public highway and of the track or tracks of any railroad, however operated, on the same plane or level, except street railways within city or village limits. When the term "commission" is used in this act it shall mean the Railroad and Warehouse Commission of the State of Minnesota. ('25, c. 336, § 1)

4743-2. Same—Uniform warning signs—Types of—The commission is hereby authorized and required to adopt and prescribe uniform warning signs for use at grade crossings in this state which will furnish adequate warning of the existence and nature of such

grade crossings and to make regulations as to the place of installation. There shall be at least three distinct types of such warning signs, to-wit: a home crossing sign, for use in the immediate vicinity of the crossing, an approach crossing sign, to indicate the approach to a grade crossing, and a stop sign, which shall have the word "stop" plainly appearing thereon, to indicate the necessity to persons on the highway approaching the crossing, whether in vehicles or otherwise, to come to a stop before proceeding over the grade crossing, according to the provisions of this act. ('25, c. 336, § 2)

4743-3. Same—Railroads to erect signs—At each grade crossing in this state hereafter established and at each grade crossing where and when the existing crossing signs are replaced the railway company operating the railroad thereat shall erect and maintain on the highway on each side of the railroad track or tracks and within a distance of 75 feet from the nearest rail, one or more of such uniform home crossing signs. ('25, c. 336, § 3)

4743-4. Same—Additional warning signs—Railroads to provide—At each grade crossing where, because of the conditions surrounding the same, the reasonable protection to life and property makes it necessary for additional warning signs to be placed on the highway at a greater distance from the crossing than the home signs, such approach warning signs shall be installed. The commission is hereby authorized to designate any such grade crossings requiring such additional signs on either or both sides of said crossing. When any such crossing is designated by the commission as requiring such additional protection, it shall notify the railway company operating the railroad thereat and the public authorities having the care of the highway. Such railway company shall, within 30 days after such notification, furnish such uniform signs to such public authorities, and such public authorities shall erect said signs in conspicuous places on said highway on either or both sides of such grade crossings, as the case may be, not less than 200 feet from said crossing and shall thereafter maintain the same. ('25, c. 336, § 4)

4743-5. Same—Stop signs—At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection of life and property makes it necessary for all persons approaching the same to stop before crossing the railroad tracks thereat, such stop signs shall be installed. The commission is hereby authorized to designate any such crossing requiring such additional protection as a stop crossing, and shall notify the railway company operating the railroad thereat of such designation. Within 30 days after such notification it shall be the duty of such railway company to erect such uniform stop crossing signs in conspicuous places on each side of said crossing. ('25, c. 336, § 5)

4743-6. Same—Vehicles required to come to full stop—Whenever any vehicle carrying school children, explosives or inflammable liquids, or passengers for hire, or any trucks or any vehicle having in tow any other vehicle or equipment, or any vehicle of the tractor or caterpillar type, approaches any grade crossing it shall be the duty of the driver thereof to bring the same to a complete stop before reaching the railroad track and before crossing said track to ascertain when such crossing can be made in safety. ('25, c. 336, § 6)

4743-7. Same—Drivers of vehicles to stop and watch for trains—Before proceeding across railroad track at any crossing marked with such stop sign, it shall be the duty of all persons controlling the movement of vehicles to bring such vehicles to a full stop and to ascertain whether or not trains are approaching such crossing. ('25, c. 336, § 7)

4743-8. Same—Drivers of vehicles required to reduce speed—It shall be the duty of any person controlling the movement of any other vehicle than those mentioned in Section 6 hereof, upon approaching any grade crossing to reduce the speed of such vehicle to such a rate that it can be brought to a full stop in case of necessity before reaching the nearest rail of the railroad track and to cautiously proceed over said crossing at a speed not to exceed ten miles per hour. ('25, c. 336, § 8)

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Explanatory note—For section 6, see § 4743-6,herein.

4743-9. Same—Watchmen—Railroads to provide—Whenever the commission, in any investigation instituted upon its own motion or upon complaint and after notice and hearing, finds that the presence of a watchman or watchmen is necessary for the protection of life and property at any grade crossing, it shall order the railway company operating the railroad thereat to provide such watchman or watchmen and shall specify in such order the hours during which the presence of the same is required. It shall thereupon be the duty of such railway company to provide such watchman or watchmen during such time. Such watchman shall have full control over the traffic at said crossing. ('25, c. 336, § 9)

4743-10. Same—Additional safeguards—Whenever, in any investigation instituted upon its own motion or upon complaint and after notice and hearing, the commission finds that conditions exist at any grade crossing which in its opinion require any additional safeguards for the protection of life and property, such as crossing gates or other suitable devices, the commission is authorized to specify the nature of the devices required and to order the railway company operating the railroad at such crossing to install the same. ('25, c. 336, § 10)

4743-11. Same—Crossing gates—Whenever, in any investigation instituted upon its own motion or upon complaint and after notice and hearing, the commission finds that the protection of life and property requires the constant operation of crossing gates, where the same are now or may be hereafter installed, the commission is authorized to order any railway company operating the railroad at such crossing to provide men to operate such crossing gates for the full 24 hours of each day. ('25, c. 336, § 11)

4743-12. Uniformity of devices for protection at grade crossings—It shall be the duty of the commission, so far as practicable, to secure uniformity in the devices used to protect grade crossings. No such devices shall be hereafter installed until the same have been approved by the commission. All such devices which are now in use or which may be hereafter installed, which, in the opinion of the commissioners, conflict with the devices approved by the commission, either in their design or method of operation, so as to create a hazardous condition to the travel at such crossing, shall be immediately modified by the railway company controlling the same so as to conform to those approved by the commission. ('25, c. 336, § 12)

4743-13. Same—Hearings by Commission—Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to vacate or relocate any crossing of a public highway and a railroad, and an agreement cannot be reached between such public officials

and the railway company, either as to the necessity for such vacation or relocation, or as to the place, manner of construction, or a reasonable division of expense in the case of a re-location, either party may file a petition with the commission, setting forth the facts and submitting the matter to it for determination; whereupon the commission, after such notice as it shall deem reasonable, shall conduct a hearing and issue its order determining the matters so submitted. ('25, c. 336, § 13)

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4743[14] 251nw 275

4743-14. Same—Overhead or underground crossings—Separate grades—The commission may require any railroad company to construct overhead and maintain underground crossings and separate grades when, in its opinion, the interests and safety of the public require, and no overhead or underground crossing, nor separation of grade, shall be made except upon the petition therefor to the commission, and with the approval of the commission. ('25, c. 336, § 14)

4743-15. Same—Obstructing, etc., signs—No person, firm or corporation shall place or maintain any advertising sign or other similar obstruction upon, over or adjacent to any highway between any such approach sign and the grade crossing which it marks, nor shall any person, firm or corporation place or maintain, upon, over or adjacent to any public highway in this state any sign or symbol in any manner resembling the signs provided for in this act. ('25, c. 336, § 15)

4743-16. Same—Injuring, destroying, etc., of signs—It shall be unlawful for any person to maliciously injure, remove, displace, deface or destroy any of the signs or signals provided for in this act. ('25, c. 336, § 16)

4743-17. Same—Penalties—Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25, nor more than $100, or by imprisonment in the county jail for not more than three months. Provided that the violation of Sections 7 and 8 hereof shall not of itself constitute contributory negligence as a matter of law. ('25, c. 336, § 17)

Explanatory note—For sections 7 and 8, see supra, §§ 4743-7, 4743-8.

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4744. Fences and cattle guards—Every such company shall build and maintain on each side of all lines of road owned and operated by it, good and substantial fences, and shall build and maintain good and sufficient cattle guards at all road and street crossings and other openings, except at station and depot grounds, and other places which the necessary business of the road or public convenience requires to be open. Whenever the land of any person lying along the right of way of any railroad is enclosed on three sides by a woven wire fence, such railroad company shall erect and maintain a woven wire fence of like character and quality along the said right of way enclosing the remaining side of said land. Provided, that in the building and maintenance of said fences and cattle guards, every such company shall be held to the exercise of ordinary diligence and care and shall be held to such ordinary diligence and care in keeping such cattle guards free from ice and snow. (R. L. § 1997, amended '07 c. 333; '11 c. 309 § 1) [4263]

1. In general—A constitutional exercise of police power (11–515, 392; 35–503, 29+202; 149 U. S. 364, 13 Sup. Ct. 870, 37 L. Ed. 769). A police regulation; not a regulation of partition fences (26–268, 3+353; 37–103, 33+316; 68–216, 71+20). Object of statute (68–216, 71+20; 95–398, 104+228). No such duty at common law (15–350, 283; 25–328; 95–398, 104+228). Enforced strictly (95–386, 104+234). Applicable to all railroads (26–268, 3+353; 46–250, 48+915). Statutory wire fence sufficient (32–88, 19+392; 96–176, 104+827). Duty to maintain and repair (30–18, 13+921; 30–489, 16+271; 34–281, 25+595; 47–429, 50+474; 101–12, 111+651). Unnecessary under present law for county board to act (25–328). Fencing necessary though cattle guards impracticable (52–276, 53+1129). Meaning of "on each side" (63–37, 65+125). Duty of parallel railroads (84–397, 87+1117). Duty absolute and imperative (80–508, 83+454; 84–397, 87+1117). Duty to keep gates closed (93–428, 101+795. See § 4268).

Action for injuries to a child under four years of age, who went upon defendant's tracks at a place where they were not fenced. The burden was on defendant to prove facts bringing this place within the exception to the statute requiring fences. 156–218, 194+620.

2. Within municipal limits— Prior to the revision there was no exception as to municipal limits (33–136, 22+179; 44–275, 46+363; 72–47, 74+898, 80+628; 80–508, 83+454).

3. Implied exceptions—Streets—Depot grounds—There is no duty where there is no right—where a fence would obstruct public streets, highways or grounds (33–136, 22+179; 42–34, 43+652; 84–397, 87+1117). Exception as to station and depot grounds (33–136, 22+179; 36–518, 32+783; 37–52, 33+314; 37–103, 33+316; 39–485, 40+613; 41–101, 42+924; 42–480, 44+530). Exception does not necessarily extend to full length of "yards" (80–508, 83+454). Repair shops and yards held within statute (95–386, 104+234; 100–34, 110+98). Possibly switching yards are excepted (*80–508, 83+454; 84–397, 87+1117*). Public necessity or convenience the limit of the exception (33–136, 22+179; 36–518, 32+783; 39–485, 40+613; 84–397, 87+1117). Burden on railroad to prove facts giving rise to exception (41–101, 42+924; 72–47, 74+898, 80+628; 80–508, 83+454; 84–397, 87+1117). Mere inconvenience to the company does not create an exception (33–136, 22+179). Fences must be built to prevent passing through depot grounds to track beyond (36–518, 32+783).

4. Cattle guards—Where necessary (40–91, 41+458). When impracticable duty to fence unaffected (52–276, 53+1129). Unnecessary to keep free from snow and ice (34–57, 24+558; 42–158, 43+905). Whether necessary to keep free from snow and ice depends on circumstances (115–496, 132+994). Duty to keep in repair (36–296, 30+892).

See also

120–378, 139+713; 130–518, 153+1087. Degree of care in maintenance of fence in repair (136–385, 162+470). Fencing Statute not applicable (144–401, 175+689). Obligation to provide and maintain gate in good state of repair at farm crossing (154–363, 191+825). Failure to maintain flagman, gates and signal device at crossing (189+580, 190+68; 194+639). Fence defined sufficient within the law (194+620).

4745. Liability for failure to fence, etc.—Any such company failing to comply with the requirements of § 4744 shall be liable for all damages resulting therefrom, and for all domestic animals killed or injured by its negligence; and, if it shall fail to pay the actual damages occasioned by such killing or injury within thirty days after such damage occurs, then, in case of recovery therefor by action brought after such thirty days, if in district court, the plaintiff shall recover double costs, and if in justice court, ten dollars costs. Such company, before the commencement of action, may make tender for such injury, and if the amount recovered, exclusive of interest, shall not exceed the tender, the plaintiff shall recover no costs nor disbursements. (1998) [4264]

1. General liability—The general liability is distinct from the special liability for loss or injury of domestic animals (95–398, 104+228; 141 Fed. 25, 72 C. C. A. 513). Liable to abutting landowner for depreciation of property or rental value from failure to fence (35–503, 29+202; 38–215, 36+340; 41–131, 42+788; 46–250, 48+915; 149 U. S. 364, 13 Sup. Ct. 870, 37 L. Ed. 769). Liable for death or injury *of child straying on unfenced road (68–216, 71+20; 80–508,* 83+454; 84–397, 87+1117. See 96–176, 104+827; 100–34, 110+98). Whether a child would have been turned by a legal fence is a question of fact. Failure to fence prima facie, but not conclusive, evidence of negligence (96–176, 104+827; 139+713).

2. Liability for animals killed or injured—Liable only where injury is the natural and proximate consequence of the neglect to fence (30–74, 14+360; 95–398, 104+228. See 32–88, 19+392; 60–134, 61+1130). Liability extends only to animals killed on right of way. Object of statute. G. S. 1894 § 2695 not applicable (95–398, 104+228). Not liable for injuries by animals passing over unfenced tracks and trespassing on adjoining lands (25–328).

Contributory negligence a defence (24–394; 27–111, 6+448; 29–425, 13+673). Liability extends to all domestic animals including estrays. Merely permitting animals to run at large unlawfully does not in itself constitute contributory negligence (26–268, 3+353; 29–425, 13+673; 31–91, 16+537; 55–192, 56+752; 57–26, 58+822. See 42–480, 44+530). No defence that animals were trespassing on land from which they passed to tracks (26–268, 3+353). Acts constituting contributory negligence (29–425, 13+673). Contributory negligence held a question for the jury (27–360, 7+366; 53–122, 54+1061; 55–192, 56+752; 57–26, 58+822; 99–332, 109+600). Animals accidentally escaping from owner (52–276, 53+1129; 53–122, 54+1061). Duty in operating trains where land is not fenced (27–360, 7+366; 96–176, 104+827). Injury resulting from failure to repair (30–18, 13+921; 30–489, 16+271; 34–281, 25+595). Liability extends to all animals that would be turned by a legal fence. Whether sheep and hogs would be turned depends on their size—ordinarily a question for the jury (32–88, 19+392; 34–216, 25+347). Burden of proving plaintiff's contributory negligence on railroad (24–394; 41–101, 42+924). Condition of road where animals enter controls; not condition where they are killed or injured (41–101, 42+924). Whether company negligent in failing to maintain fence in repair for jury (102–295, 113+886).

3. **Double costs**—Constitutional (29–425, 13+673; 34–216, 25+347). Allowable on appeal from justice court (34–216, 25+347). Not allowable when action begins within thirty days (37–52, 33+314). Not applicable to supreme court (72–47, 74+898, 80+628). Cited (27–111, 6+448; 31–91, 16+537; 95–398, 104+228).

4746. Fences—Crossings—Cattle guards—Any such company operating a line of railroad in this state, *which has failed or neglected to fence said road and to* erect crossings and cattle guards, shall be liable for all damages sustained by any person in consequence of such failure or neglect: Provided, that the measure of damages for failure to construct or maintain such fence shall be as follows: The owner of any land abutting on the line of railway of such company may serve notice on any of its station agents between April 1 and October 1 of any year, requiring the construction of a fence on the line between his land and its right of way. If such company shall not construct the same within forty days after service of such notice, the landowner may recover of the company an amount not exceeding twice the cost of such construction, with costs and reasonable attorney's fee, to be allowed by the court, or he may construct such fence after the expiration of such time, and receive from the company double the cost of construction, with like costs and attorney's fee. Such fence shall be kept in repair by such company in like manner and under like penalties as if built by such company. But failure to serve such notice shall not relieve such company from liability for damages for injuries to persons or domestic animals or other property, resulting from failure to fence its road. (1999) [4265]

80–508, 83+454; 95–398, 104+228; 141 Fed. 25, 72 C. C. A. 513.

4747. Fences between railroad and public road—If any such company shall fail to fence its line where the same adjoins a public road or street, or lies so near thereto as to render travel thereon dangerous, the governing body of the town or municipality having charge of such road or street, by notice as in case of abutting landowner, may require such fence to be built; and, in case of failure to build such fence for the time provided in § 4746, such town or municipality shall have the rights and remedies given by said section to such abutting owner. (2000) [4266]

4748. Farm crossings and drains—Persons owning lands abutting upon a railroad may construct, at their own expense, crossings under, over or across such railroad, and drains under and across the same, at such places and in such manner as not to obstruct or impair the use of such railroad, which crossings and drains shall be maintained and kept in repair by the company. Before constructing the same, the owner of the land shall serve on the nearest station agent of the company a notice, stating in detail the work which he desires to perform, and the company may construct such work; but the same shall not be opened for the use of the landowner until he pays the reasonable cost of construction. (2001) [4267]

38–491, 38+487; 108–494, 122+452.

4749. Gates at farm crossings—Any such company which shall erect at a farm crossing a gate for the exclusive use of the owner and occupants of such farm, provide a lock for the same, and deliver the key thereof to *such owner or occupant, shall not* be liable to such owner or occupant for any animal killed or injured by reason of such gate being left open without fault of such company, unless such killing or injury results from the wanton or malicious act of such company or its employes. (2002) [4268]

40–91, 41+458; 53–122, 54+1061; 79–398, 82+670; 80–24, 82+1085; 93–428, 101+795.

4750. Ditches and culverts—It shall be the duty of every railroad company or receiver or lessee thereof, operating a line of railroad in the state of Minnesota, to keep clean at all times between the first day of April and the first day of November of each year, all ditches and culverts constructed by them for the drainage of their roadbed or right of way. Provided, that this act shall not apply to ditches and culverts not located upon the right of way of any railroad. ('09 c. 377 § 1) [4269]

4751. Failure to comply—Penalty—Any such railroad receiver or lessee thereof, failing or neglecting to comply with the provisions of the foregoing section shall forfeit and pay to the State of Minnesota the sum of two hundred dollars for every mile of such ditch which it fails to keep clean during any season. Said amount shall be collected in a civil action brought by the attorney general of the State of Minnesota, or by the county attorney of any county through or into which said railroad extends. ('09 c. 377 § 2) [4270]

4752. Duty of commission—It shall be the duty of the Railroad and Warehouse Commission to have this law enforced. ('09 c. 377 § 3) [4271]

Statute designed to protect against injuries to agricultural lands incidental to closing of ditch (132–271, 156+121).

4753. Clearance between structures and cars, etc.—To what railroads applicable—That the provisions of this act shall apply to any corporation or receiver thereof, or to any person or persons while engaged as common carriers in the transportation by railroad of passengers or property within this state to which the *regulative powers of this state extend, except railways* operated by the electric trolley system. ('13 c. 307 § 1) [4272]

4754. Unlawful structures—That on and after the passage of this act, it shall be unlawful for any common carrier, or any other person, to erect or reconstruct and thereafter maintain on any standard gauge road on its line or on any standard gauge sidetrack used in connection therewith, for use in any traffic mentioned in section one of this act, any warehouse, coal chute, stock pen, pole, mail crane, standpipe, hog drencher, or any permanent or fixed structure or obstruction, or in excavating allow any embankment of *earth or natural rock to remain upon its line of rail*road, or on any sidetrack used in connection therewith at a distance less than eight feet measured from the center line of the track, which said structure or obstruction adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaduct or other obstruc-

tion passing over or above its tracks as aforesaid be erected or reconstructed at a less height than twenty-one (21) feet, measured from the top of the track rail.

Provided, however, that this act shall not be construed to apply to yards and terminals of depot companies or railway companies used only for passenger service. But, nevertheless, in the event of personal injury sustained by any employe of any such company in this proviso mentioned, by reason of non-compliance with the provisions of this act, such employe, or in case of his death, his personal representative, shall have all the rights, privileges and immunities enumerated in section 9 hereof. ('13 c. 307 § 2, amended '15 c. 171 § 1) [4273]

Refers to the maintenance of such structure or erections as were made after the passage of the act. 162–271, 202+726.

The evidence shows no negligence, the statute aside, in the maintenance of a semaphore in the defendant's yards at a less distance from the center of the track than that prescribed by the statute. 162–271, 202+726.

The semaphore carried the usual colored lights for signaling The evidence does not show negligence in failing to have other lights thereon to light the yards for men working in switching operations. 162–271, 202+726.

4755. Exceptions—That the Railroad and Warehouse Commission may upon application made, after a thorough investigation in any particular case or class of cases, permit any common carrier to which this act applies to erect any overhead or side obstruction at a less distance from the track than herein provided for, when in the judgment of said commission a compliance with the clearance prescribed herein would be unreasonable or unnecessary. ('13 c. 307 § 3, amended '15 c. 171 § 2) [4274]

4756. Distance between tracks—That on and after the passage of this act it shall be unlawful for any such common carrier to construct any track used for the purpose of moving any cars engaged in the movement of traffic within the regulative power of this state, where the center line of such track is at a distance of less than fourteen feet from the center line of any other parallel track which it adjoins. ('13 c. 307 § 4) [4275]

Relates solely to after constructed tracks. 159–70, 198+300.

4757. Tracks for switching or storing—Section four of this act shall not be construed as applying to tracks to be used wholly for the purpose of switching or storing cars, but the tracks which are to be used for such purpose shall not be constructed in closer proximity to each other than thirteen (13) feet measured from the center line of any such track to the center line of any parallel track which it adjoins; provided, that the distance between said tracks specified in sections four and five [4756, 4757] of this act may be diminished or closed up a necessary distance for track intersections, turn-outs and switch points. ('13 c. 307 § 5) [4276]

159–70, 198+300, note under § 4756.

4758. Obstructing space between tracks, etc.—Exceptions—That on and after the passage of this act it shall be unlawful for any such common carrier to permit the space between such of its tracks as are ordinarily used by yardmen and other employes in the discharge of their duties, to become or remain obstructed by any foreign obstacle that will interfere with the work of said employes or subject said employes to unnecessary hazard. Such space between or beside said tracks as aforesaid, and between the rails of said tracks must be kept in such condition as to permit said employes to pass over or between said tracks or to use the same by day or night and under all weather conditions without unnecessary hazard; provided, however, that wherever any railroad company has already begun work on depressing a portion of its tracks, within the corporate limits of any municipality, whether under contract with such municipality or otherwise, this act shall not apply to any depression of the tracks of such company lying wholly within the corporate limits of such municipality. Provided further, that none of the provisions of this act shall apply to any part of any work or enterprise heretofore begun or under construction, whether under contract between any railroad company and any municipality or otherwise. ('13 c. 307 § 6, amended '13 c. 448 § 1) [4277]

Switch stands and other instrumentalities needed in railroading are not within the design of the statute (152–182, 188+279).

4759. Penalties for violation—Duties of attorney general and commission—That any common carrier subject to the provisions of this act violating any of the provisions thereof, shall be liable to a penalty of five hundred dollars ($500.00) for each and any such violation; and each day that any structure or obstruction is maintained in violation of this act, shall constitute a separate offense, such penalty to be recovered in a suit or suits to be brought in the name of the State of Minnesota by the attorney general or under his direction in any court having jurisdiction thereof in the locality where such a violation shall have been committed, and it shall be the duty of the attorney general under the direction of the State Railroad and Warehouse Commission to bring such suits upon duly verified information being lodged with him by any person of such violation being committed, and it shall also be the duty of said State Railroad and Warehouse Commission to lodge with the attorney general information of any such violation as may come to its knowledge. ('13 c. 307 § 7) [4278]

4760. Duty of inspectors of bureau of labor, etc.—It shall be the duty of the railroad inspectors of the bureau of labor, industries and commerce to report to the Railroad and Warehouse Commission and to the attorney general any violation of the provisions of this act of which they may obtain knowledge. ('13 c. 307 § 8) [4279]

4761. Contributory negligence, etc.—That any employe of said common carrier who, while in the performance of his duty and while engaged in any commerce mentioned subject to the regulative power of this act in section one, may be injured or killed by reason of a violation of section six of this act, or by reason of any structure or obstruction erected or maintained prior to the passage of this act, or in violation of the provisions of this act, in closer proximity to the rails than hereinbefore provided, shall not be deemed to have assumed the risk thereby occasioned or to have been guilty of contributory negligence although the employes continued in the employ of such common carrier after the use of such permanent overhead or side structure or obstruction of any kind or character mentioned in this act shall have been brought to his knowledge; and an exercise of the permission provided for in section 3 of this act shall be at the sole risk of the carrier. ('13 c. 307 § 9) [4280]

Negligence being predicated upon violation of statute, neither engineering propositions nor customary construction avail as evidence in defense (152–186, 188+281).

4762. Freight platforms—Every such company shall provide at all stations in villages containing two hundred and fifty inhabitants or more, within thirty days after written notice, served in the same manner

as a summons in district court, from the village council of such village requiring such company so to do, and at other stations and sidings when required by the commission, immediately alongside of its tracks or sidetracks, platforms with approaches at each end, suitable and convenient for loading upon and unloading from its cars heavy machinery and other freight. Such platforms shall be at least twelve feet wide, strongly built, and floored with plank at least three inches thick. The platforms, exclusive of approaches, shall be at least thirty-two feet long, and of the height of the floor of an ordinary box car, and the approaches of such grade that heavily loaded teams can be driven up and down the same. Any such company failing to comply with the provisions of this section shall forfeit to the state not less than five hundred dollars nor more than one thousand dollars for every thirty days that such failure shall continue. (R. L. '05 § 2003; G. S. '13 § 4281, amended '23 c. 142 § 1)

4763. Platforms for loading—Whenever required by the commission, every railroad company shall construct and maintain at each station and siding a suitable platform for the purpose of loading grain, live stock and other commodities into its cars for shipment. The commission may require the enlargement of any platform so constructed or the construction of additional platforms at any such station or siding, whenever it deems it necessary for said purpose. Every such company which shall fail to construct any such platform within sixty days after the service on it of the order of the commission requiring such construction, shall forfeit to the state twenty-five dollars for each day thereafter that such platform remains unconstructed. (2004) [4282]

4764. Combined railroad and toll bridges—Any such company may construct and maintain at its own expense any of its bridges and the approaches thereto, so as to answer for ordinary travel, and, unless within one mile from a toll bridge previously built by an incorporated bridge company over the same stream, may charge and collect for its use reasonable toll, subject to the approval of the proper county board. Such toll shall be uniform, and the rates thereof shall be conspicuously posted on or near the toll house. Such company may contract with any person or corporation for the payment of a fixed sum, yearly or otherwise, in lieu of such toll. (2005) [4283]

4765. Sidetracks to sand or gravel pit, etc.—Every such company, upon written demand of the owner of any grain warehouse or mill of not less than five thousand (5,000) bushels capacity, adjacent to the right of way of such company and at or near any regular station thereof, shall construct, maintain and operate at its own expense, proper sidetracks, connecting such warehouse or mill with the tracks of such railroad, and afford the owner thereof proper and reasonable facilities for shipment therefrom. Should additional right of way be required for such sidetrack, the cost and expense of procuring it shall be paid by the owner of said mill or warehouse. Such company shall also construct, maintain and operate sidetracks connecting with its road any such grain warehouse, dock, wharf, mill, coal yard, quarry, brick or lime kiln, sand or gravel pit, crushed rock or concrete plant, or manufactory adjacent thereto as shall be required and on such terms as may be fixed by the commission on application of either party. (R. L. '05 § 2006, amended '13 c. 367 § 2; '17 c. 287 § 1) [4284]

Previously amended by 1913 c. 289.

115–51, 131+859; 118–491, 137+193.

Where necessary, railway to provide trackage facilities with apportionment of costs between railway and industries served (135–324, 160+866). Construction of spur was a reasonable public necessity (137–315, 163+657). Additional right of way with side tracks being necessary, commission may order same (148–216, 181+341).

4766. Charges to be reasonable—All charges made by any such carrier for the transportation of passengers or property, whether over one or more railroads, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be equal and reasonable; and every unequal or unreasonable charge for such service is prohibited. One car load of freight of any kind or class shall be transported at as low a rate per ton, and per ton per mile as any greater number of car loads of the same kind and class from and to the same points of origination or destination. (2007) [4285]

60–461, 62+826; 115–116, 131+1075.

Shippers' common law remedy is not abrogated (121–497, 142+6). Computation of differentials. Rule for disfavored shipper's recovery (127–181, 149+123). Unequal or unreasonable charges for transportation of passengers prohibited (128–28, 150+174). Trackage charge per car on stub lines (129–123, 151+974).

Suit not maintainable for removal of discrimination, resulting from disparity between rates established by federal and state authority. 210+399.

4767. Passenger rates—No railroad company owning, operating or using a line of railroad within, or partly within the State of Minnesota, shall charge, collect or receive as compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds any sum or amount in excess of the following prices, viz.: For all distances for all companies the gross earnings of whose passenger trains, as reported to the Railroad and Warehouse Commission in the then last report thereon, equaled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, as hereinafter provided, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile: Provided, that in the future, whenever the earnings of any company doing business in this state, as reported to the Railroad and Warehouse Commission at the close of any year, shall increase so as to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter, upon the notification of the Railroad and Warehouse Commission, be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty (150) pounds, a rate of only two cents per mile as hereinbefore provided. Provided further, that in computing the passenger earnings per mile of any company the earnings and the mileage of all branch roads owned, leased, controlled or occupied by such company, exclusive of all spurs and branches over which such company does not operate each way daily, except Sunday, at least one passenger train, or mixed train having at least two passenger coaches or one passenger coach and baggage car, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company. Provided further, that no company shall charge, demand or receive any greater compensation per mile for transportation of children of the age of twelve years or under than one-half of the rate herein prescribed: Provided further, that any railroad company may charge a minimum fare of five cents for each passenger transported over its road, whenever cars are pro-

pelled or moved by motive power other than steam. The provisions of this section shall apply to all railroad companies operating lines of railroad in this state. ('13 c. 536 § 1, amended '17 c. 23 § 1) [4286]
(128-28, 150+174.)

4768. Penalty for violation—Any railroad company or any officer, agent or representative thereof, who shall violate any provisions of this act, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, together with the cost of prosecution. Providing further, that this act shall in no way repeal, amend, affect or modify the provisions of Chapter 493, General Laws of Minnesota for the year 1909. ('13 c. 536 § 2) [4287]
128-28, 150+174.

4769. Passengers—Maximum rates—No railroad company owning, operating or using a line of railroad within, or partly within, the State of Minnesota, regardless of the motive power used, shall charge or collect more than two cents per mile for carrying over its road on any trip wholly within this state, any passenger of twelve years of age or over, together with baggage not exceeding one hundred and fifty pounds in weight; or more than one cent per mile for any such passenger under twelve years of age, together with baggage not exceeding seventy-five pounds in weight: Provided, that no railroad company shall be required to carry a passenger any distance for less than five cents. ('07 c. 97 § 1, amended '11 c. 331 § 1) [4288]
1907 c. 97 and 1907 c. 232 [4298-4304], and certain orders of the commission reducing rates, held not to violate Const. U. S. art. 1 § 8, as imposing a direct burden on interstate commerce or as conflicting with the federal act to regulate commerce. Held, also, upon the facts proved, that it did not appear that a fair return had been denied to certain companies (but that it did so appear as to another company), and that as to the former a conclusion that the rates were confiscatory was not sustained—reversing and modifying (C. C.) 184 Fed. 765 (Minnesota Rate Cases, 33 Sup. Ct. 729).
Regulation requiring passenger without ticket to pay 10 cents more than regular fare, with right to refundment, held not in conflict with 1907 c. 97 (116-119, 133+462.
Cited (118-380, 137+2.
Rates whether unreasonable is a judicial question. Writ of injunction restrains operation of statute until validity of rates is finally determined. Such writ is admissible in evidence in criminal proceedings (130-145, 153+320).

4770. Penalties for violation—Any railroad company, or any officer, agent or representative thereof, who shall violate any provision of this act shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars, or by imprisonment in the state prison for a period not exceeding five years, or by both such fine and imprisonment. ('07 c. 97 § 2) [4289]
Cited (118-380, 137+2).
130-146, 153+320.

4771. Freight rates—Right of carrier in first instance—Uniform classification—All common carriers subject to the laws of this state shall have the right in the first instance to prescribe and publish, as required by law, all classifications and tariffs, rates and charges, together with rules governing the same, including minimum weights for the transportation of any freight articles between points or stations in the State of Minnesota; this act shall include all terminal and switching charges. There shall be but one classification, which shall be uniform on all the railroads in this state, and shall govern in all state commerce. ('05 c. 176 § 1) [4290]
Section 9 repeals inconsistent acts, etc.
Trackage charges (129-122, 151+975).
"Interstate" and "intrastate" shipments—Reshipment—Rates. 158-77, 197+103.

4772. Notice of change to be posted—In addition to the present requirements for publishing tariffs, rates, charges and classifications, all common carriers in this state shall, whenever any new tariff or classification or any amendment to any tariff or classification is published, *either by itself or the commission*, post in a conspicuous place in every depot where the public would be affected, a notice printed in large, legible type, stating that changes have been made, indicating upon what articles or commodities, and where the new tariff, classification or amendment may be seen. ('05 c. 176 § 2) [4291]
135-272, 160+688; 143-164, 173+418.

4773. Rates not to be changed without order, etc.—The schedule of rates and charges for the transportation of freight and cars, together with the classification of such freights, minimum weights and rules now in effect, and all rates, charges and classifications published by any common carrier after the passage of this act shall be deemed just and reasonable and shall not be changed except upon the order of or by the written consent of the Railroad and Warehouse Commission, hereafter called the commission. The terms of this act shall also apply to all schedules of rates and charges published by two or more common carriers jointly. ('05 c. 176 § 3) [4292]
121-498, 142-7; 130-274; 153+610; 135-271, 160+688; 143-162, 173+418.

4774. Public property excepted—Nothing in this act shall apply to the carriage, storage or handling by any common carrier, of property free or at reduced rates, for the United States or the State of Minnesota, or for any municipal government or corporation within the state, or for any church, religious society or charitable purpose, or to or from fairs or expositions, or for stock breeding purposes, or for carrying seed grain. ('05 c. 176 § 4) [4293]

4775. Application for change—Notice—Hearing—Any common carrier desiring to change or discontinue any published rate, charge or classification, minimum weight or rule governing the same to which it is a party, shall make application to the commission in writing, stating the changes in rules, rates, charges or classifications desired, giving the reasons for such change. Upon receiving such application, the commission shall fix a time and place for hearing, and give such notice to interested parties as it shall deem proper and reasonable, and after hearing all the evidence offered, if the commission find that it is reasonable, fair and just to both shippers and carriers that the change should be allowed as asked for, it shall grant the application; otherwise, it shall deny the same, or may grant the same in a modified form. Passenger rates are not affected by this act. ('05 c. 176 § 5) [4294]

4776. Emergency rate—Upon the application of any carrier or carriers to the Railroad and Warehouse Commission, stating that they desire to put in an emergency rate for the protection of the interests of such carrier or shippers, the commission may, before such rate is established and without the notice and hearing required by section five, authorize the restoration of the rates existing at the time of such application and fix the time within which such restoration may be made, and the time so fixed may be extended in the discretion of the commission as the circumstances of the case may require. Nothing in this act shall be held in any way to limit or modify the rights and powers of the commission to investigate, inquire into, prescribe and publish what it may deem to be just and reasonable rates, charges and classifications

to govern common carriers in this state. ('05 c. 176 § 6) [4295]

4777. Penalty for violation—Any common carrier violating any of the provisions of sections 2, 3 and 5 of this act, shall be subject to a penalty of one hundred dollars for each and every day such violation shall continue, to be recovered in a civil action in the name of the State of Minnesota by the attorney general. ('05 c. 176 § 7) [4296]

4778. Duties and powers of commission—It is hereby made the duty of the commission to keep itself informed as to whether common carriers in this state are granting rebates or in other particulars are failing to comply with the laws of this state. For this purpose power is hereby conferred on the commission or its agent to at any proper time make thorough and full examination of all books, vouchers, papers and accounts of any and all common carriers of this state. Any officer, agent or employe of any railroad company in charge of such books, vouchers, papers and accounts who shall fail or refuse to submit the same for examination of the commission or its agent, shall be guilty of misdemeanor. The provisions of this section shall in no way interfere with the duties of the public examiner. ('05 c. 176 § 8) [4297]

135–272, 160+688; 143–164, 173+418.

4779. Classification of commodities—For the purposes of this act the commodities hereinunder named are classified as follows: Wheat, flaxseed, broom corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour and all uncooked grain or cereal products manufactured from wheat, shall constitute class eleven; corn, oats, rye, barley, alfalfa feed, alfalfa meal, bran, brewers' grits, brewers' meal, brewers' refuse (dry) chopped feed other than wheat chops, corn flour, corn meal, cottonseed cake, cottonseed hulls, cottonseed meal, gluten feed, gluten meal, grain screenings, hominy feed, kafir corn, linseed cake, linseed meal, middlings, shorts, sorghum seed, speltz, wild mustard seed, oat groats, rolled oats, oat dust, oat hulls, oatmeal, rolled rye, rye flour, malt, pearl barley and all uncooked grain or cereal products manufactured from corn, oats or rye, shall constitute class twelve; lumber, lath, shingles, sash doors and blinds, shall constitute class thirteen; sheep (when carried in double-decked cars) and cattle, shall constitute class fourteen; sheep (when carried in single-decked cars) and hogs, shall constitute class fifteen; hard coal shall constitute class sixteen; soft coal shall constitute class seventeen. ('07 c. 232 § 1) [4298]

See (C. C.) 155 Fed. 445.

Cited (105–170, 117+393.

Rates regulating statutes do not abrogate common law remedy (121–498, 142+7; 130–146, 153+320). Railroad operating intrastate and interstate lines between the same points, is in duty bound to give the shipper the benefit of the one having the cheaper rate (133–94, 157+997; 133-414, 158+627; 135–271, 160+688). The carrier, in the absence of shipping directions, is not bound to do the unreasonable in order to secure an anticipated cheaper rate for the shipper (137–470, 163+280). Published freight rates and the maximum statutory rates (140–186, 167+1038).

4780. Maximum rates—The following are hereby established and declared to be the reasonable maximum rates to be charged by railroad companies as common carriers of property in the State of Minnesota for the transportation, in carload lots, of the commodities belonging to the classes named in section one of this act, between stations in the State of Minnesota, for the distances named in the following schedule, to-wit:

Distance in miles.	Rate for Commodities in Classification No. 11 in cents per 100 lbs.	Rate for Commodities in Classification No. 12 in cents per 100 lbs.	Rate for Commodities in Classification No. 13 in cents per 100 lbs.	Rate for Commodities in Classification No. 14 in cents per 100 lbs.	Rate for Commodities in Classification No. 16 in cents per 100 lbs.	Rate for Commodities in Classification No. 16 in dollars and cents per ton.	Rate for Commodities in Classification No. 17 in dollars and cents per ton.
5	2.7	2.7	2.7	4.4	4.9	.54	.44
10	3.3	2.8	3.3	5.	5.5	.62	.49
15	3.8	3.4	3.8	5.5	6.3	.63	.51
20	4.4	3.8	4.4	6.3	6.8	.65	.52
25	4.6	4.	5.4	6.7	7.6	.69	.54
30	4.8	4.2	5.6	7.4	8.3	.70	.57
35	5.	4.5	5.8	7.9	9.	.72	.58
40	5.2	4.6	6.	8.6	9.7	.74	.59
45	5.4	4.8	6.3	9.2	10.3	.75	.61
50	5.7	5.	6.5	9.8	11.	.77	.62
55	5.9	5.1	6.8	10.	11.3	.81	.64
60	6.1	5.3	7.	10.2	11.5	.83	.65
65	6.3	5.5	7.4	10.5	11.8	.85	.69
70	6.5	5.8	7.5	10.7	12.	.87	.70
75	6.7	6.	7.7	10.9	12.3	.89	.72
80	7.	6.2	8.1	11.1	12.5	.93	.74
85	7.2	6.3	8.3	11.3	12.7	.95	.75
90	7.4	6.5	8.5	11.5	13.	.97	.77
95	7.6	6.7	8.7	11.8	13.3	.99	.80
100	7.8	7.	9.	12.	13.5	1.01	.82
105	7.9	7.	9.2	12.2	13.7	1.04	.83
110	8.1	7.	9.3	12.4	13.9	1.06	.84
115	8.2	7.2	9.4	12.6	14.3	1.07	.85
120	8.2	7.2	9.4	12.8	14.5	1.08	.86
125	8.3	7.3	9.5	13.	14.7	1.10	.87
130	8.4	7.4	9.6	13.3	14.9	1.11	.88
135	8.5	7.4	9.8	13.5	15.3	1.12	.92
140	8.5	7.5	9.8	13.7	15.5	1.16	.93
145	8.6	7.6	9.9	13.9	15.7	1.17	.94
150	8.7	7.6	10.	14.2	15.9	1.19	.95
155	8.8	7.7	10.1	14.4	16.2	1.20	.96
160	8.8	7.8	10.1	14.6	16.4	1.22	.98
165	9.	7.9	10.4	14.8	16.7	1.24	1.00
170	9.	7.9	10.4	15.	16.9	1.29	1.01
175	9.1	8.1	10.6	15.3	17.2	1.31	1.05
180	9.1	8.1	10.6	15.5	17.4	1.33	1.07
185	9.3	8.2	10.7	15.7	17.6	1.35	1.09
190	9.4	8.3	10.8	15.9	17.9	1.37	1.10
195	9.5	8.3	10.9	16.1	18.2	1.42	1.12
200	9.6	8.4	11.	16.3	18.4	1.44	1.16
210	9.7	8.5	11.1	16.6	18.6	1.48	1.19
220	9.8	8.6	11.2	16.8	18.8	1.54	1.22
230	9.9	8.7	11.4	17.	19.1	1.58	1.28
240	10.	8.8	11.6	17.2	19.4	1.63	1.31
250	10.2	8.9	11.8	17.4	19.6	1.68	1.34
260	10.3	9.1	11.9	17.6	19.8	1.72	1.37
270	10.5	9.3	12.	17.9	20.2	1.78	1.42
280	10.6	9.4	12.2	18.1	20.4	1.82	1.46
290	10.8	9.5	12.4	18.3	20.6	1.87	1.49
300	10.9	9.6	12.5	18.5	20.8	1.92	1.54
310	11.	9.7	12.6	18.7	21.1	1.94	1.56
320	11.1	9.8	12.8	19.	21.4	1.96	1.57
330	11.2	9.9	12.9	19.2	21.6	1.99	1.59

340	11.3	9.9	13.1	19.4	21.8	2.02	1.60
350	11.4	10.	13.2	19.6	22.1	2.04	1.63
360	11.5	10.1	13.3	19.8	22.3	2.06	1.66
370	11.7	10.2	13.4	20.	22.6	2.08	1.67
380	11.8	10.3	13.5	20.3	22.8	2.11	1.69
390	11.9	10.5	13.6	20.5	23.1	2.13	1.70
400	12.	10.6	13.7	20.7	23.3	2.16	1.72

('07 c. 232 § 2) [4299]

4781. When distance not given—Weight of carload—When the exact distance which a commodity is transported is not given in the foregoing schedule, the carrier may charge the rate specified in the said schedule for the next greater distance. In order to constitute a carload, within the meaning of this act, the weight of the commodities in any one car shall be at least as follows: Class eleven and class twelve, twenty-four thousand pounds; class thirteen, twenty thousand pounds; class fourteen, nineteen thousand pounds; class fifteen, fifteen thousand pounds; classes sixteen and seventeen, thirty thousand pounds. ('07 c. 232 § 3) [4300]

4782. Excess rates prohibited—No railroad company, which is a common carrier of property within the State of Minnesota shall charge, take or receive any greater sum for carrying within this state, between stations therein, any of the commodities named in this act than the respective amounts set forth and provided in section two [4780] of this act for the respective distances therein named. ('07 c. 232 § 4) [4301]

4783. Powers and duties of commission—This act shall not in any manner affect the power or authority of the Railroad and Warehouse Commission, except that no duty shall rest upon the Railroad and Warehouse Commission to enforce any rates specifically fixed by this or any other statute of this state. Whenever, in a proceeding regularly pending before the Railroad and Warehouse Commission, it shall be made to appear to the satisfaction of said commission that the rates herein prescribed are unreasonable, it may, by order, fix higher or lower rates for the transportation of any of the commodities herein mentioned over the line of any railroad in this state, and such rates, when so fixed, shall supersede the rates herein prescribed upon said line of railroad, and shall be enforced as prescribed by the law relating to such orders, but until such order shall have been made by said Railroad and Warehouse Commission the rates herein prescribed shall be the exclusive legal maximum rates for the transportation of the commodities herein enumerated between points within this state. ('07 c. 232 § 5) [4302]

4784. Duties of railroad companies—Penalties—Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it between stations upon its line of road in this state of the commodities named in this act; and every officer, director, traffic manager or agent or employe of such railroad company, exercising any authority, or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by such railroad company of rates not exceeding those specified in this act; and any officer, director or such agent or employe of any such railroad company who violates any of the provisions of this section, or who causes or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends and in which it has a station, and, upon conviction thereof, be punished by imprisonment in the county jail for a period not exceeding ninety days. ('07 c. 232 § 6) [4303]

4785. Existing rates—If, at the time of the taking effect of this act, any railroad is maintaining a rate between any two stations in this state that is less than the rate herein prescribed for the same distance, this act shall not be construed as authorizing the raising of such rate. ('07 c. 232 § 7) [4304]

130–146, 153+320; 133–94, 157+997; 133–414, 158+627; 135–46, 159+1082; 135–271, 160+688; 137–470, 163+280; 140–186, 167+1038.

4786. Duties of railroad companies—Penalties—Every railroad company transacting the business of a common carrier within this state shall adopt and publish and put into effect rates not exceeding the charges specified herein for the transportation by it between stations upon its line of road in this state of the commodities named in this act; and every officer, director, traffic manager or agent or employe of such railroad company, exercising any authority or being charged with any duty in establishing freight rates for such railroad company, shall cause the adoption, publication and use by such railroad company of rates not exceeding those specified in this act. ('09 c. 136 § 6) [4305]

1909 c. 136 is identical with 1907 c. 232, except that the above section omits the provisions contained in section 6 of the earlier act prescribing penalties for the violation thereof, and adds the following section:

121–499, 142+7.

4787. Continuation of prior act—This act is intended to operate as a continuation of Chapter 232 of the Laws of 1907, and not as a repeal thereof, except that the provisions of said chapter 232 contained in section six thereof, prescribing penalties, for the violation thereof, are hereby repealed. ('09 c. 136 § 8) [4306]

Explanatory note—For Laws 1907, c. 232, see §§ 4779 to 4785, herein.

4788. Failure to adopt rates—Duty of attorney general—Duty of carrier—Reports—Whenever any common carrier doing business in this state shall fail or refuse to adopt and put into effect any rates prescribed by the statute, or any rates prescribed by an order of the Railroad and Warehouse Commission after the time for appeal from such order has expired, and such rates have by the terms of such law or order become effective, it shall be the duty of the attorney general to forthwith commence appropriate proceedings for and in the name of the state for the enforcement of the law or the order prescribing such rates, in the district court of Ramsey county or in the district court of any county in which such common carrier has an agent or station, or in which its said business is carried on, and during the pendency of such proceedings—or during the pendency of any proceedings instituted in any court having jurisdiction by or on behalf of such common carrier to resist the enforcement of such law or such order, it shall be the duty of every such common carrier to keep a correct account of every charge made by it for any service to which such rates apply in excess of the rates so prescribed, showing in each case the difference between the amount actually charged and the amount allowed to be charged under such rates, the date of the transaction, the stations between which the business was carried, and the names and addresses of the consignor and consignee. Every such common carrier shall on or before the tenth day of each month report such information in full, covering the business of the preceding month, to the Railroad and Warehouse

Commission, and said commission shall carefully preserve such information in its office. ('09 c. 195 § 1) [4307]

135–273, 160+689; 142–183, 171+799.

4789. Carrier to pay to commission excess rates—Within sixty days after such judicial proceedings, brought to enforce or to resist the enforcement of such rates, are ended by the entry of final judgment therein—unless by such judgment said rates are found to be unlawful—every such common carrier shall pay to said Railroad and Warehouse Commission, for the benefit of the parties entitled thereto, all sums so charged and collected by it on the business to which such rates apply, in excess of the rates so prescribed, with lawful interest thereon from the date when each item thereof was received, and it shall thereupon be the duty of said Railroad and Warehouse Commission to pay such money, with said interest, to the person, firm or corporation by or for whom the same was paid to such common carrier, and for the purposes of this act the person holding the original receipted freight bill showing the payment thereof to such common carrier shall be taken to be the persons entitled to so receive such money. ('09 c. 195 § 2) [4308]

Remedy for recovery of excess charges (121–499, 142+7; 135–273, 160+689). Same does not apply to suit by shipper (142–183, 171+799).

4790. Failure to pay excess rates—Duty of commission and attorney general—Claims—Unclaimed amounts—If any common carrier affected by such rates shall fail or refuse to pay to the Railroad and Warehouse Commission within the time aforesaid all moneys so collected by it in excess of the amount lawfully collectable under the rates so prescribed, or to file with the said commission within said time the written release of his claim signed by the person entitled to such restitution, it shall be the duty of the Railroad and Warehouse Commission to report such default of such common carrier to the attorney general, who shall thereupon bring an action in the name of the State of Minnesota for the benefit of the parties having paid such overcharges, to recover the same from such common carrier, and it shall have the exclusive right to sue for and collect such money of said common carrier, and in such action, in addition to the aggregate amount of such excess charges and interest, the court shall allow ten per cent thereof additional as a penalty. All persons entitled to any part of such money shall file their claims therefor within one year from the time when the litigation involving the validity of said rates is ended. And all amounts paid to or recovered by the Railroad and Warehouse Commission, not so claimed, shall be paid into the state treasury to the credit of the general revenue fund. ('09 c. 195 § 3) [4309]

135–273, 160+689; 142–183, 171+799.

4791. Failure of carrier to keep accounts, etc.—Penalty—Every common carrier and the officers and agents thereof whose duty it is to make collections of any such rates and keep the accounts thereof, who shall wilfully fail or neglect to keep such accounts as are herein provided for, or who shall make any intentional false account, entry or report in reference thereto, or who shall fail to make the reports herein provided to be made to said Railroad and Warehouse Commission, shall be guilty of a misdemeanor. ('09 c. 195 § 4) [4310]

4792. Certain provisions repealed—All provisions of law prescribing any other procedure for the enforcement of any rate or schedule of rates that have been heretofore or may be hereafter prescribed, either by act of the legislature or by any order of the railroad and warehouse commission, applying to the intrastate business of any common carrier doing business in this state, or prescribing any penalty for the failure of any common carriers to put any such rates into effect, are hereby repealed, but the court in which proceedings for the enforcement of such rates may be pending may impose penalties for disobedience to its orders made in such proceeding as for contempt. ('09 c. 195 § 5) [4311]

4793. When to take effect—This act shall take effect and be in force from and after its passage, and shall apply after ten days from the date of its passage to all rates heretofore prescribed in this state, which have not been put into effect. ('09 c. 195 § 6) [4312]

135–273, 160+689.

4794. Refundment of excess freight, baggage and express charges—All charges for freight, baggage or express that are collected by a common carrier over what it is entitled to receive under the lawful tariff or classification, shall be refunded by said carrier within sixty (60) days after the payment of the same. Provided, that when such overcharge is due to a difference in weight a claim may be filed as provided in section 2. ('11 c. 306 § 1) [4313]

4795. Claims, when adjusted and paid—How presented—Every claim against a common carrier doing business in this state, for an overcharge due to difference in weight, or for loss, damage or injury to property while in its possession, shall be adjusted and paid within sixty (60) days in case of shipment wholly within the state, and within ninety (90) days in case of shipment from without this state, or from a point in this state to a point in another state, after the filing of such claims with the agent of said carrier at the point of the origin, or of the destination of such shipment, or with the claims department of such carrier. No such claim shall be filed until after the arrival of a shipment, or of some part thereof at the point of destination, or until after the lapse of a reasonable time for the arrival thereof. For the purpose of this act, a claim, when filed shall consist of (a) original bill of lading or shipping receipt, (b) paid freight bill, (c) bill of claimant, and (d) original invoice or certified copy when necessary. True copies of any of said documents may be used, and in case of absence, an explanation must be attached. The carrier shall acknowledge the filing of a claim, or any letter, papers or documents purporting to be such, within ten days after receipt, and if the claim so filed does not comply with the above requirements, the carrier shall so inform the claimant and advise him of what may be required to complete the claim. ('11 c. 306 § 2) [4314]

Statute is not unconstitutional (126–138, 147+960).

A claim for loss in transit required by an express receipt is sufficient when made by the consignee, although the consignor is the real party in interest. 160–221, 199+568.

4796. In what amount liable—In every case such carrier shall be liable for the amount of such overcharge and for such loss, damage or injury to property, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. ('11 c. 306 § 3) [4315]

4797. Penalty for failure — Fraudulent claims — Failure to adjust and tender or pay such overcharge or claim within the periods herein prescribed shall subject such common carrier so failing, to a penalty of twenty-five ($25.00) dollars for each and every such failure, to be recovered by the claimant in the action

or proceeding brought to collect such claim or overcharge, in any court in the state. Unless such claimant recovers in such action the full amount claimed by him, no penalty shall be recovered, but only the actual amount of the loss, injury or damage to property or amount of the overcharge, with interest. And if, in such action, a special issue of fraud is raised and such claim is found to be fraudulent, the claimant shall pay to the carrier the penalty of twenty-five ($25.00) dollars, to be recovered along with the costs. In an action brought under the provisions of this law, if the carrier can show that it made a tender of the amount claimed, with interest, and a penalty of five ($5.00) dollars, within five days after a demand that is made at any time after the expiration of the time specified in sections 1 and 2, then it shall only be subject to the penalty of five ($5.00) dollars, to be recovered along with the costs. ('11 c. 306 § 4) [4316]

Valid legislation (126–138, 147+960). Inapplicable to interstate shipments 131–158, 154+955; 140–384, 168+134.

4798. Remedy cumulative—The remedy herein provided is cumulative, and shall not deprive the claimant of any other right of action provided by statute or by the common law. ('11 c. 306 § 5) [4317]

4799. Charges for transporting national guard, etc.—That whenever it shall be necessary for any or all of the officers or men of the Minnesota national guard or the Minnesota naval militia or reserve to travel upon any railroad in the state under orders from competent authority to perform military duty, such railroads shall furnish transportation at the rate of one cent per mile for the whole distance to be traveled upon such railroad or railroads within the limits of this state, for each officer or enlisted man so carried including the usual amount of baggage; and all station or ticket agents or conductors shall sell first class tickets or furnish first class passage at the rate named, upon being notified that such officer or officers or enlisted men are traveling upon military duty. Such notification must be issued by the adjutant general, and may be by telegraph or by filing a copy of the order issued by the adjutant general for such transportation with the station or ticket agent or conductor. This rate shall apply to officers or men traveling under orders, either single or in companies, so that whenever one or more members of the guard shall present an order for transportation issued by the adjutant general, it shall be honored by the ticket agent or by the conductor and received in lieu of fare, and when presented by the railroad companies to the adjutant general, shall be audited to be paid at once at the fixed rate. ('09 c. 493 § 1) [4319]

In an action to compel the defendant, railway company, to carry a member of the national guard at the rate and under the terms specified in this act, defendant having waived the defense that the rate is inadequate, held, that it did not appear that the act contravenes either the federal or the state constitution (118–380, 137+2).

4800. Refusal to transport, etc.—Penalties—Any railroad agent or officer thereof, or any person whose duty it is to transport or carry passengers or baggage thereon, who shall willfully refuse to transport or furnish the means for transporting any of the troops of this state and their said baggage, when ordered out by the governor, on the terms prescribed by this act, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be fined in the sum of not less than fifty dollars nor more than five hundred dollars for each offense. And any railroad company who shall refuse to transport said troops and baggage as aforesaid, or refuse to permit its agents or employes to transport the same or furnish means of transporting them, shall be liable to the state of Minnesota in a penal sum of five hundred dollars for each violation of the law, to be recovered in a civil action in the name of the state of Minnesota, and to be prosecuted by the attorney general or county attorney of the proper county. Should any county attorney, upon proper complaint made and verified, neglect, decline or refuse to prosecute any person or persons violating the provisions of said act, any court, judge or justice of the peace having jurisdiction of the offense may appoint an attorney-at-law to conduct said prosecution, who shall receive a fee of not less than ten nor more than fifty dollars in each case where conviction shall be had, said fee to be fixed by the court and taxed as costs in said action; but in no event shall the county be liable for said fee. ('09 c. 493 § 2) [4320]

118–380, 137+2.

4801. Common-law liability not to be limited—The liability of common carriers at common law with reference to property in their custody shall not be limited by contract or otherwise, except as stated in their published classification schedules. Such liability must include absolute responsibility for the acts of their agents in reference to such property. (2008) [4321]

65–168, 68+4.
165–43, 205+605.
Validity of contract for interstate shipment determined by federal statute (111–123, 126+627).
Contract limiting common law liability (121–259, 141+164). Termination of liability (122–453, 142+727).

4802. Receipts and bills of lading—Liability of carrier issuing for loss, etc., caused by connecting carriers—That any common carrier, railroad or transportation company receiving property for transportation from any point in this state to any other point in this state, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; provided, that nothing in this act shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law. ('13 c. 315 § 1) [4330]

Interstate commerce, see Mason's Code, 49:20.
Common law liability of connecting carriers, 165–43, 205+605.

4803. Remedy over of carrier issuing—That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage or injury shall have been sustained the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof. ('13 c. 315 § 2) [4331]

4804. Preferences forbidden—It shall be unlawful for any common carrier to make or give any unequal or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever; or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any unequal or unreasonable prejudice in any respect whatsoever. (2009) [4332]

50–371, 52+962; 55–8, 56+248; 79–188, 199, 81+835; 119–302, 138+284.

121–497, 141+1102; Refusal to install scale an unlawful discrimination (122–56, 142+7; 128–28, 150+174; 143–93, 173+179).

Transportation Act 1920 (Mason's Code, 49:3), prohibiting the delivery of freight at the point of destination without the payment of tariff charges, except under such rules and regulations as the Interstate Commerce Commission may prescribe, does not of itself operate to release the consignor from liability when the carrier delivers freight to the consignee without payment, or make the consignor's liability secondary to that of the consignee. 161–466, 202+24.

Suit not maintainable for removal of discrimination, resulting from disparity between rates established by federal and state authority. 210+399.

4805. Certain preferences allowed—Nothing in this chapter shall prevent the carriage, storage, or handling of property free, or at reduced rates, for the United States, the state, or for any municipal corporation thereof, or for charitable purposes, or for exhibition at fairs or expositions, or of stock for breeding purposes; or the issuance of mileage, excursion or commutation passenger tickets at rates equal for all; or giving such reduced rates to ministers of religion, sisters of charity, missionaries, students of any educational, or inmates of any charitable, institution; nor the free transportation of passengers when allowed by law. (2010) [4333]

4806. Rebates, etc., forbidden—Penalty—It shall be unlawful for any common carrier in this state, by any special rate, rebate, drawback, or other device to directly or indirectly charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered in the transportation of any property within this state than its regular established schedule of rates and charges for like and contemporaneous service for any other person or for the public generally; and it shall be unlawful for any such common carrier directly or indirectly to offer or give any shipper in connection with, or as an inducement or reward for receiving any property for transportation from any such shipper, any gift, gratuity or free pass whereby any passenger or freight shall thereafter be transported over the lines of such common carrier free, or at any rate less than that offered to the public, and in either such case such common carrier shall be deemed guilty of unjust discrimination and shall be punished by a fine not exceeding five thousand dollars. And any person who shall knowingly either for himself or for any firm or corporation directly or indirectly receive from any common carrier any such reduction of rate, rebate, gratuity or other favor as is herein declared to be an unjust discrimination by such common carrier shall be guilty of a misdemeanor. ('05 c. 177 § 1) [4334]

121–498, 142+7.

4807
29 — 162

4807. Free passes, transportation on reduced rates prohibited—Exceptions—From and after January 1, 1908, it shall be unlawful for any person, association, co-partnership, or corporation or any representative thereof, to offer, give or in any manner furnish to any person, either for himself or another, any free pass or frank, or any special privilege or reduction in rate withheld from any other person for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication except to persons included within the classes hereinafter designated and limited, and it shall also be unlawful for any person or persons not included within the classes hereinafter excepted or limited to solicit or receive, either for himself or another, for any person, association, co-partnership or corporation, or use in any manner or for any purpose any free pass or frank or special privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication; provided, however, that nothing contained in this act shall be construed to prohibit, or to make unlawful the issuing or giving of any such free ticket, free pass or free transportation to any person or persons within the classes hereinafter excepted or limited or the acceptance or use of the same by persons within such classes, that is to say, officers, bona fide agents, surgeons, physicians, attorneys and employes of such railroad or other companies, or persons affected by this act and dependent members of their families, the duly elected representatives of railroad labor organizations, children under 12 years of age, ministers of religion, secretaries of Young Men's associations, persons exclusively engaged in charitable and eleemosynary work, indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals or by public charity, and necessary agents employed in such transportation, inmates of national homes or state homes for disabled volunteered soldiers, inmates of soldier's and sailor's homes, including those entering and returning from such homes and boards of managers of such homes, postoffice inspectors, custom inspectors and immigration inspectors; witnesses of said railroad companies attending any legal investigation in which said company is interested, officials and linemen of telegraph and telephone companies; ex-employees retired from service on account of age or because of disability sustained while in the service of said railroad company and dependent members of their families or the widows or dependent children of employes killed or dying while in the service of such railroad company; necessary caretakers of livestock, poultry, vegetable and fruit; including transportation to and from the point of delivery; employes on sleeping and express cars; railway mail service employes; newsboys on trains; baggage agents and persons injured in wrecks and physicians and nurses attending them; providing that one trip pass for a discharged employe and his family may be issued for use within 30 days of such discharge.

Provided further, that the provisions of this act shall not be construed to prohibit and make unlawful the interchange of passes, express and other franks for the officers, bona fide agents, surgeons, physicians, attorneys and employes and the dependent members of their families of any person or company affected by this act from doing any of the things prohibited hereby free, with the object of providing relief in cases of general epidemic, pestilence or calamitous visitation.

Provided further, that the provisions of this act shall not be construed to prohibit or make unlawful the interchange of passenger transportation and message service between such railroad companies and telegraph companies and provided further that the provisions of this act shall not be construed to prohibit or make unlawful the interchange between railroad, express, telegraph and telephone companies of the transportation of persons and property, and the transmission of messages.

Provided further, that no free transportation shall be issued or given to any person when such person is a member of, employed by, or in any way connected with any political committee, or a candidate for, or incumbent of any office or position under the constitution and laws of this state, except as herein provided,

and except that any railroad company may issue free passes to its employes, while occupying office or position, other than judicial, under a municipality, county or public school district, or while acting under appointment as a notary public in this state, and except that any railway company may issue free passes to any member of the Legislature who is and has been an employe of such railway company for a continuous period of five years prior to his election to such office; provided, however, that such free transportation shall not be used by such member of the Legislature during the period of any legislative session nor for any travel for which mileage is collected from the state. ('07, c. 449, § 1; amended '13, c. 92, § 1; '17, c. 53; '23, c. 121, § 1; '27, c. 86, § 1) [4335]

Cited (118-380, 137+2).

The trade of two caretakers' return tickets not a violation of the statute (140-357, 168+128).

A licensee is conclusively presumed, as a matter of law, to know that a license is revocable at the pleasure of the licensor, and, if he seeks to travel on a free pass, he does so at his peril. 158-20, 196+670.

A free pass, having on its back that it "may be revoked by the railroad company at any time," to ride on trains is not a contract, but is a license, which may be revoked by the licensor at any time. 158-20, 196+670.

One, who the jury found to have been in the caboose of defendant by permission of the conductor of the train at the time another of defendant's trains, through gross negligence of those in charge of such trains, collided therewith, is not precluded from recovering for injuries because of a violation of the antipass statute. 166-308, 207+644.

4808. Free transportation for Commission — The Railroad and Warehouse Commission and their secretary shall have the right to free transportation in the performance of their duties on all railroads and railroad trains, and on all motor busses and bus lines and all other transportation lines of any nature or kind now or hereafter placed under the control or jurisdiction of said commission, during the full period of such control or jurisdiction, in this state, and their experts or other agents whose service they may require shall likewise be transported free of charge. ('07, c. 449, § 2; amended '25, c. 283) [4336]

Cited (118-380, 137+2.

4809. Penalty for violation—Any person, corporation or company or any officer or agent of such corporation or company violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars or by imprisonment in the county jail for a period not exceeding ninety days. ('07 c. 449 § 3) [4337]

Cited (118-380, 137+2.

4810. Free transportation of highway material, etc. —It shall be lawful for any railroad or transportation company, operating in this state, to transport, handle or store free, or at reduced rates, for the United States, the state, or for any municipal corporation thereof, any stone, stone dust, gravel, sand, or any other material to be used in building, improving or repairing public highways, by any of the said entities or corporations herein mentioned. ('11 c. 192 § 1) [4338]

See '17 c. 375 making it lawful to transport soldiers in uniform in time of war.

4811. Street railways in cities—Reduced rates for transportation of members of police and fire departments—It shall be lawful for any railway company operating a street railway in any city of this state to enter into a contract with the head or chief officer of the police and fire departments of such city for the transportation over the lines of said street railway company within such city of any member or officer of the said police and fire departments, or either of the same, at a yearly, monthly or other specified term rate less than that made to other persons for transportation over the said lines, said rate to be mutually agreed upon between the said railway company and such officers. Said contract shall be in writing and approved by the mayor of such city and shall be filed with the board of railway and warehouse commissioners of the state of Minnesota for public examination and such contract shall be effective and operative according to the provisions therein contained, during the time or term therein specified and it shall be lawful for any such street railway company to fulfill the terms of said contract or agreement, and to carry and transport the said members or officers of said fire or police departments over its said street railway lines without other payment than as provided in said contract, and it shall likewise be lawful for any member or officer of any such police or fire department entering into any such contract to ride and accept transportation over the lines of said street railway company in pursuance of the terms of said contract and without further or other payment than as herein required.

Provided, that such contract shall not provide for the carrying or transportation of any member or officer of such police and fire departments or either of the same except when the said member or officer is wearing full official uniform. ('13 c. 539 § 1) [4339]

4812. How construed—This law shall not be construed as constituting any discrimination, special privilege or reduction in rate in contravention of the provisions of chapter four hundred forty-nine (449) of the General Laws of Minnesota for 1907. ('13 c. 539 § 2) [4340]

4813. Suburban railways may be granted franchise for carrying freight, etc.—The governing body of any city or village may by a revocable license, or by a franchise duly approved by the electors in accordance with its charter, permit a suburban railway using other than steam power to enter such city or village for the purpose of carrying passengers, baggage and light freight. Such license or franchise shall specify its terms and conditions and shall designate the route to be followed, but shall not be construed as a contract between the parties. ('15 c. 310 § 1)

4814. Compensation to be fixed by railroad commission—Where the designated route is already provided with tracks and other equipments, said suburban railway and the corporation owning or controlling said tracks and equipments may enter into an agreement for the joint use thereof upon equitable terms. Upon the failure of the interested parties to agree among themselves, the State Railroad and Warehouse Commission, when applied to by either party or by the city or village council, shall hear the matter and by an order fix the rate of compensation to be paid by such suburban railways for the use of the tracks, overhead wires, electric current and other accessories to be used in the operation of such suburban railway under the schedule established and the license or franchise granted by such city or village, and such suburban railway shall thereupon be entitled to the use of said tracks, overhead wires, electric current and other accessories under the terms of said order, and may enforce said right by mandamus proceedings in the courts of this state. ('15 c. 310 § 2)

4815. Cars and equipment to be furnished by suburban railways—That said suburban railways shall provide for operation within such city or village limits, cars and equipment substantially similar to the cars

and equipment used by the street railways operating upon the tracks over the route so designated, and while operating upon such street railway tracks, shall comply with and be subject to all ordinances, laws, traffic rules, time schedules and regulations applicable to such street railways as the city council or other governing body may from time to time adopt, except where such suburban railways are specifically exempted by any such council from compliance with any ordinances or other municipal regulation of such city or village. ('15 c. 310 § 3)

4816. **Definitions**—The term "Commission" as used in this Act shall mean the Railroad and Warehouse Commission of this State; the term "city" as used in this Act shall mean city or village within this State; the term "street railway" and "street railways" shall mean and apply to any association or corporation, leasing, holding, owning, managing, operating or otherwise controlling any street railway line or street railway property wholly or partly within this State; the term "Council" shall mean any board or body, whether composed of one or more branches, who are authorized to make ordinances for the government of a city within this State, and the term "indeterminate permit" as used in this Act shall mean and embrace every grant to any street railway to own, operate, manage or control any street railway property within the state for the transportation of passengers for hire. The phrase "street railway property" whenever used in this Act shall include and mean the property of any street railway as an operating system which is used, useful and reasonably necessary for street railway purposes. ('21 c. 278 § 1)

152-213, 188+286; 154-401, 191+1004; 193+175.

4817. **Franchises to be "indeterminate permits"—Terms not affected except as provided**—Every grant that has been heretofore, or that shall be hereafter, made to a street railway by the state or any city shall become and it shall thereafter be, an indeterminate permit, upon such street railway executing and filing with the clerk of the city in which said street railway is located, a written declaration that it desires that such grant shall become an indeterminate permit and consent that the terms of this Act shall apply to and govern the ownership, control, management, maintenance and operation of the street railway property of said street railway. Upon such street railway filing such declaration and consent, the city clerk shall issue to such street railway a certificate that such declaration and consent has been filed in his office. When such certificate shall be filed with the Secretary of State such grant subject to the provisions of this Act shall become an indeterminate permit to own, operate, manage and control any street railway property, or any part thereof, within such city under the terms and conditions of the grant that shall have been theretofore made by the state or any such city and be then in force; but all of the terms, conditions and obligations of such existing grant, except as herein otherwise specifically provided, shall continue in force so long as such indeterminate permit shall continue. Such indeterminate permit shall continue in full force unless and until the city shall acquire the street railway property of such street railway within the limits of such city, or unless terminated or modified by the Legislature of the State of Minnesota as hereinafter provided. ('21 c. 278 § 2)

4818. **Cities may acquire street railways—Procedure**—Any city shall have the power and authority to acquire the street railway property of any street railway within such city as in this section provided and not otherwise; (a) by eminent domain according to the procedure provided by Chapter 41, General Statutes of Minnesota for 1913, and amendments thereto; or (b) by purchase by agreement between the city and the street railway at a value fixed by such agreement; or (c) by purchase at the fair value of such street railway property as determined and fixed by the Commission upon hearing upon petition by the city and subject to appeal to the district court, all as herein provided; and every street railway within the State is hereby required to sell its street railway property to any such city in which the same is located, at such fair value when and as so fixed by the Commission or by the Court upon appeal.

No value shall be allowed in any case for any franchise and no allowance shall be made for damages because of the severance of the properties from connecting properties, but the same shall be valued as an operating system.

Any city which may acquire street railway property may own, operate, lease or resell or otherwise dispose of such property. In no case, however, shall any acquirement of street railway property by purchase or by eminent domain or otherwise, or any agreement or action or proceeding therefor have any force or effect or be binding in any way upon any such city unless and until such acquirement shall, after the fair value of such street railway property has been fixed as provided by this Act, be ratified and approved by a majority of the votes of the electors of such city, cast upon the question at a general or regular city election, or a special election for that purpose, at which such question shall have been submitted as herein provided. As soon as may be after the fair value of such street railway property within any city has been finally determined and fixed by any proceeding or by agreement as provided by this act, the Council of such City shall by resolution submit the question of such acquirement by purchase or by eminent domain, as the case may be, to the electors of such city, fixing the time of such election which shall be not less than three months nor more than six months after the passage of such resolution, and providing for due notice thereof, stating the question to be voted upon and providing for the holding of such election Provided that no special election shall be ordered to occur or be held for such purpose within any three months' period immediately preceding or immediately succeeding any general or regular city election. ('21 c. 278 § 3)

Explanatory note—For G. S. 1913, c. 41, referred to, see §§ 6537 to 6578, herein.

4819 229nw 883

4819. **City councils to have power to grant franchises**—The exclusive right and authority is vested in the council of any city, in this state to grant a license, permit or franchise for the construction, maintenance and operation of street railway property within the limits of such city and on such terms and conditions as it may impose. Such council shall have the exclusive right and authority to designate the street or streets upon which any street railway property or part thereof may be hereafter constructed and no street railway property shall be hereafter constructed upon any street in any city without express authority from the council of such city. Such council shall have authority by ordinance or resolution to require the construction of any new line or lines and the extension or change or removal of any existing line or lines. The council shall have authority to prescribe reasonable requirements, standards and conditions of service and operation of any street railway property by any street railway within such city, and shall have the right at

all times and in all respects to exercise reasonable control over such service and operation and all things pertaining thereto, including type of cars, the right to fix and amend service schedules, to control stops, routes, headway, speed and number of cars, and to make regulations governing their lighting, heating and their sanitary condition, and such street railway shall furnish the council such information relating to such matters as it may from time to time require and shall operate at all times at least a sufficient number of cars to and shall fully comply with all schedules and routes required by the council, and adequately accommodate the traveling public, and in these and all other respects furnish reasonable and adequate service and facilities for the accommodation of the traveling public. All cars used shall be of modern design and equipped and furnished with such improvements and appliances as to assure the health, safety, comfort and convenience of the passengers, the public and the company's employes. They shall at least equal in quality, style and design cars now operated in such city. The company's road bed and tracks shall be maintained at all times in first class operating condition so as to afford convenient and comfortable travel thereon. The location of shops, car barns, waiting rooms and terminals and all other matters hereinbefore in this section specified shall be subject to the approval of the Council. The action of the Council of any city under this section shall be final and not subject to appeal by the street railway, except as specifically otherwise provided by this section.

Any order, resolution, rule or regulation or requirement of any kind made or imposed upon the street railway by the Council as provided by this Act may be enforced by mandamus, injunction or other appropriate proceeding. (21 c. 278 § 4)

4820. Railroad and Warehouse Commission to fix rates—The Commission is hereby granted initial and exclusive power and authority upon hearing upon petition as provided by this Act, to fix and establish rates of fare and charges by a street railway for carrying passengers, subject to the powers of the district court in case of appeal thereto as hereinafter provided, which rates shall not yield to exceed a reasonable return on the fair value of the street railway property of any street railway. ('21 c. 278 § 5)

Railway is authorized to charge rates authorized by prior franchise until changed by commission, and was not divested of right under former franchise (152-213, 188+287).

4821. Rates must be fair—Transfers—Rates of fare and charges within any city shall be just, fair and reasonable and shall be sufficient to yield only a reasonable return on a fair value of the street railway property of the street railway within such city. The same fare shall be charged each passenger for transportation over all street railway lines in any city from any one point to any other point therein and transfers and retransfers shall be given to each passenger free of charge, good for use for his continuous trip on all other lines in the city under such rules and regulations as the Commission may prescribe. In all cases where cities are contiguous, continuous inter-city passenger service shall be provided without change of cars by a street railway operating in both cities. If a different street railway is operating in one such city from the street railway that is operating in the other city, the inter-city transportation as above provided shall be furnished nevertheless by both street railways and mutual adjustment of fares and expenses shall be made by such railways, subject to control and regulation thereof by the Commission, authority for which is hereby granted to the Commission. The fare charged for transportation within either city on the portion of such interurban line located within that city shall not exceed the fare on other lines within such city with like transfers and retransfers as hereinbefore provided. The costs and expenses incurred and paid by the street railway in performing its obligations shall be reasonable. ('21 c. 278 § 6)

167-311, 209+10; 4 F. (2d) 543, note under 4829.

4822. Companies may issue bonds, stocks, etc., on permit from commission—Any street railway authorized to do business under the laws of this state may issue stocks, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the dates thereof, whenever necessary for the acquisition of property, the construction, extension or improving of facilities or for the discharge or lawful refunding of obligations; provided, however, that except as herein otherwise provided before the street railway shall issue any such stocks, bonds, notes or other evidences of indebtedness as aforesaid, it shall secure from the Commission after a full hearing and investigation before and by such commission an order authorizing such issue and fixing the amount thereof. The city shall be a necessary party to such hearing. Such order shall only be issued when the Commission shall be satisfied that the funds derived from such issue are essential for carrying out such purposes, and that it is proper and reasonable under all the circumstances to make such issue; provided that it shall be the duty of the Commission to authorize an issuance of such bonds, notes or other evidences of indebtedness as may be required for the construction of any new line or lines, or the extension or change of any existing line or lines, or any construction or improvement in facilities, any of which shall have been ordered, required or approved by the council as provided by this act, subject, however, to the right of appeal to the district court of the county wherein such city is located from any such order or requirement upon the same terms and conditions as provided by this act in case of other appeals. Any order of the Commission made hereunder, shall contain a finding by the Commission that the use of the capital or property to be secured by issue of such stocks, bonds, notes or other evidences of indebtedness is reasonably required for the purposes of such street railway and that such issue is reasonable and proper under all the circumstances. Provided, further, however, that any street railway may issue notes for lawful purposes payable at periods of not more than twelve months without authority from said Commission, and no such notes or any part thereof shall be refunded by any issue of stocks, or bonds or any evidences of indebtedness running for more than twelve months without the consent of the Commission. The Commission shall not permit the issue of and the street railway shall not issue, any notes, bonds or other evidence of indebtedness when the aggregate par value thereof, together with all other like evidences of indebtedness that shall then be outstanding, shall exceed 85% of the fair reasonable value of the property of the street railway. ('21 c. 278 § 7)

4823. Street railways to make application to fix rates—Any street railway or city may apply to the commission at any time to fix and establish hereunder rates of fare to be charged by such street railway for the carrying of passengers within such city and it shall be the duty of the Commission upon application being made by petition as provided by this act to proceed with due diligence to examine and appraise

the street railway property and to hear evidence submitted on behalf of the street railway or the city, and to fix and determine the fair value of such street railway property within such city and to fix and establish rates of fare to be charged by such street railway for carrying passengers within such city under and in accordance with the terms and requirements of this act, which rates established shall yield to the street railway a reasonable return on the fair value of its street railway property within such city as an operating system. In establishing any rate of fare the Commission or the court upon appeal shall consider the fair value of the street railway property of the street railway within such city as an operating system, but no additional value shall be allowed for any franchise of the street railway. The rates which the street railway is authorized to charge and collect under existing franchises shall be and remain the authorized and lawful charge until a rate is fixed by the Commission under the provisions of this Act; provided, however, that the Commission may on application of either any city or street railway establish after notice and hearing, an emergency or temporary rate pending a valuation of property and the establishment of a rate based thereon; provided that no such rate shall continue in force or effect for a longer period than is reasonably necessary to make a valuation of the property and establish a rate based thereon. The Commission may at any time after notice and hearing change or cancel any such emergency rate. Thereafter the Commission may on its own initiative and shall upon the application of the city or the street railway from time to time make such investigation as to any change in property value or cost of service as may be reasonably necessary and after a full hearing as herein provided make such order confirming existing rates or changing rates as may be just, to properly regulate rates of fare hereunder. The Commission or council shall have the right at all times to inspect by itself or by its representatives all the books, records and accounts and street railway property of any street railway in any city. ('21 c. 278 § 8)

167-311, 209+10.

Books and papers only in so far as containing information relevant and material to an inquiry pending before the commission are open to inspection (154-401, 191+1004).

4824. Proceedings commenced by filing petition—Hearing—All proceedings before the Commission shall be commenced by filing with the Commission a petition in writing in such form as the Commission may prescribe briefly setting forth in addition to such other matters as the Commission may by rule or order provide, the matter or matters upon which hearing is desired and requesting a hearing thereon. Any city or street railway affected by any such proceeding shall be a necessary party thereto. Upon the filing of any such petition as aforesaid, the Commission shall fix a place and time for such hearing not less than thirty days after the filing of such petition and shall forthwith give notice of the time and place of such hearing to all interested parties and serve or cause to be served upon each such party a copy of such petition, provided that continuances from time to time shall be granted to either party as the necessities of the case may require; and the city shall have reasonably ample time before the conclusion of any such hearing to make all necessary valuations and adequately prepare its case, as herein provided.

At the time and place so set for said hearing unless continued for cause the Commission shall proceed to hear and determine the matter or matters set forth in such petition. If the petition be to fix the value of street railway property for purchase by the city as provided by this act, the Commission shall after such hearing determine and fix the fair value of the street railway property of any such street railway within the city. If the petition be to fix a rate of fare, the Commission shall after hearing as herein provided fix a rate of fare to be charged by the street railway which will yield only a reasonable return on the fair value of the street railway property of such street railway within the city, as provided by this act.

Whenever any proceeding is instituted before the Commission or Court on appeal, either for rate-making purposes or purchase of the street railway property and before the same is heard, the Council shall examine and appraise, or cause to be examined and appraised, the street railway property of the street railway involved and shall employ and procure the services of a person or persons of known and recognized experience and qualifications in street railway appraisals and rate-making, to appraise such street railway property, investigate the books, accounts and records of such street railway and inform himself as to its operating conditions and expenses, and otherwise fully prepare himself and the city to present to the Commission or the Court all the facts material to the issue before the Commission or Court; and the Council shall employ such other qualified accountants, engineers and others to assist in the preparation of the city's case before the Commission or the court on appeal, as the Council deems advisable.

All the expenses and disbursements of the city in any such proceeding, either before the Commission or court on appeal shall be borne by the street railway company as an operating expense, and shall be paid by the street railway to the city upon presentation to the street railway of vouchers showing the same has been paid or incurred by the city; provided the amount of expenses and disbursements to be so paid shall not exceed in any one year an amount equal to One Hundred and Fifty Dollars per 1000 of population of any such city and the necessary expense incurred by the Commission in such proceedings shall also be paid by the street railway company and treated as an operating expense. ('21 c. 278 § 9)

163-274, 203+972, note under § 4825; 167-311, 209+10.

The right of the city to inspection is limited by the terms of section 9, to the ascertainment of facts material to the issues. 154+401, 191+1004.

Action of commission in fixing rates cannot be assailed unless confiscatory. 4 F. (2d) 543.

4825. Appeals—Any city or street railway may appeal from any order, ruling or decision of the Commission duly made after hearing to the District Court of the county in which the city affected by any such order, ruling or decision is located, and said appeal shall be taken and all proceedings thereunder had as provided for by Sections 4191 to 4199, both inclusive, General Statutes of Minnesota for 1913, so far as the same may be applicable. Upon such appeal the matters involved therein shall be tried and determined by the court without a jury, in the same manner as though originally commenced therein, provided that the findings and order of the Commission shall be received in evidence upon such trial but the Court shall in no event be bound thereby. In case of an appeal involving the value of the property for the purpose of purchase by the city, such appeal shall be heard by three (3) judges, and if there are less than three judges in such district, then the Governor shall designate one or more district judges to sit upon any such case so that the same may be determined by such judges as aforesaid. Upon any

appeal the District Court shall have jurisdiction of and shall try the whole matter in controversy including matters of fact as well as law, and make findings upon all material facts, and in any case involving rates or the value of street railway property shall find and determine the fair value of such property and also what is a reasonable rate of return thereon, and shall affirm, modify or reverse any order or finding of such commission as may be required by law. The judgment or any order of such court shall be certified to said commission and the commission shall thereupon modify, reverse or put into effect its order or findings so as to conform to the judgment, order and findings of such court. Any party to an appeal or other proceeding in the District Court under this act may appeal from the final judgment or from any final order therein in the same cases and manner as in civil actions. The appeal may be filed in the Supreme Court during any term thereof and shall be immediately entered upon the calendar and heard upon such notice as the court may prescribe, as provided for by Section 4200, General Statutes of Minnesota for 1913, as far as the same may be applicable. ('21 c. 278 § 10)

Explanatory note—For G. S. 1913, § 4200, see § 4659, herein

Street railway could sue in Federal court without awaiting appeal to state District court. 47 Sup. Ct. 489.

Hearing before district court on appeal is judicial and not a continuation of the legislative rate making process. 4 F. (2d) 543.

This section is constitutional. 167-311, 209+10.

In a proceeding before it under Laws 1921, c. 278, the Railroad and Warehouse Commission is charged with the duty of fixing reasonable street railway rates. One factor is the fair value of the street railway property. An order made in the course of the proceeding finding the value is not appealable to the district court. An order fixing the rate is appealable, and on such appeal the question of value is before the district court. An appeal from the finding of value does not confer jurisdiction; and upon such appeal the court is without authority to direct the Commission to make a return of the proceedings had before it. 163-274, 203+972.

On appeal from an order of the Railroad and Warehouse Commission, the court may not fix the rate of fare; it only hears and determines upon its own judgment and upon original evidence controversies as to existing facts which bear upon the final question of whether the future rate fixed by the commission is confiscatory or fair. 167-311, 209+10.

4826. Reservations by city—The city hereby reserves the right to authorize any existing or future suburban railway company to jointly use tracks, poles, wires, appliances, power and electric current of said street railway, as now existing or hereafter constructed. Such use shall be subject to such rules and regulations, routing and schedules as may be fixed by mutual agreement between said street railway and such suburban railway company, subject to the approval of the Council. If the parties cannot agree as to said rules of operation, routing and schedules, the same shall be determined by the Council.

The compensation to be paid the street railway by such suburban companies for said joint use shall, if possible, be fixed by mutual agreement between the street railway and the suburban company, subject to the approval of the Council. If they are unable to agree upon such compensation the same shall be fixed and determined in the first instance by the Council subject to appeal to the District Court of the county *in which such city is located as in case of other appeals* provided for in this Act.

Such compensation shall in all cases be just, fair and reasonable compensation for the facilities furnished, representing a sum not less than the reasonable value of the power furnished by the company and a fair share of the cost of maintenance of the tracks and equipment, taking into account the advantages and disadvantages of the entry of said line into the city.

The city expressly reserves the right by ordinance at all times to regulate and control the carrying of freight and express and the operation of freight and express cars by suburban lines over the tracks of the company. ('21 c. 278 § 11)

4827. Franchise not to be issued without certificate from commission—No license, permit or franchise to operate a street railway in any city where a street railway is then operating shall be granted by the Council of any such city unless a certificate of convenience and necessity is first obtained from the Commission after a hearing held thereon. ('21 c. 278 § 12)

4828. Commission to investigate, prescribe system of accounting, etc.—The Commission shall have authority, upon its own motion, to make investigation, prescribe uniform systems of accounting, and prescribe depreciation, written notice of which shall forthwith be given the city with the right in such city to appeal to the District Court as provided by this Act in other cases of appeal, and shall have authority to control the disposition and use of any moneys in the depreciation fund, and to do or perform any act which may in its opinion be necessary or expedient to carry out the provisions of this Act. The street railway shall furnish and file with such Commission annually, accurate and full reports and information of its income and expenditures (in such form as the Commission shall require) and the Commission may require the street railway to make and file with it, any and all other reports, financial or otherwise, that it may deem necessary. ('21 c. 278 § 13)

4829. Rights reserved—Permit may be granted to Minnesota corporations only—The state reserves the right at any future time to modify, amend or repeal this Act or any part thereof, or to cancel or modify any indeterminate permit arising or existing under this Act, or any grant, permit or franchise heretofore or hereafter granted by the State or any city, or otherwise, and nothing in this Act contained shall limit the police power of the State. The street railway shall be subject to all the duties, restrictions or liabilities now or hereafter contained in the General Laws of the state. Notwithstanding anything in this Act to the contrary, an indeterminate permit shall be granted only to a Minnesota corporation, and any assignment, or transfer thereof, shall be to a Minnesota corporation. No such street railway shall be entitled to any damages or compensation in the event of any modification, amendment or repeal of this Act or the cancellation or modification, of any permit, grant or franchise above referred to. ('21 c. 278 § 14)

4830. Conflicting acts repealed—All Acts or parts of Acts conflicting with the provisions of this Act are hereby repealed insofar as they are inconsistent therewith. ('21 c. 278 § 15)

4831. Pooling forbidden—No such carrier shall enter into any agreement or combination with any other carrier for the division or pooling of the business of different and competing carriers, or to divide the aggregate or net proceeds of the earnings of such carriers, or any part thereof, and any such agreement or combination shall be deemed a separate offence for each day of its continuance. (2011) [4341]

121-498, 142+7.

4832. Public schedule of rates—Every such company shall keep at every station or depot of its road, convenient for and open to public inspection, schedules printed in large type, showing all classifications, rates, fares and charges for transportation of freight and

passengers in force at the time upon its road. Such schedule shall plainly state the places between which persons and property will be carried, shall show the classification of freight, a distance tariff, a table of distances between stations, and shall state, separately, the terminal charges, and any rules or regulations in any way affecting the aggregate of such rates, fares and charges. And every such company shall keep posted in a conspicuous place, at every such station, accessible to shippers, notice that such schedules are so kept thereat. (R. L. § 2012, amended '07 c. 377 § 1) [4342]

121–498, 142+7; 130–275, 153+611.
143–93, 173+179; 143–166, 173+419.

4833. Change in schedule—No change in the classification shall be made, and no change shall be made in the rates, fares and charges, which have been established and published as aforesaid, by any common carrier, in compliance with § 4834, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedules then in force, and the time when the changed schedules will 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 no change shall be made in any schedule of rates or schedule of joint rates which has been in effect for sixty days, so as to raise the rates for transportation of grain, lumber, coal or live stock, either by change of rates or of classification, except upon the written order of the commission allowing such change, made upon hearing and such notice to shippers as the commission shall direct. Any company violating any provision of this section shall forfeit to the state one hundred dollars for each day such violation shall continue. (2013) [4343]

143–166, 173+419.

4834. Schedules to be filed—Every railroad company shall file with the commission copies of such schedules, and shall promptly notify the commission of all proposed changes therein. Every such company shall also file with the commission copies of all its traffic agreements or arrangements with other carriers. Copies of all joint schedules of rates, fares or classifications shall also be filed with the commission and be made public in the same manner as hereinbefore provided for the publication of tariffs. (2014) [4344]

136–420, 162+519; 143–93, 173+179; 143–166, 173+419.

4835
242nw 287

4835. Unlawful charges—No such carrier shall charge, demand, collect or receive for any service a greater or less sum than that fixed in its published schedules. (2015) [4345]

121–498, 142+7.

4836. Switching charges—There shall be but one terminal charge for switching or transferring any car within any one municipality. If it is necessary that any car in such transfer pass over the tracks of more than one railroad within such limits, the company first so transferring such car shall receive the entire charge therefor, and shall be liable to each company doing subsequent switching thereof for its just share of such charge, subject to the rules adopted by the commission. Any disagreement as to such division shall be finally determined by the commission. (2016) [4346]

Commission, within its province, in order abolishing switching charge, and same was not unlawful or unreasonable (137–10, 162+689; 143–166, 173+419)

4837. Long and short haul—No carrier shall charge or receive any greater compensation for the transportation of passengers, or of like kind or class and quantity of property, for a shorter than for a longer distance over the same line, the shorter being included within the longer distance; but this shall not be so construed as to authorize any carrier to charge or receive as great compensation for a shorter as for a longer distance; but upon application to the commission such carrier, in special cases, after investigation by the commission may be authorized to charge less for longer than for shorter distances, for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of this section. No carrier shall charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line in the same general direction, or from the same original point of departure, or to the same point of arrival; but this shall not be construed so as to authorize any carrier to charge as high a rate per ton per mile for a longer as for a shorter distance. (2017) [4347]

128–29, 150+174. Excess freight charges paid, barred by statute of limitations, are not recoverable under Federal Transportation Act (194+9).

The enactment by Congress of section 206 (f) of the Federal Transportation Act of Feb. 28, 1920, [Mason's Code Title 49], did not have the effect of reviving causes of action which had theretofore become barred by the statute of limitations of this state. 156–20, 194+9.

Suit not maintainable for removal of discrimination resulting from disparity between rates established by federal and state authority. 210+399.

4838. Railroad commission authorized given authority to adjust railroad rates to protect Minnesota industries—If any railway corporation shall charge, collect or receive for the transportation of freight of any description upon its railroad for any distance within this state, a greater amount of freight, toll or compensation than is at the same time charged, collected or received for the transportation of like quantity of freight of the same class over a greater distance of the same railway; or if it shall charge, collect or receive at any point upon its road a higher rate of freight, toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any other point upon the same line of railway; or if it shall charge, collect or receive for transportation of any freight of any description over its railway a greater amount as freight, toll or compensation than shall at the same time be charged, collected or received by it for the transportation of a like quantity of freight of the same class being transported over any portion of the same railway of equal distance; or if it shall charge, collect or receive from any person a higher or greater amount of freight, toll or compensation than it shall at the same time charge, collect or receive from any other person for receiving, handling or delivering freight, of the same class and like quantity at the same point upon its railway; or if it shall charge, collect or receive from any person for the transportation of any freight upon its railway a higher or greater rate of freight, toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point over equal distance of the same railway; or if it shall charge, collect or receive from any person for the use and transporta-

tion of any railway car or cars upon its railroad for any distance, a greater amount of freight, toll or compensation than is at the same time charged, collected or received from any other person for the use and transportation of any railway car of the same class or number, for a like purpose, being transported over a greater distance of the same railway; or if it shall charge, collect or receive from any person for the use and transportation of any railway car or cars upon its railway, a higher or greater compensation in the aggregate than it shall, at the same time, charge, collect or receive from any other person for the use and transportation of any railway car or cars of the same class for a like purpose, being transported from the same original point, over an equal distance of the same railway, such railway corporation shall be deemed guilty of unjust discrimination which is hereby prohibited and declared to be unlawful, and all such are hereby declared to be discriminating, unjust and unreasonable rates, charges, collections and receipts, and all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be received as prima facie evidence of the violation of the provisions of this act, and it shall not be sufficient excuse of justification thereof on the part of said railway corporation that the station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such freight or for the use and transportation of such railway car the greater distance than for the shorter distance, is a station or point at which there exists competition with another railway or other transportation lines; provided, however, where two or more railroads run into a city or village, one having a shorter mileage than the other from a given point the Railroad and Warehouse Commission may permit the railroad or railroads having the longer mileage to meet the rate made by the shortest line at such city or village; and provided further, where an industry now is, or may hereafter be, located within the State of Minnesota, and within a radius of five miles from a similar industry without the State of Minnesota, the Railroad and Warehouse Commission may permit the railroad serving the industry within the State of Minnesota to meet the rate established and charged by the railroad serving the industry located as aforesaid without the State of Minnesota. ('13 c. 90 § 1, amended '19 c. 235 § 1) [4348]

Cashman Act applied to movement of cars and not to switching or like movements within a shipping point (130–273, 153+610). Distance tariff act, and order of commission thereunder, relating to two connecting lines of road (133–414, 165+869).

210+399, see note under § 4837.

Speculative benefits. 160–506, 200+808.

4839. Other evidence not excluded—Application to all railways—The provisions of this act shall not be construed so as to exclude other evidence than as herein provided, tending to show any unjust discrimination in freight rates and the provisions thereof shall apply to any railway, the branches thereof, and any road or roads which any railway corporation has a right, license or permission to use, operate or control within this state. ('13 c. 90 § 2) [4349]

4840. Rates per 100 pounds, per ton, per car, etc., in like class, to be the same in proportion—No such railway company shall charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for several cars of a like class of freight over the same railway, for the same distance; nor charge, collect, demand or receive more for transporting a ton of freight than it charges, collects, demands or receives per ton for several tons of freight under a carload of a like class over the same railway for the same distance; nor charge, collect, demand or receive more for transporting a hundred pounds of freight than it charges, collects, demands or receives per hundred for several hundred pounds of freight, under a ton, of a like class, over the same railway, for the same distance; and all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be received as prima facie evidence of the violation of the provisions of this act. ('13 c. 90 § 3) [4350]

4841. Application of act—Terms defined—The provisions of this act shall apply to the transportation of property wholly within this state and shall apply to all railroad corporations and common carriers engaged in this state in the transportation of property by railroad therein and to the shipment of property made from any point within the state to any other point within the state over or upon any railroad therein. The term railroad and railway, as used in this chapter, shall include all bridges and ferries used or operated in connection with any railroad, and also all the roads in use by any corporation, receiver, trustee or other person operating a railroad whether owned or operated under contract, agreement, lease or otherwise; and the term transportation shall include all instrumentalities of shipment or carriages, and the term railway corporation shall mean all corporations, companies or individuals owning or operating any railroad in whole or in part in this state; and the provisions of this chapter shall apply to all persons, firms and companies and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any line of railway in this state, street railways excepted, the same as to railroad corporations herein mentioned. Provided, that nothing in this act shall apply to the carriage, storage or handling of property free or at reduced rates for the United States, for this state, for municipal governments therein, or for charitable purposes or to and from fairs and expositions held under the authority of county or state or municipality therein for exhibition thereat. ('13 c. 90 § 4) [4351]

4842. Powers of commission not abridged, etc.—Nothing in this act contained shall be construed as limiting or abridging the powers now vested by law in the board of Railroad and Warehouse Commissioners of the State of Minnesota, except that the said board of Railroad and Warehouse Commissioners shall not have power to promulgate any rule or establish any rate or rates in conflict with or in violation of the provisions of this act, and nothing in this act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions thereof are in addition to such remedies. ('13 c. 90 § 5) [4352]

130–273, 153+610; 133–414, 165+869.

33 4843 — 233

4843. Railroad commission to fix rates for switching, drayage and feeding of stock—The Board of Railroad and Warehouse Commission of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedule shall include the classification of such rates, and it shall be the duty of said commission to make such classification, and said schedules so made by said

commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all the courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. The commission may fix different schedules of class or commodity rates for railroads of the same class. The maximum rates shall not apply to switching or drayage rates. The commission may define switching and drayage service to apply to the movement of traffic within and between points, and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation, and in the making of said rates the commission shall not be governed entirely by the distance principle established by this act. The commission may fix rates for feeding cattle which shall apply to out movement from terminal markets. The commission may unite two or more stations or commercial centers into a common rate point, and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point and any or all other points in the state. The distances so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points. ('13 c. 90 § 6, amended '15 c. 367 § 1) [4353]

Duluth and Fond du Lac constituting a single industrial center, and the railroad and the public acquiescing in a switching charge, the distance tariff act does not apply (138–449, 165+270; 130–272, 153+610).

'15 c. 367 is not an attempt to delegate legislative power; an order of commission establishing common point is valid (134–222, 158+984; 139–55, 165+869).

4844. Classification of railroads as to gross earnings—The Board of Railroad and Warehouse Commission shall have and are hereby given and vested with power and it shall be their duty to classify all railroads in this state according to the gross amount of their several annual earnings, within this state, per mile for the preceding year as follows:

"Class A shall include those whose gross annual earnings per mile shall be four thousand dollars ($4,000.00) or more."

"Class B shall include those whose gross annual earnings per mile shall be three thousand dollars ($3,000.00), or any sum in excess thereof less than four thousand dollars ($4,000.00)."

"Class C shall include those whose gross annual earnings per mile shall be less than three thousand dollars ($3,000.00), and shall have power to and may fix a higher maximum charge by the railroad corporations included in class C than those included in class B and a higher maximum charge by the railroad corporations included in class B than those included in class A." ('13 c. 90 § 7) [4354]

4845. Shipment over two or more lines—Reasonable rates—When shipments of freight to be transported between different points within the state are required by two or more railway companies operating connecting lines, such railway company shall transport the same at reasonable through rates not greater than the maximum rates allowed by law, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road. ('13 c. 90 § 8) [4355]

4846. Penalty for violation—Any person or corporation guilty of violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00) for the first offense, and for each subsequent offense not less than five thousand dollars ($5,000.00) nor more than ten thousand dollars ($10,000.00), and shall pay in addition to said fine so imposed the costs of prosecution. ('13 c. 90 § 9) [4356]

4847. Prosecution, in what counties—Duty of county attorney, etc.—Any prosecution under this act may be instituted in any county of this state through or into which the line of any railway so offending against the provisions of this act may extend, and it shall be, and hereby is made the duty of the county attorney of any such county to appear therein and conduct such prosecution, and if so requested by said county attorney, the attorney general of the State of Minnesota shall assist in the prosecution thereof. ('13 c. 90 § 10) [4357]

130–273, 153+610; 133–415, 165+869.

4848. Joint rates—Upon the demand of any person interested, any railroad companies shall establish reasonable joint through rates between points on their respective lines within this state. No such company shall be required to send its cars over the line of another company when its own lines or connections reach the point to be reached on such other road, but the charge for transportation between any two points shall not exceed the established through joint rate between such points. (2018) [4358]

4849. Transfer facilities—When required by the Railroad and Warehouse Commission, after notice and where it is reasonably practicable, all such railroad companies at all points of intersection and crossing of different railroads, and at any place where two railroads are not more than one-half mile apart, and at all terminals, shall provide ample and equal facilities by track connection, use of each other's tracks, passenger and freight platforms and depots, warehouses, docks over which general merchandise is handled and forwarded, and other necessary appliances and conveniences for the transfer, forwarding and handling of general merchandise and parcel freight between such railroads and between such railroads and such docks, warehouses and vessels at such docks. They shall not discriminate in their charges, rates or service between such connecting lines or on freight or passengers coming over or transferred from them. No carrier shall be required to furnish to another carrier its tracks, warehouses, depots, equipment or terminal facilities without reasonable compensation. Carriers shall be entitled to reasonable compensation for service performed over transfer tracks, and this act shall apply where actions and proceedings are now pending. (R. L. § 2019, amended '07 c. 27; '13 c. 429 § 1) [4359]

71–519, 74+893; 88–448, 93+112; 40–353, 42+21; 179 U. S. 287, 21 Sup. Ct. 115, 45 L. Ed. 194. See 92–374, 378, 100+95.

Charges for line haul; switching; discrimination (134–169, 158+817).

Held that connecting switch does not constitute an extension of either line of road within the meaning of Interstate Commerce Act, § 1, subd. 18. 167–174, 208+809. (Mason's Code, 49:1.)

An order of the Railroad and Warehouse Commission requiring reciprocal connecting switch at the intersection of two interstate railroads to facitate the transfer of carlot shipments, held not to impede or regulate interstate traffic, and to be lawful and reasonable. 167–174, 208+809.

An order of the Railroad and Warehouse Commission requiring reciprocal connecting switch at the intersection of two interstate railroads to facilitate the transfer of carlot shipments, held not to impede or regulate interstate traffic, and to be lawful and reasonable. 213+534.

Held that connecting switch does not constitute an extension of either line of road within the meaning of

Interstate Commerce Act. § 1, subd 18, as added by Act May 29, 1917, and amended by Act Feb. 28, 1920, § 402 (*Mason's Code, 49:1*). 213+534.

4850. Adjustment of costs of transfer—Each such company shall pay its proportionate share for the building and maintenance of tracks and switches necessary for such transfer facilities. If such companies cannot agree upon such proportion, either company may apply to the commission to determine the same. (2020) [4360]

4851. Transfer of carload shipments—Freight in carload lots shall be transferred without unloading from the cars containing the same, unless such unloading and reloading shall be done without charge to the shipper or receiver, under such contract arrangements as the connecting companies may make, or under rules prescribed by the commission. (2021) [4361]
92–20, 23, 99+365.

4852. Smaller shipments—Less than carload lots shall be transferred at cost, and the charge for such transfer shall be included in the joint rate. All railroad companies shall give the same facilities to local or state as to interstate traffic. (2022) [4362]

4853. Railroads and street railways in connection—Any railroad or railway corporation in this state may make such contracts for the carriage of passengers, express and freight, with any street railway company operating local street railways within this state as will enable and permit the operation of railroads and street railways in connection with each other, or in such manner as shall be deemed most beneficial to their and public interests. Provided, that before any railroad or railway shall operate upon any street railway in any city, and before any street railway in any city shall haul or transport over its lines in such city any car, equipment or motive power of any railroad or railway the contract shall be approved by a vote of not less than three-fourths of all the members of the common council or other legislative body of such city and a copy thereof filed with the clerk or recorder of such city, and that the cars, equipment and motive power used by the said railroad shall be substantially similar to the cars, equipment and motive power used by the street railways contracted with, and such railroad shall, while operating upon street railway tracks, comply with the ordinances and laws applicable to such street railways. Any such railroad companies may grant by lease or contract to street railways the right to use railroad tracks for the operation of street railway cars thereon. ('09 c. 482 § 1) [4363]
Section 2 repeals inconsistent acts, etc.

4854. Division of cars among applicants—Whenever any railroad company shall be unable to furnish enough cars at any station or sidetrack to supply all persons demanding them for shipment of freight, such cars as the company can furnish each day shall be divided among the applicants equally until each shipper has received at least one car, after which the balance shall be divided ratably in proportion to the amount of such freight which each shipper shall have ready for and awaiting shipment as compared with the total amount of such freight which is ready for and awaiting shipment at such station or sidetrack. During the continuance of such car shortage the supply to which each shipper is entitled during any day shall be based on his affidavit filed with the local agent of such railroad company on any day stating the total amount of freight which such shipper has ready for and awaiting shipment on such railroad. In the event of any conflict arising between the provisions of this section and rules or regulations established pursuant to an act of Congress, the Railroad and Warehouse Commission is authorized to prescribe such reasonable modifications of the rules provided herein as may be necessary to remove such conflict, which shall become effective notwithstanding the provisions of this section. (R. L. '05 § 2023; G. S. '13 § 4364, amended '23 c. 198 § 1)

4855. Railroad and Warehouse Commission to regulate distribution of cars—The Railroad and Warehouse Commission of the State of Minnesota is hereby given full power and authority, and it is hereby made its duty, after having given reasonable notice and upon hearing being had, to make, publish and enforce from time to time such reasonable and just rules and regulations for the distribution of cars at stations for the transportation of livestock, grain and other farm products, among the shippers, whether located upon a certain railroad line or lines, or customarily dependent upon such railroad line for their car supply. ('21 c. 307 § 1)

4856. Carriers to apportion cars—During any period when the supply of cars available for such service does not meet the requirements of the shippers, it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such shippers to the extent that cars are available, and to count each and every car furnished to or used by such shippers against such shippers. ('21 c. 307 § 2)

4857. Violations and penalties—Failure or refusal to do so shall be unlawful, and in respect to each car not so counted shall be deemed a separate offense, and the carrier, receiver or operating trustee so failing or refusing, upon conviction, shall be fined $100.00 for each offense; provided, however, that when necessity is found to exist of which the commission is advised, either by its own investigation, which it may make at any time, or by hearing on complaint of any shipper or railroad company, the commission may, by special order, require the railroad company on whose railroad such necessity is found to exist, to depart to the extent provided in such order, from the application of this act or any rule or rules formulated and established under the same. ('21 c. 307 § 3)

4858. Duty to furnish cars—Application—Reasonable time—Penalty—It shall be the duty of any railroad company to furnish suitable car or cars to every 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 same at any station or public switch 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 connected; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a like service. When the owner, manager or shipper of any freight of any kind shall make application in writing to any superintendent, agent or other person in charge of transportation of any railroad company, at any point that cars are desired in or upon which to ship any freight, it shall be the duty of such railroad company to supply the number of cars so required at the point indicated in the application within a reasonable time thereafter, not to exceed forty-eight hours at terminal points and seventy-two hours at intermediate points, from the receipt of such application, Sundays and legal holidays

excepted, and shall supply such cars to the person or persons so applying therefor in the order in which such applications are made, without giving preference to any person; provided, that if the application be for more than three cars, the railroad company may have one additional day in which to supply each additional car so ordered. Said application for cars shall be in writing, stating the number of cars wanted; the time and place desired, and said application shall state the character of freight and its final destination. To facilitate the making of the application in writing, every railroad company doing business in this state shall provide suitable blanks for that purpose to be kept at all freight offices; and it shall be the duty of every such railroad company, upon the request of the applicant, to furnish him a duplicate of such application. When cars are applied for under the provisions of this chapter, if they are not furnished within the time herein stated, the railroad company so failing to furnish them shall forfeit to the party or parties so applying for them the sum of one dollar per day for each car failed to be furnished, to be recovered in any court of competent jurisdiction, together with all damages such applicant may have sustained. ('07 c. 23 § 1)

Congress has so taken possession of the subject of delivery of railroad cars for interstate commerce under Act June 29, 1906, as to invalidate, when applied to cars demanded for interstate commerce, provisions of 1907 c. 23 requiring railroad companies to furnish freight cars on demand under penalty (226 U. S. 426, 33 Sup. Ct. 174, 57 L. Ed.—, reversing 110-25, 124+819).

Voluntary contract between carrier and shipper as to furnishing cars need not be in writing (112-112, 127+436. See, also, 114-531, 131+1135).

The act does not diminish common-law rights, but gives additional rights to shippers (117-495, 136+295).

4859. Loaded cars, when removed—Penalty—Any railroad company mentioned in section 1 of this act, upon receipt of notice from a shipper that one or more cars have been loaded by such shipper and are ready for delivery to such company at the place of loading thereof, to be carried on the road of such company towards the destination thereof, shall remove such car or cars from such loading point and forward the same towards destination within twenty-four hours after receiving such notice, Sunday and legal holidays excepted; and for every delay of twenty-four hours, or fraction thereof, after the expiration of the period therein allowed for the removal thereof, such railroad company shall forfeit to such shipper the sum of one dollar for each and every car, not so removed within the period herein provided, together with all damages he may have sustained by failure so to remove. ('07 c. 23 § 2) [4366]

4860. Duty of connecting railroad—Penalty—Any railroad company mentioned in section 1 of this act which shall receive from a connecting railroad company one or more cars of freight consigned to any point on or beyond its line, shall within twenty-four hours after such car or cars are offered to it, or are placed on its transfer or other track, forward said car or cars over its railroad toward destination; and for every delay of twenty-four hours, or fraction thereof, on the part of said railroad company in forwarding said car or cars beyond said allowed period of twenty-four hours, said railroad company shall forfeit to the party injured by such delay the sum of one dollar for each and every car so received and not forwarded upon its line within the time above allowed, together with all damages he may have sustained. ('07 c. 23 § 3) [4367]

4861. Starting car — Average speed — Penalty—When any railroad company in this state shall have received from any shipper, or from a connecting railroad, for shipment over its railroad one or more cars of freight, it shall be the duty of such company receiving such car or cars of freight within twenty-four hours thereafter to start the same forward from the place of shipment toward the place of destination, and after being started forward, such car or cars of freight shall be continued in transit toward the destination thereof at a rate of not less than an average speed of fifty miles per day of twenty-four hours; and upon the failure of such railroad company to transport such car or cars at the speed herein indicated, such railroad company shall forfeit to the consignee thereof one dollar for each and every car for each twenty-four hours, or fraction thereof, consumed in the transportation of said car or cars in excess of the time herein prescribed; and, in ascertaining the time consumed in the shipment of such car or cars, the time shall begin to run twenty-four hours after the date of the bill of lading or receipt given for said car or cars by said railroad company, which bill of lading or receipt shall be received by the courts of this state as prima facie evidence of the time when said car or cars were received by such company. ('07 c. 23 § 4) [4368]

4862. Delivery to consignee—Penalty—It shall be the duty of every railroad company mentioned in section 1 of this act to deliver at the usual place of unloading by the consignee all cars of freight hauled by it for delivery to said consignee within forty-eight hours, Sundays and legal holidays excepted, after the same shall have reached its point of destination; and for each and every delay of twenty-four hours, or fraction thereof, in not so delivering the same after the expiration of the time herein prescribed, said railroad company shall forfeit the sum of one dollar for each and every car not so delivered within the time herein allowed. ('07 c. 23 § 5) [4369]

Section 1 is § 4858, herein.

4863. Time for loading—Penalty—It shall be the duty of any shipper in compliance with whose request any railroad company mentioned in section 1 of this act, has placed one or more cars at the usual loading point of said shipper, to fully complete the loading thereof, ready for re-delivery to said railroad company within forty-eight hours after the same shall have been placed at such loading point, Sundays and legal holidays excepted, which full period for loading is allowed the shipper free from demurrage charges; and for every twenty-four hours, or fraction thereof, of delay beyond said period in so loading said car or cars, such shipper shall become indebted, and on demand shall pay, to said railroad company the sum of one dollar for each and every car so placed and not loaded and ready for re-delivery within the time allowed herein. ('07 c. 23 § 6) [4370]

4864. Time for unloading—Penalty—It shall be the duty of the consignee of each and every car delivered by any railroad company mentioned in section 1 of this act, at the usual place of unloading by the consignee to fully unload such car or cars within 72 hours for bituminous coal, bulk lime, fruit, or vegetables, or lumber shipments, and 48 hours for other shipments, from the time the same shall be placed at the usual unloading point of the consignee, which full periods are allowed the consignee for unloading free from demurrage charges; and for each and every delay of 24 hours, or fraction thereof, on the part of the consignee in unloading such car or cars beyond the said above periods, respectively, the consignee shall become indebted, and on demand, shall pay to the railroad company delivering such car or cars the sum of

one dollar for each and every car not so unloaded within the time herein prescribed. ('07 c. 23 § 7) [4371]

Section 1 is § 4858, herein.

4865 177m 494 225nw 432 See 4878

4865. Bill of lading—Evidence—Penalty—For all shipments of freight in carload lots on the railroads mentioned in section 1 of this act, proper bills of lading showing the date of delivery to such railroad company, the weights and the marks and numbers of each car so shipped, shall be issued by the railroad company and delivered to the shipper at the time of receiving such car or cars; which bill of lading when offered by any party in any cause pending in any court in this state, shall be received and admitted in evidence by such court as prima facie evidence of the time when delivery of such car or cars was made by the consignor to such railroad company and of the weights and the contents thereof when so delivered to such company, and such railroad company shall be subject to a penalty of one hundred dollars for its neglect or refusal to furnish such shippers such bill of lading for each car so received by it. ('07 c. 23 § 8) [4372]

Section 1 is § 4858, herein.

158–44, 196+933.

Interstate commerce. 158–115, 196+938.

In an action to recover the value of wheat alleged to have been lost in transit, plaintiff made a prima facie case by introducing in evidence the bill of lading, the weighmaster's certificate, and proof of the market price of the wheat. 163–371, 204+47.

Is merely declaratory of the general rule that a bill of lading is prima facie evidence of the receipt by the carrier of the goods described therein, and in this respect the statute is applicable to interstate as well as intrastate shipments. 163–371, 204+47.

Bill of lading and proof of delivery of a less amount, being in evidence, carrier has burden of proof to combat presumption of negligence (137–217, 163+164).

4866. Notice of arrival—Railroad companies shall, within twenty-four hours after arrival of any car or cars, give notice to the consignee of the arrival of such car or cars, together with the amount of freight charges due thereon. The notice as referred to in this act may be either actual or constructive. When the consignee or agent is personally served with notice of arrival of car or cars at or before 6 p. m. of any day, free time shall begin at 7 a. m. of the day after such notice shall have been given. Constructive notice consists of posting notice by mail to consignee. When this method of notice is adopted there shall be 24 hours additional free time. ('07 c. 23 § 9) [4373]

4867. Damages not offset by demurrage—Live stock—The payment by said railroad company of demurrage provided in this act shall in no way invalidate or offset any claim any shipper or consignee may have or make for damages occasioned by delay on the part of such railroad company, or other cause, but shall be a further remedy and in addition to any already existing. Nor shall anything herein contained be held to lessen the duties of any common carrier in the shipment of live stock or other perishable property. ('07 c. 23 § 10) [4374]

(117–495, 136+295).

4868. Strikes, accidents, etc.—The period during which the movement of freight or furnishing cars is suspended on account of strikes, public calamities, accident, or any cause not within the power of the railroad company to prevent, or during which the loading or unloading of freight by shipper or consignee is delayed by reason of inclement weather which would make loading or unloading impracticable, or any cause not in the power of said shipper or consignee to prevent, shall be added to the free time allowed in this act and counted as additional free time. ('07 c. 23 § 11) [4375]

4869. Reports to commission—It shall be the duty of every railroad company operating within the State of Minnesota to make at the end of each month a sworn detailed report of all penalties paid and collected as demurrage during the previous month, showing therein to whom paid or from whom received; this report shall be filed with the Railroad and Warehouse Commission. ('07 c. 23 § 12) [4376]

4870. Actions — Attorney's fee — When suit is brought to collect any of the damages, forfeitures or demurrage charges, provided for in this act, said suit may be brought in any court in this state having jurisdiction of the subject matter and parties under the then existing cause; and if the plaintiff therein recover judgment, such plaintiff shall also recover a reasonable attorney's fee for bringing such suit, to be taxed as costs in other cases and paid as other costs by defendant in such suit. ('07 c. 23 § 13) [4377]

4871. Empty cars kept closed—To prevent the spread of noxious weeds, every such company shall keep the doors of all empty freight cars closed during transit on any of its lines in this state. Every such company violating the provisions of this section shall forfeit to the state not less than ten dollars nor more than twenty-five dollars for each offense. (2024) [4378]

4872 31—215

4872. Cars for and rates of transportation of live stock—Penalty—Every such company shall furnish at proper points designated by it, suitable cars for the transportation of live stock of all kinds, and shall transport the same at a rate not to exceed the highest rate and minimum weight charged by such company for any kind of stock in such car, except that the cattle rate and minimum weight will apply when by the use of same a lower charge results, and the cattle rate will apply when the actual weight exceeds the cattle minimum. Stock of different kinds shall be carried in the same car, at the option of the shipper, and the Railroad and Warehouse Commission is hereby authorized to provide for the partitioning of cars on such terms and conditions as it deems proper. Any such company failing to comply with any provision of this section shall forfeit to the party aggrieved not less than $100, nor more than $500. (R. L. '05, § 2025, G. S. '13, § 4379; amended '15, c. 254; '19, c. 301, § 1; '27, c. 76)

85–337, 88+1001.

4873. Transportation rates for live stock in certain cars—Every car containing a double deck extending not to exceed ten feet of its length in which live stock is transported by any railway company in this state shall be considered as and have the same transportation rates applied to live stock shipped therein as a single deck car. ('23 c. 303 § 1)

4874. Transportation of shippers, etc.—Every such company receiving for shipment live stock by the carload shall, without additional charge transport, going, in a caboose or other suitable car, and returning, by first class passage, with each single, or with the first such carload, one person to care for such stock, and one person in addition for each four additional carloads shipped at the same time. Any company failing to comply with the provisions of this section shall be liable to the shipper for all damages sustained by him by reason of such failure, and any judgment recovered for such damages shall include a reasonable attorney's fee. (R. L. '05 § 2026, amended '09 c. 380 § 1; '21 c. 311 § 1) [4380]

4875. Live stock at terminal—Time for delivery at stock yards and unloading—That all live stock arriving at any terminal over any line of railroad in this state, which is billed to any stock yard within twenty miles of said terminal where live stock is bought, sold or transferred, shall be delivered to chutes of such stock yard within five hours after its arrival at such terminal unless prevented by an act of God, and that all live stock arriving at any terminal over any line of railroad in this state which is billed to any stock yard within ten miles of said terminal where live stock is bought, sold or transferred, shall be delivered to chutes of said stock yard within three hours after its arrival at such terminal unless prevented by an act of God. ('13 c. 411 § 1; amended '17 c. 378 § 1; '19 c. 322; '23 c. 124 § 1) [4381]

4876. Penalty for violation—That any carrier or carriers failing to comply with the provisions of this act, shall forfeit and pay to the State of Minnesota, the sum of fifty dollars ($50.00) for each such failure, to be recovered in a civil action brought by the attorney general. If two or more carriers are involved in the movement of such live stock, they may be joined in one action and judgment recovered against them all, unless any such carrier shall establish to the court that the cause of such failure was not its fault. The proof by the state that such stock was not delivered in time shall be prima facie evidence that all the carriers were liable. ('13 c. 411 § 2) [4382]

4877. Intrastate shipments—This act shall apply only to intrastate shipments. ('13 c. 411 § 3) [4383]

4878
177m 494
225nw 432
See 4865

4878. Damage to live stock—Notice of claim—In any action hereafter brought in any court of this state against one or more common carriers by any owner, shipper or consignee of any shipment of live stock hereafter made, to recover damages for loss of or injury to any such live stock in transit, wherein the answer of the defendant or defendants shall set up the defense that the shipper, owner or consignee of said live stock failed or neglected to make or give written or verbal notice or claim of any kind or form to any agent of any carrier or to any carrier which may have participated in the transportation of said live stock, within any specified or particular time less than four months after the happening of such loss, injury or damage, as provided by the terms of any shipping contract, bill of lading or other agreement relating to such shipment, it shall be a sufficient compliance with any such requirement or stipulation in any such shipping contract, bill of lading or other agreement, that a written notice or claim for such loss, injury or damage was made or given by such shipper, consignee or owner to any general or acting freight agent, claim agent or ticket agent of any one of said carriers within sixty days after the happening of said loss, injury or damage. ('09 c. 467 § 1) [4384]

4879. Caboose cars—It shall be unlawful for any person, corporation or company operating any railroad in the State of Minnesota to require or permit the use of any caboose cars unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door at each end thereof, and with suitable water closets, cupolas, platforms, guard rails, grab irons and steps for the safety of persons in alighting or getting on said caboose cars and said caboose cars shall be equipped with at least two four-wheeled trucks. ('09 c. 382 § 1) [4387]

4880. Penalties for violation—Any person, corporation or company operating any railroad in the State of Minnesota violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable for a penalty of not less than ten dollars nor more than fifty dollars for each offense, and the use of any one caboose car prohibited in section 1 of this act shall constitute a separate offense for every day or part of a day so used, and such penalty shall be recovered in a suit brought in the name of the State of Minnesota in any court having jurisdiction thereof, in any county in or through which such line of railroad may run, by the attorney general of the state, or under his direction, or by the county attorney in any county in or through which such line of railroad may be operated. All fines and penalties recovered by the state under this act shall be paid into the treasury of the State of Minnesota. ('09 c. 382 § 2) [4388]

4881. Railway cars must be cleaned—It shall be the duty of every railway company operating a railroad within this state to cause every railroad car used in the transportation of live stock in this state to be properly and thoroughly cleaned by removing all litter, manure and refuse from such car once in each month between the first day of March and the first day of December of each year. ('21 c. 179 § 1)

4882. Rules and regulations by live stock sanitary board for transportation of live animals and poultry—The state livestock sanitary board is hereby authorized to make reasonable rules and regulations for the cleaning and disinfection of railroad cars used for the transportation of live animals and poultry within the state, and also automobiles, trucks and other vehicles used as public carriers for the transportation of live animals and poultry over the public highways within the state. The said board shall furnish from time to time to each railway company operating a railroad within this state copies of said rules, and shall furnish copies of the rules and regulations relative to the cleaning and disinfection of automobiles, trucks and other vehicles, used as public carriers to persons and companies operating public stock yards within the state, and when deemed necessary by said board to such other public markets as it may from time to time designate. It is hereby made the duty of every such railway company and all owners of automobiles, trucks and other vehicles as public carriers used for the transportation of live animals and poultry over public highways to obey each and every one of said rules. ('21, c. 179, § 2; amended '27, c. 182)

4883. Violation a misdemeanor—Penalty—Any railway company violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than $50 nor more than $500. ('21 c. 179 § 3)

4884. Law repealed—Chapter 41, General Laws 1915, is hereby repealed. ('21 c. 179 § 4)

4885. Time allowed for loading produce—Every such company shall allow a shipper thirty-six hours, exclusive of Sundays, without additional charge, in which to load any car ordered for the shipment of grain or other farm produce. (2027) [4389]

4886. Depots and waiting rooms—Every such railroad company shall provide and maintain at all villages and cities upon its lines, depots with suitable waiting rooms for passengers and rooms for storage of freight. In places of four hundred inhabitants or more, such depots shall have separate waiting rooms for men and women, of sufficient size to accommodate all passengers stopping thereat, and not less than fifteen by eighteen feet in size and ten feet in height, properly and comfortably furnished, heated, lighted and ventilated, and in such condition open for the reception of passengers for at least one-half hour before and

after the arrival of each passenger train. (R. L. § 2028, amended '07 c. 54 § 1) [4390]

1907 c. 54 § 1 repeals inconsistent acts, etc.

87–195, 91+465; 193 U. S. 53, 24 Sup. Ct. 396, 48 L. Ed. 614; 118–491, 137+193.

Privileges of a passenger hold only for a reasonable time before train time (123–153, 143+263). Commission has power to determine whether suitable, and if not require construction of a suitable depot (135–19, 159+1089). Order of commission is subject to conformity with municipal fire ordinance as to depot, permitting repairs and prohibiting rebuilding (142–169, 171+312). Order enlarging depot (151–403, 186+797).

A common carrier, in the construction and maintenance of depots and conveniences and facilities therein, is only required to exercise reasonable care for the safety of its passengers, invitees, or licensees. 157–66, 195+538.

An alleged defect in a step of a temporary stairway examined, and held to be so slight and so free from any possibility of tripping, catching, or interfering with persons passing over it that the court rightly held that no charge of negligence could be based thereon. 157–66, 195+538.

4887
177m 136
225nw 94
4651
4657

4887. Certain depots to be kept open—When the annual business from outgoing and incoming traffic at any station amounts to eight thousand dollars or more, *such company shall keep an agent at such station* during the business hours of each business day; and no station shall be abandoned, nor the depot removed, nor an agent withdrawn therefrom without the written consent of the commission. The commission may by written order authorize the withdrawal of such agent at stations where the business is periodical, during such time as there is no business thereat, or the abandonment of any station where the business from outgoing and incoming traffic is less than fifteen hundred dollars for any consecutive three months. (2029) [4391]

Order is presumed valid (123–467, 144+157). Agent service (151–402, 186+797).

4888. Penalty—Any company failing to comply with any of the provisions of §§ 4888, 4889 shall forfeit to the state for each such violation not less than five hundred dollars nor more than one thousand dollars; and each period of thirty days that any such failure shall continue shall be deemed to constitute a separate offense. (2030) [4392]

4889. Railroad and Warehouse Commission to order stations lighted—The Railroad and Warehouse Commission of this state is hereby authorized and empowered, on complaint duly made and after hearing, to order that any railroad company operating within the State of Minnesota shall provide, or cause to be provided, suitable electric lights and lighting in and about every railroad station on its lines in this state, including waiting rooms, offices of employes and station platforms thereof, and they are hereby required to keep and maintain said lighting system in good and proper repair. Provided, in case there is no electric light current or connections within five hundred feet from such stations, then, and in such case, said railroad companies shall provide and maintain in good and proper repair and condition, other suitable lighting in and about such railroad stations and platforms. ('21 c. 244 § 1)

4890. Failure to comply—Penalties—*Any railroad* company maintaining waiting rooms at their stations in this state, who shall fail to comply with the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not exceeding one hundred dollars and costs of prosecution. ('21 c. 244 § 2)

4891. Commission to enforce provisions of act—The Railroad and Warehouse Commission of this state shall have power to enforce the provisions of this act. ('21 c. 244 § 3)

4892. Toilet rooms at stations, etc.—The Railroad and Warehouse Commission of this state is hereby authorized and empowered, on complaint duly made, to order that all railroad companies operating within the State of Minnesota shall provide, or cause to be provided, suitable toilet rooms in, or immediately adjacent to, every railroad station waiting room located on its lines in this state, and they are hereby required to maintain and keep said toilet rooms in a good sanitary condition. Provided, in case there is no water and sewerage system in towns where railroad station waiting rooms are located, which extends to a point not more than three hundred feet distant from such station waiting rooms; then, and in such case, said railroad companies shall provide and maintain, in good sanitary condition, within a reasonable and convenient distance of said station waiting rooms, a suitable closet or privy. ('05 c. 208 § 1, amended '13 c. 495 § 1) [4393]

4893. Penalty for violation—Any railroad com*pany maintaining waiting rooms at their stations in* this state, who shall fail to comply with the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not exceeding one hundred dollars and costs of prosecution. ('05 c. 208 § 2) [4394]

4894. Power of commission—The Railroad and Warehouse Commission of the state shall have power to enforce the provisions of this act. ('05 c. 208 § 3) [4395]

4895. Stations—Name of city or village—Every railway company, telegraph company, express company or other company or corporation doing business as a common carrier which now has, or shall hereafter have or maintain, any station in any city or village within the State of Minnesota shall publish in its printed matter published for the public, and use as the name of such station only, the name of the city or village in which such station is located or by which such city or village is or may be incorporated. ('05 c. 252 § 1) [4396]

4896. Exceptions—Every such railway company, telegraph company, express company or other common carrier is hereby prohibited from using, or continuing to use within the state of Minnesota, a different name for its station from that of the city or village within which such station is located, or which is in use by the local government postoffice, unless there is some village or postoffice on the same division of any railroad in this state the name of which is so similar as to be confusing in the dispatch of train orders. ('05 c. 252 § 2) [4397]

4897. Penalty for violation—Any such railway company, telegraph company, express company or other common carrier failing to comply with the provisions of this act shall forfeit to the city or village where such station is located the sum of one hundred dollars for each day that such failure shall continue. Provided, that before any such company shall be deemed to be in default, the council of the city or village within which such station is located shall notify such company to change the name of such station to the same name as that of such city or village within sixty days after the service of such notice upon such company. ('05 c. 252 § 3) [4398]

4898. Trains to stop at stations—All trains carrying passengers, except through and limited trains not advertised for local business, shall stop at the depot in each city and village, and at other stations at which

such train is advertised to stop, a sufficient time, not less than one minute, to safely discharge and receive passengers. (2031) [4399]

57–385, 59+487 (affirmed, 166 U. S. 427, 17 Sup. Ct. 627, 41 L. Ed. 1064); 67–18, 69+632.

The evidence made it a jury question whether or not plaintiff alighted at the direction or invitation of the conductor, and whether or not giving such direction or invitation was actionable negligence. 159–475, 199+93.

The defense of contributory negligence was for the jury. 159–475, 199+93.

The evidence sustains a finding that the trainmen of the defendant advised or directed the plaintiff, a passenger, to alight from a moving train, assuring him of safety, and that in so doing they were negligent. 161–304, 201+551.

Negligent discharge of passengers (121–511, 141+845). Scope of statute as to one with an implied invitation as a passenger (124–518, 145+746; 128–193, 150+518). Stopping train at station sufficient length of time (130–247, 153+518, 192+495).

4899. Time of arrival of passenger trains—Bulletin—That every corporation, company or person operating a railroad within this state, shall, immediately after the taking effect of this act, cause to be placed in a conspicuous place in each passenger depot of such company, located at any station in this state at which there is a telegraph office, a blackboard of suitable size, upon which such company or person shall cause to be written, at least twenty minutes before the schedule time for the arrival of each passenger train stopping upon such route at such station, the number of the train, the time each train is due and the fact whether such train is on schedule time or not, and if late, how much. But nothing in this act shall be so construed as to compel a railroad company to post the train number, schedule time and lateness of such trains as arrive or depart from such stations aforesaid when there is not a telegraph operator regularly on duty at the schedule time of the arrival of such train. Provided, also, that any passenger train not more than ten minutes late shall be deemed to be on time as to the operation of this act. ('05 c. 287 § 1) [4400]

Section 3 repeals inconsistent acts, etc.

4900. Penalty for violation—For each wilful violation of the provisions of this act in failing to report, or in making a false report, such corporation, company or person, so neglecting or so refusing to comply with the provisions of this act, shall forfeit and pay the sum of twenty-five dollars, together with all taxable costs, to be recovered in a civil action to be prosecuted by the prosecuting attorney of the county in which the neglect or refusal occurs, in the name of the State of Minnesota, which shall be paid over to the county in which such proceedings are had, and shall be a part of the road and bridge fund. ('05 c. 287 § 2) [4401]

4901. Telegraph or telephone operator at depot—Every railroad company operating within this state shall keep at its depot in any city or village of over 500 inhabitants, a competent telegraph or telephone operator, who shall be on duty for [at] least one-half hour before the scheduled time of arrival of any train receiving or discharging passengers at such depot. Such telegraph or telephone operator shall obtain and communicate, upon request of any person, information as to the time of arrival of any delayed train. ('09 c. 173 § 1) [4402]

4902. Duty of commission—It shall be the duty of the Railroad and Warehouse Commission to enforce the provisions of this act. ('09 c. 173 § 2) [4403]

4903. New roads—Notice to commission—Filing of maps, etc.—Every railroad company having constructed any railroad by way of branch or extension or otherwise, before opening the same to public use, shall notify the commission that the same is finished and in a safe condition for operation, and shall file with said commission a map and profile thereof with table of grades, curvatures and mileage, and a statement of other characteristics of such road and an itemized statement showing the actual cost thereof; all of the foregoing to be in such form as the commission shall prescribe and to be attested by the oath of the president or other managing officer, and the chief engineer of the company.

Before the new line is operated as a public road, the commission shall inspect the same, or cause it to be inspected, and furnish the company with a certificate showing the compliance with the foregoing conditions, that the road has been inspected and found to be in safe condition for operation.

Provided, however, that whenever it is found desirable to operate any portion of any new railroad built or any new branch or extension, or otherwise, before completion of the same, the commission may, on application, authorize the operation of such portion thereof pending the completion of the entire road under such terms and conditions as the commission may impose in the interests of the public. (R. L. § 2032, amended '07 c. 260; '13 c. 126 § 1) [4404]

4904. Penalty for non-compliance—Any such carrier failing to comply with the provisions of this act, or with any order of the commission made thereunder, shall forfeit for each day's default, one hundred dollars, to be recovered in a civil action in the name of the state. ('13 c. 126 § 2) [4405]

4905. Stopping trains at crossings—Every company *operating a railroad shall cause all trains on* such railroad to come to a full stop not less than ten nor more than sixty rods before reaching any railroad junction or crossing at grade, unless such stoppage is rendered unnecessary by an interlocking plant or other device approved by the written order of the commission, or by the court upon appeal. Any company violating any of the provisions of this section shall forfeit not less than twenty dollars nor more than one hundred dollars, to be recovered in a civil action before any justice of the peace of the county in which such violation occurs, upon the complaint of any person, one-half to go to the complainant, and one-half to the school fund of the county. (2033) [4406]

67–18, 69+632; 85–387, 88+994; 100–361, 111+388.

What are "junctions" (176 Fed. 237, 100 C. C. A. 41).

No inter-locking device at junction, commission has right to order trains to stop (124–534, 144+771).

4906. Transfer of passengers—Trains shall stop at all junctions and railroad crossings where transfer of passengers is required as at stations, and, as far as can reasonably be done, companies shall so adjust their time tables as to facilitate such transfer. In case trains on intersecting roads are due at any such junction or crossing at practically the same time, within two minutes of each other, the train first arriving shall wait for the other train five minutes, unless it is known that such train cannot arrive within said time. Any superintendent, engineer, conductor or other officer or employe of any railroad company who shall violate any of the provisions of this section, or cause a violation thereof, shall be guilty of a gross misdemeanor. (2034) [4407]

Order of commission requiring train stop at old depot and at Union station on flag (137–345, 164+368; 137–338, 163+662).

4907. Toilet rooms in cars—Every such company shall provide, in all cars and cabooses used for carrying passengers or other persons not employes of such

company, suitable toilet rooms for the use of such persons. Any such company failing to comply with the provisions of this section shall forfeit to the state one hundred dollars for each day that such default shall continue. (2035) [4408]

4908. Sanitary toilet facilities required on interurban cars—The Railroad and Warehouse Commission may, upon a hearing, order the installation of sanitary toilet facilities in any interurban and suburban car operating in regular service under its jurisdiction, and failure of any company or corporation owning and operating such car to comply with such order, shall subject it to a fine of not less than one hundred dollars ($100.00).

This act shall not apply to cars running between the cities of St. Paul and Minneapolis, nor to any such interurban or suburban cars operated over a distance of less than eighteen miles beyond the city limits of either of said cities. ('17 c. 449 § 1)

4909. Right to regulate given to local authorities—The authorities of any municipality through which such cars are or may be operated shall have the right to regulate the closing of such closet within such municipalities. ('17 c. 449 § 2)

4910. Fire extinguishers and tools—Every such company shall keep, at each end of each passenger and sleeping car run or operated by it, fire extinguishers of good and approved construction, in good condition for use, and in a safe and convenient position, and in each car two saws and two axes, one of each to be kept inside and one outside of the car, in convenient places for use in case of accident. Any company violating any provision of this section shall forfeit to the state not more than one thousand dollars, and any officer, agent, or employee of such company who shall be responsible for such violation shall be guilty of a gross misdemeanor, and punished by a fine of not more than one thousand dollars. (2036) [4409]

4911. Prevention of fire—Every company operating a railroad shall use upon each locomotive engine a good and efficient spark arrester, which the master mechanic shall cause to be examined each time before leaving roundhouse, and the master mechanic and the employee making such examination shall be held responsible for the good condition of the same, but without relieving the company from its responsibility hereunder.

Every such company shall keep its right of way clear of combustible materials, except ties and other materials necessary for the maintenance and operation of the road, from April 15 to December 1.

No company shall permit any of its employees to leave a deposit of fire, live coals or ashes in the immediate vicinity of wood land or lands liable to be overrun by fire, and every engineer, conductor or trainman discovering fire adjacent to the track shall report the same promptly at the first telegraph or telephone station reached by him.

In dry seasons every such company shall give its employees particular instructions for the prevention and extinguishment of fires, and shall cause warning placards furnished by the forestry commissioner to be conspicuously posted at every station in the vicinity of forest and grass lands, and, when a fire occurs near the line of its road, shall concentrate such help and adopt such measures as shall be available for its extinguishment.

In dry seasons every such company shall employ at least one patrolman for each mile of its road through lands liable to be overrun by fire to discover and extinguish fires occurring near the line of the road, by which is meant a distance within which a fire could usually be set by sparks from a passing locomotive.

Any company violating any provision of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty dollars and not exceeding one hundred dollars and costs of prosecution for each offense, and any railroad employee violating the same shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars and costs of prosecution, or by imprisonment in the county jail not exceeding ninety days. (R. L. § 2037, amended '09 c. 182; '11 c. 9 § 1) [4410]

This section is probably superseded by Laws 1925, c. 407, §§ 26, 27. See §§ 4031-26, 4031-27, herein.

114-375, 131+462.

162-256, 202+483, note under § 9280; 164-213, 204+928.

Evidence examined, and held not to sustain findings because of the failure to identify the railroad fire, alone or in union with other fires, ever reaching plaintiffs' premises. 158-146, 197+92

Baxter v. Great Northern Ry. Co., 73 Minn. 184, 75 N. W. 1114, Followed. 158-146, 197+93.

4912, 4913. [Superseded.]

These sections (Laws '19, Ex. Sess. c. 33) are superseded by Laws 1925, c. 407. (See § 4031-1, et seq., herein.)

4914. Automatic couplers on freight cars—That on and after the first day of July nineteen hundred and eight it shall be unlawful for any railway company or common carrier in moving freight between points in the state to haul or permit to be hauled or used on its line any car not equipped with couplers coupling automatically by impact and which can be uncoupled without the necessity of men going between the ends of the cars. ('07 c. 202, amended '09 c. 488 § 1) [4411]

The evidence made it a jury question whether the defective coupler was a contributing cause of the death of plaintiff's intestate. 158-378, 197+744.

The use, by a railway company, engaged in interstate commerce, of a freight car with a defective uncoupling safety appliance thereon, in violation of the federal Safety Appliance Act (Mason's Code 45:1 et seq.), establishes negligence on the part of the company as a matter of law. 165-223, 206+436.

4915. Grab irons—That on and after the first day of July nineteen hundred and eight it shall be unlawful for any railway company or common carrier in moving freight between points in the state to use any car that is not provided with secure grab irons or hand holds in the ends and sides of each car for the greater security to men in coupling and uncoupling cars. ('07 c. 202, amended '09 c. 488 § 2) [4412]

The evidence sustains a finding of the jury that a handhold, which it was the absolute duty of the defendant to furnish secure under the Safety Appliance Act (Mason's Code, 45:1) on a freight car on which the plaintiff, a brakeman, was working in interstate commerce, loosened and caused his fall. 159-492, 199+891.

4916. Train brake system—That it shall be unlawful for any railroad doing business in the state of Minnesota to use on this line any locomotive in the moving of its trains not equipped with power, driving wheel, brakes and appliances of operating the train brake system or to run any train over its road that has not 75% of the cars in such train equipped with power or train brakes and having the brakes used and operated by the engineer of the locomotive drawing such train, and all power brake cars in such train shall be associated together and have their brakes used and operated. Provided, that this section shall not apply to the handling of trains or cars in yard service, or to a local train while engaged in performing switching service. ('07 c. 202, amended '09 c. 488 § 3) [4413]

Where a brakeman on his way to release a defective brake stepped off a ladder at the side of the car in the

nighttime without lowering his lantern to see what was beneath him, and fell through a bridge, the accident is not proximately attributable to the defect in the brake, within the meaning of the federal Safety Appliance Act (Mason's Code, 45:1, et seq.) 161-74, 200+804.

A railroad company owes the duty of due care to the servants of a shipper who will be exposed to danger arising from defects in a car turned over to the shipper for loading. 164-6, 204+524.

4917. Draw bars—That it shall be unlawful for any railroad doing business in the state of Minnesota to use any locomotive, tender, car or similar vehicle used in the movement of state traffic, that is not provided with draw bars of standard height, to-wit, standard gauge cars 34½ in., narrow gauge cars 26 in. measured perpendicularly from the level of the tops of the rails to the center of the draw bars; the maximum variation from such standard heights between draw bars of empty and loaded cars shall be 3 inches. ('07 c. 202, amended '09 c. 488 § 4) [4414]

Federal Employers' Liability Act construed. 159-166, 198+450.

The drawbeams of a freight car, to which the drawbar is attached, are an integral part of the "automatic coupling" apparatus required by the federal Safety Appliance Act (Mason's Code, 45:1, et seq.). 159-388, 199+178.

4918. Passenger traffic—That the provisions of sections 1, 3, and 4 of this act shall also apply to locomotives, cars and trains used in passenger traffic in the state of Minnesota, in so far as the same are applicable to the vehicles used in passenger train traffic. ('07 c. 202, amended '09 c. 488 § 5) [4415]

Sections 1, 3, 4 are §§ 4914, 4916, 4917, herein.

4919. Cars from connecting lines—That any such common carrier may refuse to receive from connecting lines or from any shipper any car not equipped in accordance with the foregoing sections of this act. ('07 c. 202, amended '09 c. 488 § 6) [4416]

4920. Assumption of risk—Contributory negligence—That any employe of any such common carrier who may be killed or injured by any locomotive, tender, car, similar vehicle, or train, in use contrary to the provisions of this act, shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, tender, car, similar vehicle, or train has been brought to his knowledge, nor shall such employe be held to have contributed to his injury in any case where the carrier shall have violated any provision of this act, when such violation contributed to the death or injury of such employe. ('07 c. 202, amended '09 c. 488 § 7) [4417]

4921. Powers of commission—The railroad and warehouse commission of Minnesota may from time to time after full hearing and for good cause shown, increase the minimum percentage of cars in a train required to be operated by power or train brakes, and a failure to comply with any requirement of said commission shall be subject to a like penalty as a failure to comply with any requirement of this act. The said railroad and warehouse commission of Minnesota is hereby authorized to grant to any common carrier subject to this act, upon full hearing and for good cause shown, a reasonable extension of time in which to comply with the provisions of this act; provided, that in no case shall such extension or extensions in the aggregate, exceed the period of eighteen months from and after the approval of this act. ('07 c. 202, amended '09 c. 488 § 8) [4418]

4922. Penalty for violation—That every railroad or the receiver thereof, using or permitting to be used on its line or to be hauled on its line, any locomotive, tender, car or similar vehicle or train in violation of any of the provisions of this act shall be liable to the state of Minnesota for a penalty of one hundred dollars for each offense and such penalties shall be recovered in a suit brought in the name of the state of Minnesota, in any court having jurisdiction thereof, in any county in or through which such line of railroad may run, by the attorney general of the state or under his direction, or by the county attorney in any county in or through which such line of railroad may be operated. All fines and penalties recovered by this state under this act shall be paid into the treasury of the state of Minnesota. Provided, that nothing in this act contained shall apply to locomotives, tenders, cars or similar vehicles or trains when the height of the draw bars on such locomotives, tenders, cars, similar vehicles or trains does not exceed twenty-five inches in height or any of which are in actual use in interstate commerce. ('07 c. 202, amended '09 c. 488 § 9) [4419]

4923. Duty of commission—It shall be the duty of the railroad and warehouse commission to have this law enforced. ('07 c. 202, amended '09 c. 488 § 10) [4420]

121-362, 145+1070.

4924. Railroad companies to equip engines with classification lamps—Every person, company, corporation or receiver thereof, operating any railroad in the state of Minnesota, is hereby required to equip, maintain and use upon every locomotive operated in road service in this state, an electric or other headlight of at least fifteen hundred (1,500) candle power, measured without the aid of a reflector; provided, however, that this candle power shall not apply to locomotive engines regularly used on branch lines less than twenty-five miles long and logging roads not over sixty miles long in switching cars or trains, and provided further that every person, company, corporation or receiver thereof, subject to the provisions of this act, is hereby required to equip, maintain and use upon every locomotive engine regularly used in switching cars and trains, a headlight of at least fifty (50) candlepower measured without the aid of a reflector, [and to place a similar light on the tender of all locomotives regularly used in the transportation of freight and passengers in such a position that the same shall reflect to the rear of such locomotive; and be it further provided; that all locomotive engines used in other than switching service shall be equipped with electric classification signal lights]; and provided further, that this act shall not apply to locomotive engines used exclusively between sun up and sun down, nor when being taken to or returned from repair shops when ordered in for repairs. ('13 c. 93 § 1, amended '23 c. 392 § 1) [4421]

The amended portion included in brackets does not become effective until January 1, 1925. See 133-258, 158+233; 151-528, 188+552.

4925. Penalty for violation—Fines—Any person, company, corporation or receiver thereof operating any railroad in the state of Minnesota violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be liable for a penalty of not less than twenty-five dollars nor more than one hundred dollars for each offense, and the use of any one locomotive engine prohibited in section 1 of this act shall constitute a separate offense for every day or part of a day so used, and such penalty shall be recovered in a suit brought in the name of the state of Minnesota in any court having jurisdiction thereof, in any county in or through which such line of railroad may run, by the attorney general of the state or under his direction, or by the county attorney in any

county in or through which such line of railroad may be operated.

All fines and penalties recovered by the state under this act shall be paid into the treasury of the state of Minnesota. ('13 c. 93 § 2) [4422]

4926 31 — 64

4926. Abandonment of road—No company operating any line of railroad in the state of Minnesota shall abandon the same or any portion thereof, nor shall it abandon any siding, sidetrack, spur or other railway track of any kind which has once been opened and used for business, nor shall it close for traffic thereon except as provided in section 4930 as the same is hereinafter amended. Any company violating any provision of this section shall forfeit to the state not less than two hundred dollars nor more than one thousand dollars for each day such violation continues. (R. L. § 2038, amended '07 c. 261 § 1) [4423]

70–105, 112, 72+835.

See 89–363, 95+297.

Constitutional right to abandon, unless under contract to operate, if to continue is only at a loss (150–31, 184+186).

4927. Fine to go to municipalities—Whenever a railroad or other common carrier is fined on account of an abandonment or tearing up of its tracks, or any part thereof, such fine shall go to such municipalities as have been injured by such action through disturbance of their manufacturing or business interests or otherwise. ('15 c. 317 § 1)

4928. Disposition to be made by district court—The disposition of such fine shall be determined by the *district court of the district in which the prosecution* was conducted and shall be heard as are ordinary civil actions upon petition of such municipalities setting forth the facts, but no such petition shall be filed later than six months after the payment of such fine. Such fines shall not be turned into the state treasury until such petitions, if any, have been disposed of and shall be distributed in accordance with the judgment of the court. ('15 c. 317 § 2)

4929. To apply to fines paid since Jan. 1, 1915—This act shall apply to any fines paid since January 1, 1915, irrespective of when prosecution was instituted, provided that petition be filed within six months after this act goes into effect, and to provide for such cases the sum of two thousand dollars ($2,000) is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and upon presentation of a certified copy of the judgment of any district court showing any municipality to be entitled to any such fine, or part thereof, the state auditor shall draw a warrant upon the treasurer in favor of such municipality for the amount named in said judgment. ('15 c. 317 § 3)

4930 244nw 57 244nw 61

4930. Procedure for abandonment—Any such company desiring to abandon or close for traffic any portion of its line, siding, sidetrack, spur or other railway track, shall first make application to the commission in writing. Before passing upon such application the commission shall fix a time and place for hearing and require such notice thereof to be given as it deems reasonable. Upon the hearing, the commission shall ascertain the facts and make findings thereon, and if such facts satisfy the commission that the proposed abandonment or closing for traffic will not result in substantial injury to the public, they may allow the same, otherwise, it shall be denied, or, if the facts warrant it, the application may be granted in a modified form. (R. L. § 2039, amended '07 c. 261 § 2) [4424]

Cited (118–193, 137+193).

Commission under express limitation imposed by legislature, is sans power to order road abandoned (150–31, 184+186).

4931. Action against company—Whenever any such railway company has abandoned, taken up, or ceased to operate, or has closed for traffic any portion of its line for thirty days without having complied with the requirements of § 4932, any town, municipality, corporation or individual which has issued bonds or given promissory notes or other thing of value to such railway company as an inducement or aid to or in the construction of the line ceased to be operated or closed for traffic as aforesaid, may recover the same, or the value thereof, in an action against said company in the district court of any county wherein such road or any portion thereof has been abandoned or closed for traffic, or the operation of which has ceased as aforesaid. The foregoing provisions shall not apply to logging or ore roads constructed and used exclusively for logging or mining purposes, nor shall it apply to any railroad which is not a common carrier. (R. L. § 2040, amended '07 c. 261 § 3) [4425]

§ 4932 should be § 4930.

Cited (118–491, 137+193).

4932 177m 259 225nw 111

4932. Fire caused by engine—Insurable interest—Each railroad corporation owning or operating a railroad in this state shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated directly or indirectly by the locomotive engines in use upon the railroad owned or operated by such railroad corporation, and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owned or operated by it and may procure insurance thereon in its own behalf for its protection against such damages. (R. L. § 2041, amended '09 c. 378 § 1) [4426]

1909 c. 378 § 2 repeals inconsistent acts, etc.

The statute merely makes the fact of the fire being scattered or thrown from railroad cars and engines prima facie evidence of negligence. The existence of such negligence is still the issue to be presented by the complaint and tried by the jury. The statute simply relieves plaintiff of the initiative in proof of negligence. It does not relieve him of any proof save that of negligence. The presumption of negligence does not arise and defendant need not introduce evidence to rebut it until plaintiff has made out a case for the jury on the issue of the cause of the fire (29–12, 11+122; 32–526, 21+732; 35–361, 29+6; 63–66, 65+93; 65–112, 67+794; 117–434, 136+275; [C. C.] 22 Fed. 811). Plaintiff's case must rest upon something more than mere speculation or conjecture (83–370, 86+451; cf. 117–434, 136+275). Evidence to rebut presumption must be as broad as the presumption and must satisfactorily rebut every negligent act or omission which might, under the circumstances of the case, reasonably or naturally have caused the fire (29–12, 11+122; 35–170, 28+215; 43–334, 45+608; 45–481, 48+22. See, also, 97–467, 107+548). Presumption is overcome by satisfactory proof that the engine was properly constructed and managed and in suitable repair (43–319, 45+611; 145 Fed. 577, 75 C. C. A. 591. See 40–60, 41+301; 63–233, 65+443). Whether presumption is overcome is ordinarily a question for the jury (29–12, 11+122; 32–526, 21+732; 35–170, 28+215; 97–467, 107+548). Presumption held not overcome (29–12, 11+122; 29–58, 11+146; 31–57, 16+488; 32–526, 21+732; 33–359, 23+536; 35–170, 28+215; 36–452, 32+176; 39–413, 40+270, 12 Am. St. Rep. 659; 40–60, 41+301; 43–334, 45+608; 43–427, 45+719; 43–519, 45+1132; 45–17, 47+260; 45–481, 48+22; 46–269, 48+1117; 58–104, 59+978; 62–207, 64+392; 62–243, 64+562; 63–233, 65+443; 117–434, 136+275.. See, prior to statute, 21–60). Presumption held overcome (43–319, 45+611). No presumption that right of way was in unsafe condition (36–522, 32+751).

Not unconstitutional, as arbitrary class legislation (186 Fed. 139, 29 C. C. A. 612).

Cited (119–181, 137+970).

Permitting fires on right of way and their spreading (121–357, 141+491). Destruction of licensee's railroad ties on right of way (123–423, 144+145). Showing of negligence in railroad fire cases (146–242, 178+609. Engines causing fires eliminates question of negligence (146–431,

179+45). Absolute liability where locomotive engines communicate fire (149–215, 183+521). This statute is applicable to Director General of Railroads (150–530, 185+299).

162–256, 202+483, note under § 9280.

Evidence examined, and held not to sustain findings because of the failure to identify the railroad fire, alone or in union with other fires, ever reaching plaintiffs' premises. 158–146, 197+93.

Baxter v. Great Northern Ry. Co., 73 Minn. 189, 75 N. W. 1114, Followed. 158–146, 197+93.

The liability for a fire set by a railway locomotive is absolute and not dependent upon negligence. 159–485, 199+237.

The court sufficiently charged that the fire must be traced definitely from its origin to the plaintiff's property and that a verdict could not be based upon conjecture and speculation. 159–485, 199+237.

Evidence. 162–281, 202+900.

Evidence held sufficient to warrant a finding of the jury that the fire which caused the loss was set by defendant's locomotive. 164–213, 204+928.

4933–40
176m 437
223nw 675
227nw 426
228nw 546
228nw 556
45 USCA
51–59

4933–35
231nw 710
231nw 922
232nw 341
232nw 629
45
U.S.C.A.
§§
51–59

4933–4940
179m 67
249nw 422
251nw 532

4933. Liability of corporations for injury or death to employes—That every company, person or corporation, owning or operating, as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any employee suffering injury while engaged in such employment; or, in case of death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and if none, then to such employee's parents; and if none, then the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such employer, or by reason of any defect or insufficiency due to the employer's negligence. The damages recoverable in case of death to be distributed to the parties in interest in the same proportion as personal property of persons dying intestate. ('15 c. 187 § 1, amended '23 c. 333 § 1)

In General.

156–20, 164+9; 166–1, 206+945.

Where crew engaged in removing station platform and "gang boss" in manipulating revolver found there caused same to inflict injury. "Gang boss" not deemed engaged in scope of his employment (142–367, 172+763). Clerk in office of railroad company injured getting into elevator through negligence of elevator boy, her fellow servant, comes within this statute (142–379, 172+767). Private steam railroads not common carriers (145–183, 176+750; 145–228, 176+754). Section hand injured by foreman in starting gasoline car (145–243, 179+370). Railway company's gravel pit employee using its track to and from work within this statute (151–182, 186+238; 191+608, 154–18, 194+10).

Duty of railway company to have instrumentalities reasonably safe for the performance of the functions for which they are designed. 157–354, 196+257.

An injury arising out of the improper use of instrumentalities does not justify the inference of negligence. 157–354, 196+257.

Injuries from burning gasoline. 159–370, 199+108.

Constitutionality.

Act is constitutional. 160–1, 199+887.

Interstate Commerce.

The evidence sustains a finding of the jury that the plaintiff was employed in interstate commerce at the time of his injury. 163–457, 204+557.

Deceased was a switchman in the employ of an interstate railroad. His crew had just picked up and put onto the main line 20 cars of interstate freight which they were moving to a ward farther on. Leaving these cars in charge of a flagman, they went a few miles distant to pick up 5 cars of intrastate freight which they intended to join and move on with the 20 interstate cars. Held, that he was engaged in interstate transportation. 164–353, 205+260.

Employee.

The cook, hired and paid by a bridge crew in the employ of a railway company, is not an employee of the latter; the railway company having no right of selection and discharge nor any supervision and control of the cook. The mere fact that the company furnished a kitchen car, fuel and oil for the bridge crew, and assisted in the collection of board bills, does not affect the situation. 158–25, 196+807.

Simple Tools.

Since the shovel was a simple tool the employe had equal knowledge thereof with the employer. Actionable negligence did not exist. 162–90, 202+49.

Plaintiff may have been prevented by the circumstances from making even a casual inspection of the tool before proceeding to use it. In such a situation, the rule of the simple instrumentality cases does not apply. 164–494, 205+439.

Proof that the jaws of a claw bar were flattended from use, and had acquired a quarter of an inch too much spread, held sufficient to show a defect resulting in injury to plaintiff while using the tool. 164–494, 205+439.

A spout hook, six or seven feet long, furnished by a railroad and placed on the tender of an engine before it started on its trip, intended for the use of the fireman in pulling the spout from the standpipe in filling the tank with water, is not within the simple tool or appliance rule, 165–58, 205+689.

Negligence.

Care required of engineer with respect to section hand. 160–83, 199+517.

A tool slipped off a moving section car and derailed it, resulting in the death of a member of the crew. A little attention on the part of a fellow servant of deceased would have kept the tool in place and prevented the accident. These facts sustain the jury's conclusion of negligence. 161–195, 201+321.

Whether the engineer's act in running the train while the fireman was replacing a light bulb in the locomotive headlight was negligence, in view of the position to be occupied in doing the work, was for the jury. 162–419, 203+57.

The jury could find that the fireman undertook the work at the engineer's request, and that he did not go outside the scope of his duties. 162–419, 203+57.

Action for Death.

Action for death. 166–1, 206+945.

Section 8175, G. S. 1913, limiting the amount recoverable in actions for injuries causing death, does not apply to actions under the state Railway Employers' Liability Act. 160–1, 199+887.

Release of Damages.

A release of damages for injuries sustained in an accident may be set aside on the ground of mutual mistake where it clearly appears that a substantial injury, not discovered until after the settlement, had in fact been sustained in the accident and existed at the time of settlement. 157–474, 196+643.

Such a release cannot be set aside on the ground that known injuries resulted in consequences not known and not expected when it was made. The parties are presumed to have intended to settle all claims growing out of the injuries, whether the after effects proved to be more or less serious than anticipated. 157–474, 196+643.

Evidence.

The evidence would warrant an inference by the jury that plaintiff was on the scaffold when he fell, and that its unsafe condition was a proximate cause of his injury. Plaintiff had the burden of establishing causal connection between the negligence alleged and the injury suffered, but was not required to establish it by direct evidence. 157–171, 195+893.

The evidence warranted the jury in finding that a scaffold provided by defendant for the use of its employees while remodeling a car in its shops was not safe. 157–171, 195+893.

Record considered, and it is held, that the verdict is justified by the evidence; that it is not excessive and does not appear to have been rendered under the influence of passion and prejudice. 157–184, 195+892.

The evidence sustains the finding that the plaintiff's interstate was in the line of his employment when killed. 157–412, 196+657.

The evidence sustains a verdict for the plaintiff for damages for the death of her intestate, a car inspector and repairer in the defendant railroad company's yards, upon the theory that a switching crew, disregarding a blue flag, the customary warning, which he had placed

on the track on which he was working, pushed a car over him. 158–171, 197+275.

The evidence does not sustain a verdict for the plaintiff upon the theory that it was the duty of the switching crew to watch for men about the cars on the team track in the yards, when making switching movements, and that it negligently failed to do so. 158–171, 197+275.

An examination of the record discloses no negligence on the part of the defendant contributing to plaintiff's injury. The rule of res ipsa loquitur does not apply. *158–199, 197+215.*

No actionable negligence was proven against appellant on account of the location of its own tracks, or the clearance between its lead and the tracks of the other defendant, or in any other respect. 159–70, 198+300.

The evidence sustains a finding of the jury that the death of the plaintiff's intestate was caused by a bent air line negligently permitted by the defendant along a track in its yards. 160–411, 200+477.

Instructions.

The court correctly charged that the plaintiff's intestate, a night watchman about the defendant's yards, was employed in "interstate commerce" at the time of his death. The charge is supported upon the ground that the train which he was endeavoring to board was an interstate train, as well as upon the ground that his duties in protecting freight, nearly all of which was interstate, though not confined to interstate traffic, were inseparably connected with it. 157–412, 196+657.

Under the evidence defendant was entitled to have the jury instructed that, if plaintiff's intestate went between *the cars to lift the pin in a defective coupler, contrary* to the express command of the foreman, his willful disobedience would be the sole proximate cause of his death. 158–378, 197+744.

Questions for Jury.

Whether the defendant was negligent in banking snow along one of its tracks and allowing it to remain there, without a sufficient clearance for an employe on the side of the train, or attempting to board it, was for the jury. 157–412, 196+657.

It was error to direct a verdict for defendant, for the deposition of one of defendant's employees, introduced by plaintiff, made it a jury question whether plaintiff's decedent at the time he met death was engaged in interstate commerce. 212+944.

Damages.

Damages held not excessive. 159–436, 199+20.

Measure of damages. 209+905.

Federal Employers' Liability Act.

For cases under federal act, see Mason's Code, Title 45.

Federal Employers' Liability Act construed. 159–166, 198+450.

Federal Safety Appliance Act.

The federal Safety Appliance Act (Mason's Code, 45:1, et. seq.) applies to sill steps on cars, but it does not apply to an ordinary platform step on a passenger car. 160–484, 200+485.

Whether an appliance, within the act, complies with the act is a question for the jury; but the question of whether the appliance is within the purview of the act is purely judicial. 160–484, 200+485.

4934. Liability of common carriers—That every company, person or corporation, owning or operating as a common carrier or otherwise, a steam railroad or railway in the State of Minnesota, shall be liable in damages to any person suffering injury while he is engaged in the line of his employment, or in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such employer, or by reason of any defect or insufficiency in such employer's appliances, machinery or apparatus furnished. ('15 c. 187 § 2, amended '23 c. 333 § 2)

Constitutionality.

Act is constitutional. 160–1, 199+887.

Interstate Commerce.

A head brakeman on a freight train hauling interstate commerce, whose run was from Oshkosh to Milwaukee and return, having a number of hours off duty at the latter place, and using the caboose on his train as an abode during that time, was injured while so occupying the caboose, by a sudden jolt caused in coupling on the first two cars by the switching crew while making up the train more than an hour before time for its departure for Oshkosh. Held not employed in interstate commerce at the time of his alleged injury. 157–60, 195+534.

Evidence.

The doctrine of res ipsa loquitur applies in a proper case to the master and servant relation and to such relation under the state Railway Liability Act. 210+32.

There was no claim in the pleadings nor at the trial that the plaintiff was engaged in interstate commerce. In developing the case there was evidence tending to show that the plaintiff was so engaged. The court gave a charge embodying the res ipsa rule, to which there was no exception below nor assignment of errors here. It is held that there was no error in the charge or the submission of the case. 210+32.

Damages.

The damages awarded were not excessive. 210+32.

Federal Employers' Liability Act.

For cases under Federal Employers' Liability Act, see Mason's Code, Title 45.

Action under Federal Act. 210+62.

4935. Contributory negligence not to bar a recovery—That in all actions hereafter brought against any such employer under or by virtue of any of the provisions of this act, to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact that the employee may *have been guilty of contributory negligence shall not* bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 3)

145–228, 176+754; 151–142, 186+238; 191+608.

For cases under Federal Employers' Liability Act, See Mason's Code, Title 45.

Act is constitutional. 160-1, 199+887.

"Contributory negligence" and "assumption of risk," distinguished and defined. 157–325, 196+272.

Negligence of section hand. 160–83, 199+517.

Liability under federal act. 159–166, 198+450; 210+62.

4936. Employee not to be held to have assumed risk of employment—That in any action brought against any employer under or by virtue of any of the provisions of this act to recover for injuries to or the death of any of its employees, such employee shall not be held to have assumed the risk of his employment in any case where the violation by the employer of any statute enacted for the safety of employees contributed to the injury or death of such employee. ('15 c. 187 § 4)

For case under Federal Employers' Liability Act, see Mason's Code, Title 45.

Constitutionality.

Act is constitutional. 160-1, 199+887.

Contributory Negligence and Assumption of Risk Distinguished.

"Contributory negligence" and "assumption of risk" distinguished and defined. 157–325, 196+272.

Risks assumed.

The risk which caused decedent's death was fully known and appreciated by him, and hence was assumed. 159–70, 198+300.

Risks Not Assumed.

Injuries from burning gasoline. 159–370, 199+108.

Failure to keep lookout to protect section hand. 160–83, 199+517.

The evidence did not require a finding that the plaintiff assumed the risk in using the hook which was placed on the tank for his use, though he knew of a defect in it. 165–58, 205+689.

Questions for Jury.

Whether plaintiff assumed the risk incident to the use of the scaffold was a question for the determination of the jury. He had the right to act on the assumption that defendant would see that the scaffold was kept safe for use to the extent of discovering and remedying an unsafe condition, if it arose after the scaffold was constructed, and would not be obvious to those who used it. 157–171, 195+893.

The plaintiff's intestate did not as a matter of law assume the risk resulting from the presence of the snowbank, nor was he as a matter of law contributorily negligent. 157–412, 196+657.

The decedent did not as a matter of law assume the risks. 160–411, 200+477.

The defense of assumption of risk was a jury question. 162–419, 203+57.

4937. Contrary contracts declared void—That any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any employer to exempt such employer from any liability created by this act, shall to that extent be void; provided, that in any action brought against any such employer under or by virtue of any of the provisions of this act, such employer may set off therein any sum he has contributed or paid to any insurance, relief, benefit or indemnity that may have been paid to the injured employee, or the persons entitled thereto on account of the injury or death for which said action was brought. ('15 c. 187 § 5)

Act is constitutional. 160–1, 199+887.

4938. Definition of term "employer"—That the term employer as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of management and operation of any business employing labor. ('15 c. 187 § 6)

Act is constitutional. 160–1, 199+887.

4939. Right of action given to surviving widow, children, next of kin and personal representative—That any right of action given by this act to a person suffering injury shall survive to his or her personal representative for the benefit of the surviving widow or husband and children of any such employee; and if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. ('15 c. 187 § 7, amended '23 c. 333 § 3)

162–271, 202+726.

Act is constitutional. 160–1, 199+887.

The jurisdiction of the state and federal courts of a cause of action arising under the federal Employers' Liability Act (Mason's Code, 49:51, et. seq.) is concurrent. Removability of a case when commenced is determined by the allegations of the complaint. 159–388, 199+178.

The federal Employers' Liability Act of April 22, 1908 creates in the personal representative of an employe killed by the negligence of a railroad company while employed in interstate commerce a right of action "for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee." Held, that the personal representative may recover where the deceased employee leaves no wife nor child, but leaves a parent, who dies after his death, and before action brought, and a dependent sister who is his next of kin, the recovery in such case being for the benefit of such dependent sister. 159–417, 199+101.

The objection that a widow brings action for the death of her husband in her representative capacity is waived, when not raised by demurrer or answer, nor at the trial. 160–49, 199+889.

The objection that the administratrix was not the proper party to bring the action was waived by failing to demur. 160–49, 199+889.

Dependency is to be determined from the facts and circumstances of each particular case. It may exist although there was no actual necessitous want on the part of the alleged dependent, if he or she received support from one who furnished it voluntarily, and who might reasonably be expected to continue to do so. 166–79, 207+186.

4940. Action to be commenced within two years—That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrues. ('15 c. 187 § 8)

191+607 is upheld in 191+596 as being decisive that the two-year limitation is a bar.

Gen. Laws 1887 c. 13, R. L. '05 § 2042; G. S. '13 § 4427, relating to negligence of fellow servants, was held in 154–184, 191+607 to have been superseded by '15 c. 187; the decisions under the former law, however, should be of value and appear below. "Rule of haste" is hazard element of railroading, statute applying (121–476, 141+844). Contributory negligence.—Custom and practice, and physical conditions, prevailing in moving trains, question of contributory negligence is one of fact (123–110, 143+121).

No. 1. To what servants liable; Railroad employee injured unloading logs at unloading track, not within this statute (123–252, 143+740). Where negligence is conjectured no recovery can be had (124–487, 145+393). Employee coupling cars on spur track injured through running cars against same from lead track is not subject to custom or usage justifying negligent act (127–381, 149+660). Section hand injured in having thrown against him a trespassing horse struck by a locomotive failing in giving proper warning (128–505, 151+177). Duty of engineer in switch yard to keep constant look-out; failure is negligence (130–222, 153+529; 140–118, 167+347). Character of employment test of liability (142–379, 172+766). "Rule of haste" as to over exertion handling mail bags not applicable (151–424, 186+815).

Amendment stating new cause of action. 166–1, 206+945.

1. To what servants applicable—Not applicable to all servants of railroads (40–249, 41+974). Applicable only to those who are exposed to the peculiar hazards incident to the use and operation of railroads (43–222, 45+156; 45–355, 47+1068; 93–63, 100+681; 104+1079). Not necessary that employment of servant injured and of servant causing injury should be of same kind (44–17, 46+149). Held applicable to sectionman run over by passing train (44–17, 46+149); to sectionman pushed off a hand-car (45–355, 47+1068, 110–325, 132+316); to laborer injured when boarding a construction train (48–46, 50+930); to sectionman against whom a hand-car was thrown by a passing train (53–341, 55+137); to wiper in roundhouse hit by wire cable (60–319, 62+386); to wiper in round house injured by moving engine (63–137, 65+260); to one required to step from platform to top of moving freight cars (63–203, 65+269); to sectionman repairing tracks injured by falling rail (65–69, 67+804); to brakeman coupling cars (85–447, 89+68; 93–497, 101+1134, 102+1134); to brakeman boarding train (86–77, 90+122); to brakeman injured by negligence of engineer (163 Fed. 827); to sectionman injured in removing hand-car from tracks (86–152, 90+381; 57 Fed. 1037; to engineer of locomotive (93–63, 100+681); to sectionman hit by stone thrown from moving engine (93–339, 101+504); to fireman on engine (42–68, 43+783); to car cleaner (70 Fed. 15). Held not applicable to helper of boiler-maker in railroad shop (40–249, 41+974); to one repairing railroad bridge (43–222, 45+156); to one loading railroad iron from ground to flat-car (47–9, 49+302); to one working in railroad repair shops (69–524, 72+805); to one working about a steam shovel (70–474, 73+409; 79–245, 82+576; 104+1079); to one employed in removing lumber of trestle work (80–27, 82+1086); to sectionmen pushed off handcar (138+1027). Held question for jury whether servant was subjected to railroad hazards (74–432, 77+240; 83–385, 86+413; 100–131, 110+433).

Removing merchandise from wrecked cars may embrace railroad hazard (108–94, 121+607).

2. Who liable—Statute applicable to a railroad company operating a line composed of the lines or tracks of several different companies (48–46, 50+930); to a private logging railroad (85–447, 89+68. See [C. C.] 113 Fed. 382; 136 Fed. 147, 69 C. C. A. 145); to contractors operating a railroad in repairing the road (86–77, 90+122); to private mining railroad (93–63, 100+681; 93–497, 101+1134, 102+1134; 114–299, 131+334; 163 Fed. 827, 91 C. C. A. 390. See 136 Fed. 147, 69 C. C. A. 145); to a receiver (63–137, 65+260). Not applicable to street railways (61–435, 63+1099; 65–387, 67+1006. See 48–391, 51+125).

Railroad company is liable to its servants for negligence of employes of a union depot company, whose duty it is to operate switches and direct movement of *trains out of yards (102–81, 112+875).*

Liability of railway company and brewing company jointly operating yards and locomotives (112–38, 127+433).

3. **Proviso as to new roads**—42–68, 43+783; 48–46, 50+930; 93–63, 100+681; 199 U. S. 593, 26 S. Ct. 159, 50 L. Ed. 322.

4. **Contributory negligence**—Statute does not change rule that burden of proving contributory negligence is on defendant (48–391, 51+125).

5. **Constitutionality**—The equal protection of the laws is not denied by construing the exception as only exempting incomplete railroads, and therefore as not excepting an accident on a narrow-gauge track on which dump cars were run by a mining company for the purpose of stripping its mine (199 U. S. 593, 26 Sup. Ct. 159, 50 L. Ed. 322).

Act is constitutional. 160–1, 199+887.

4941. License for ticket agents—Every corporation, common carrier, firm, or person, operating any line of railroad, steamboat line, or steamboat, shall furnish to each of its authorized ticket agents a certificate of agency duly signed by or on behalf of such carrier, and, in case of a corporation, attested by its corporate seal. Upon presentation of such certificate and payment of a license fee of three dollars, the secretary of state shall issue to such agent a license to sell transportation tickets for such carrier. Such certificate and license shall be kept conspicuously posted in the office of such agent, and no person not so licensed shall sell any ticket or other evidence of right to passenger transportation. It is hereby made the duty of every corporation, common carrier, firm, or person operating any line of railroad, steamboat line or steamboat, on or before the first day of January, July of each year, to file with the secretary of state, a duly authenticated list of its ticket agents in this state. Any person not so licensed who shall sell, barter, or otherwise transfer any such ticket or other evidence of right to passenger transportation or any part thereof, shall be guilty of a gross misdemeanor. Provided, however, that the provisions of this act shall not apply to persons, firms or corporations operating street railways, electric railroads or power boats in connection therewith. (R. L. § 2043, amended '09 c. 143 § 1) [4428]

57–345, 59+317.

4942. Redemption of unused tickets—Every such carrier shall redeem, upon presentation to any of its authorized ticket agents, any passenger ticket, coupon, or mileage book, unused in whole or in part, and which has not by its terms expired, and shall pay therefor a pro rata share of the price at which such ticket was sold, or, if wholly unused, the entire purchase price. Any such carrier violating the provisions of this section shall forfeit to the state not to exceed five hundred dollars. (2044) [4429]

57–345, 59+317.

1893 c. 66 did not violate state or federal constitution (97–173, 106+907).

4943. Mileage books—All passenger mileage tickets or books hereafter issued by railroad companies operating lines in this state, except interchangeable mileage now in use, shall be good until used, and shall be transferable by delivery and good for travel in the hands of the holder thereof between stations in Minnesota. ('05 c. 221 § 1) [4430]

4944. Company not liable, when—Railroad companies accepting such mileage tickets shall not be liable to the owner of such ticket in case they are used by persons not legally entitled to use the same. ('05 c. 221 § 2) [4431]

4945. Members of family, etc.—Penalty—Upon presentation of any mileage book having coupons attach*ed thereto entitling the holder thereof upon complying* with the conditions thereof to travel thereon, issued by any railroad corporation operating a railroad in this state, to a conductor on any train, on any line of railroad owned or operated by said railroad corporation, the holder thereof or any member of his family, shall be entitled to travel for a number of miles equal to the number of coupons detached by such conductor. Such mileage books shall entitle the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to accept any such mileage book for transportation as provided by this section, or in violation hereof, shall forfeit fifty dollars ($50.00), to be recovered by the party to whom such refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action has accrued. Provided, that nothing herein contained shall be construed as repealing the provisions of chapter 221, General Laws of 1905. ('13 c. 151 § 1) [4432]

4946. Railroad companies directed to keep on sale mileage books—Every railroad company owning, operating or using a steam railroad in this state for the intrastate transportation of passengers, shall from and after the effective date of the order provided for in sections 3 and 5 of this act keep on sale at all its ticket offices in this state mileage books for passenger transportation containing coupon tickets representing two thousand miles, good for intrastate transportation between stations on said railroad in this state, when presented for transportation by the original purchaser thereof. Such mileage books shall be sold at a price not to exceed the maximum rate per mile authorized by law to be charged by the railroad company issuing the same for the intrastate transportation of passengers between stations in this state, and the tickets contained therein shall show on their face the rate per mile paid therefor. Such mileage books shall be valid for one year from the date of purchase and if not wholly used within the year, the company issuing the same shall redeem the unused coupons therein, if presented by the purchaser for redemption within thirty days after the expiration of the year, at the rate per mile paid therefor. ('17 c. 118 § 1)

4947. If rates are increased coupons are good for pro rata increase—If any such railroad company after issuing a mileage book or books hereunder and before such mileage book or books shall be used up by the purchaser thereof, shall lawfully issue mileage books hereunder at an increased rate, the unused coupons in all unexpired mileage books theretofore issued shall thereafter be good on such railroad only for the proportionate mileage which the rate paid therefor would have purchased at such increased rate. ('17 c. 118 § 2)

4948. Proceedings for enforcement of above sections—The railroad and warehouse commission of this state within ten days after this act takes effect, shall notify every railroad company owning, operating or using a steam railroad in this state, that it will upon a day named in such notice, which day shall not be earlier than thirty days after the giving of such notice, take up for investigation the subject of requiring all railroad companies owning, operating or using steam railroads in this state to accept for the intrastate transportation of passengers between stations on their said

railroads in this state, mileage tickets issued by other railroad companies pursuant to the provisions of this act. All corporations, partnerships and persons interested in the subject may present themselves at the hearing and be heard under such reasonable rules and regulations as the said commission may prescribe. In such investigation, which shall be conducted with all due diligence, the said commission shall take into consideration the financial responsibility of the various railroad companies owning, operating or using steam railroads in this state, and the rates authorized by law to be charged by such railroad companies for the intrastate transportation of passengers between stations on their said railroads in this state, and any other pertinent matters; and after considering the same shall make findings of fact relative to the matters considered by it and an order based thereon wherein it shall establish just and reasonable rules and regulations, pursuant to which such railroad companies shall be required to accept for the intrastate transportation of passengers between stations on their said railroads in this state, mileage tickets issued by other railroad companies pursuant to this act. ('17 c. 118 § 3)

4949. Certain railroad companies may be excluded from provisions of this act—If on such investigation the commission shall find that any such railroad company is financially irresponsible or that for any other just and reasonable cause other railroad companies ought not to be required to accept for transportation mileage tickets issued by such company, the said commission shall in its rules and regulations exclude from the operation of section 6 of this act, mileage tickets issued by any such company. ('17 c. 118 § 4)

4950. Order to be issued when provisions become effective—The order shall fix the date when such rules and regulation shall become effective, which shall be not less than thirty days from the making and filing of such order, and shall be served upon the railroad companies affected thereby as provided in section 1967, Revised Laws of 1905, the same being section 4183, General Statutes of 1913. Every such railroad company shall publish and adopt such rules and regulations and shall comply therewith as soon as the same shall become effective. ('17 c. 118 § 5)

Explanatory note—For R. L. '05, § 1967 and G. S. 1913, § 4183, see § 4642, herein.

4951. Mileage book issued by one company to be good on all lines coming under above provisions—Subject to the provisions of such rules and regulations every such railroad company shall accept for the intrastate transportation of passengers between stations in this state over all steam railroads owned, operated or used by it, mileage tickets issued by other railroad companies pursuant to the provisions of this act. ('17 c. 118 § 6)

4952. Commission may revise rules and regulations—The railroad and warehouse commission upon such reasonable notice as it may prescribe may from time to time upon its own motion, or upon the application of any corporation, partnership or person interested therein, revise, change or add to any rule or regulation fixed hereunder and any such revised, changed or added rules and regulations shall be served in the same manner and have the same force and effect as the rules and regulations originally established. ('17 c. 118 § 7)

4953. Purchaser to have same rights on all railroads effected—Any such mileage book when presented for transportation, either to the railroad company issuing the same or to another railroad company pursuant to the rules and regulations fixed by the commission, shall entitle the purchaser thereof to the same rights and privileges in respect to the transportation of both person and property, to which the highest class ticket issued by the railroad company to which it is presented would entitle him. ('17 c. 118 § 8)

4954. State employes may use mileage books—Whenever a department of the state government in the proper conduct of the business of such department, finds it necessary, and is authorized by law to pay railroad fares of its officers or employees, said department through its official or board authorized by law to present or approve claims against the state arising out of the operation of said department, may present to the state auditor a verified abstract in form and manner as provided for the approval of claims against the state approving an expenditure of state funds of said department for the purchase of script or mileage books for transportation upon the railroads of the country, and the state auditor shall issue his warrant upon the state treasurer for the amount shown by such abstract, and the state treasurer shall issue check accordingly. ('21 c. 515 § 1)

4955. Department to keep record and report use of books—The department of the state obtaining such script or mileage book or books shall keep a record of the date of purchase of each of said books, the official or employee to whom said books are delivered, and shall require a report from the said official or employee at regular intervals showing the stations between which said official or employee travels, the mileage covered and the nature of the work performed. Whenever the script or mileage book is exhausted the department causing the purchase of said book shall deliver a copy of its record as herein required to be kept, to the state auditor to be attached to the original abstract filed in the first instance. ('21 c. 515 § 2)

4956. Inconsistent acts repealed—All acts inconsistent herewith are hereby repealed. ('21 c. 515 § 3)

4957. Application of preceding provisions—All the provisions of this chapter regarding the construction, maintenance, and operation of railroads, and the duties and liabilities of railroad companies, shall apply to any firm or person operating a railroad, whether as owner, lessee, trustee, receiver, or otherwise, and the term "company," wherever used in this chapter, shall be construed to include any such firm or person when such construction is not inconsistent with the context. (2045) [4433]

4958. Collection of forfeitures—All forfeitures provided by this chapter shall be collected by civil action in the name of the state, and the attorney general and the county attorney of any county in which the cause of action arises shall prosecute such action. (2046) [4434]

BILLS OF LADING

THE ISSUE OF BILLS OF LADING

4958½. Bills governed by this act—Bills of lading issued by any common carrier shall be governed by this act. ('17 c. 399 § 1)

147–181, 179+901.

4959. Form of bills—Essential terms—Every bill must embody within its written or printed terms:

(a) The date of its issue,

(b) The name of the person from whom the goods have been received,

(c) The place where the goods have been received,

(d) The place to which the goods are to be transported,

(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,

(f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in Section 23, and,

(g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. ('17 c. 399 § 2)

4960. Form of bills—What terms may be inserted—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

(a) Be contrary to law or public policy, or,

(b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. ('17 c. 399 § 3)

4961. Definition of non-negotiable or straight bill—A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. ('17 c. 399 § 4)

4962. Definition of negotiable or order bill—A bill in which it is stated that goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that is non-negotiable shall not affect its negotiability within the meaning of this act. ('17 c. 399 § 5)

4963. Negotiable bills must not be issued in sets—Negotiable bills issued in this state for the transportation of goods shall not be issued in parts or sets.

If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. ('17 c. 399 § 6)

4964. Duplicate negotiable bills must be so marked—When more than one negotiable bill is issued in this state for the same goods to be transported, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. ('17 c. 399 § 7)

4965. Non-negotiable bills shall be so marked—A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable," or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character. ('17 c. 399 § 8)

4966. Insertion of name of person to be notified—The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. ('17 c. 399 § 9)

4967. Acceptance of bill is prima facie evidence of assent to its terms—Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, this shall be prima facie evidence that he assents to its terms in so far as they are in accordance with law and public policy. ('17 c. 399 § 10)

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING.

4968. Obligations of carrier to deliver—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and,

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. ('17 c. 399 § 11)

4969. Justification of carrier in delivering—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is:

(a) A person lawfully entitled to the possession of the goods, or,

(b) The consignee named in a non-negotiable bill for the goods, or,

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. ('17 c. 399 § 12)

4970. Carrier's liability for misdelivery—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such a delivery he:

(a) Had been requested by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or,

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. ('17 c. 399 § 13)

4971. Negotiable bills must be cancelled when goods delivered—Except as provided in section 27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and can-

cel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. ('17 c. 399 § 14)

4972. Negotiable bills must be cancelled or marked when parts of goods delivered—Except as provided in section 27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(a) To take up and cancel the bill, or,

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession,

He shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. ('17 c. 399 § 15)

4973. Altered bills—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. ('17 c. 399 § 16)

4974. Lost or destroyed bills—Where a negotiable bill has been lost, stolen or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: Provided, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. ('17 c. 399 § 17)

4975. Effect of duplicate bills—A bill upon the face of which the word "duplicate," or some other word or words indicating that the document is not an original bill, is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. ('17 c. 399 § 18)

4976. Carrier cannot set up title in himself—No title to goods or right to their possession asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. ('17 c. 399 § 19)

4977. Interpleader of adverse claimants—If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate. ('17 c. 399 § 20)

4978. Carrier has reasonable time to determine validity of claims—If some one other than the consignee or person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. ('17 c. 399 § 21)

4979. Adverse title is no defense, except as above provided—Except as provided in the two preceding sections and in section 12, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. ('17 c. 399 § 22)

4980. Liability for non-receipt or misdescription of goods—If a bill of lading has been issued by a carrier or on his behalf by an agent or employe, the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

(a) The owner of goods covered by a non-negotiable bill subject to existing right of stoppage in transitu, or,

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

When package freight or bulk freight is loaded by a shipper and the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words, "shipper's weight, load and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill: Provided, however, where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words, "shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. ('17 c. 399 § 23)

4981. Certain duties of carrier when goods are loaded by him—When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation or tariff, "shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein. ('17 c. 399 § 23a)

4982. Attachment or levy upon goods for which a negotiable bill has been issued—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. ('17 c. 399 § 24)

4983. Creditor's remedies to reach negotiable bills—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('17 c. 399 § 25)

4984. Negotiable bill must state charges for which lien is claimed—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. ('17 c. 399 § 26)

4985. Effect of sale—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. ('17 c. 399 § 27)

NEGOTIATION AND TRANSFER OF BILLS

4986. Negotiation of negotiable bills by delivery—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person and such person or a subsequent indorsee of the bill has indorsed it in blank. ('17 c. 399 § 28)

4987. Negotiation of negotiable bills by indorsement—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. ('17 c. 399 § 29)

4988. Transfer of bills—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated free from existing equities and the indorsement of such a bill gives the transferee no additional right. ('17 c. 399 § 30)

4989. Who may negotiate a bill—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. ('17 c. 399 § 31)

4990. Rights of person to whom a bill has been negotiated—A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and,

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. ('17 c. 399 § 32)

4991. Rights of person to whom a bill has been transferred—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. ('17 c. 399 § 33)

4992. Transfer of negotiable bill without indorsement—Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. ('17 c. 399 § 34)

4993. Warranties on sale of bill—A person who negotiates or transfers for value a bill by indorsement or

delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

(a) That the bill is genuine,

(b) That he has a legal right to transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the bill, and,

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. ('17 c. 399 § 35)

4994. Indorser not a guarantor—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. ('17 c. 399 § 36)

4995. No warranty implied from accepting payment of a debt—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be *deemed by so doing to represent or to warrant the* genuineness of such bill or the quantity or quality of the goods therein described. ('17 c. 399 § 37)

4996. When negotiation not impaired by fraud, accident, mistake, duress or conversion—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, *accident, mistake, duress, loss, theft or conversion.* ('17 c. 399 § 38)

4997. Subsequent negotiation—Where a person having sold, mortgaged or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. ('17 c. 399 § 39)

4998. Form of the bill as indicating rights of buyer and seller—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer *or of his agent, the consignor thereby transfers the* property in the goods to the buyer.

(b). Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not *honor the draft, and if he wrongfully retains the bill* he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill endorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. ('17 c. 399 § 40)

4999. Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to the accompanying bill—Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect pay*able on demand or presentation or at sight, or not* more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, *or to a third person, or to his order.* ('17 c. 399 § 41)

5000. Negotiation defeats vendor's lien—Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall *the carrier be obliged to deliver or justified in deliver*ing the goods to an unpaid seller unless such bill is first surrendered for cancellation. ('17 c. 399 § 42)

5001. When rights and remedies under mortgages and liens are not limited—Except as provided in Section 42, nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which

are subject to the mortgage or lien and obtained possession of them. ('17 c. 399 § 43)

CRIMINAL OFFENSES

5002. Issue of bill for goods not received—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by any agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 44)

5003. Issue of bill containing false statement—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 45)

5004. Issues of duplicate bills not so marked—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 7, knowing that a former negotiable bill for the same goods, or any part of them, is outstanding and uncancelled, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 46)

5005. Negotiation of bill for mortgaged goods—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('17 c. 399 § 47)

5006. Negotiation of bill when goods are not in carrier's possession—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 48)

5007. Inducing carrier to issue bill when goods have not been received—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 49)

5008. Issue of non-negotiable bill not so marked—Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words, "not negotiable," placed plainly upon the face thereof, shall be guilty of a crime, and, upon conviction, shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('17 c. 399 § 50)

INTERPRETATION

5009. Rule for cases not provided for in this act—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy or other invalidating cause, shall govern. ('17 c. 399 § 51)

5010. Interpretation shall give effect to purpose of uniformity—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and also of the United States. ('17 c. 399 § 52)

5011. Definitions—(1) In this act, unless the context or subject matter otherwise requires:

"Action" includes counter claim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. ('17 c. 399 § 53)

5012. Act does not apply to existing bills—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. ('17 c. 399 § 54)

5013. Inconsistent legislation repealed — Section 4495 of General Statutes 1913, and chapter 414 of the Session Laws of 1909, the same being sections 4322 to 4329, inclusive, of General Statutes 1913, are hereby repealed, and all acts or parts of acts inconsistent with this act are hereby repealed. ('17 c. 399 § 55)

5014. Time when the act takes effect—This act shall take effect and be in force from and after the 1st day of June, 1917. ('17 c. 399 § 56)

5015. Name of act—This act may be cited as the uniform bills of lading act. ('17 c. 399 § 57)

5015¹ 172m 601 174m 331 215nw 188 219nw 167

MOTOR VEHICLE TRANSPORTATION FOR HIRE.

5015-1. Meaning of terms used — Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases shall, for the purposes of this act, be given the *meanings hereinafter subjoined* to them. ('25, c. 185, § 1)

5015-2. Definitions—(a) The word "Commission" means the Railroad and Warehouse Commission of the State of Minnesota.

(b) The term "corporation" means a corporation, company, association or joint stock association.

(c) The term "person" means an individual, firm or a co-partnership.

(d) The word "certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every street, road, or highway in this state, and shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard, or other place built, supported, maintained, controlled or used by the public or by the state, county, district, or municipal officers for the use of the public as a highway or for the transportation of persons or property or as a place of travel or communication between different localities or communities.

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(f) The term "motor-vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons or property for compensation as common carriers, except motor vehicles used exclusively in transporting children to or from school, and motor vehicles used by any transportation company engaged exclusively in transporting agricultural, horticultural, dairy or other farm products from the point of production to the primary market, or to motor vehicles used exclusively in transporting or delivering dairy products or to motor vehicles engaged exclusively in transporting or delivering freight within any city or village in this state or between contiguous villages or cities, or by any transportation company engaged in operating taxicabs, or hotel busses to or from a depot to a hotel.

(g) *The words "between fixed termini or over a* regular route," when used in this act, mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor vehicle, even though there may be departures from said termini or route, whether such departures be periodical or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route," within the meaning of this act, shall be a question of fact to be determined by the Commission.

(h) The term "auto transportation company," when used in this act, means every corporation or person owning, controlling, operating or managing any motor-propelled vehicle not usually operated on or over rails used in the business of transporting persons or property for compensation as common carriers over any public highway in this state between fixed termini or over a regular route; provided, That the term "auto transportation company" as used in this act, shall not include corporations or persons engaged exclusively in the transportation of children to or from school, or any transportation company engaged exclusively in transporting agricultural, horticultural, dairy or other farm products from the point of production to the primary market, or to motor vehicles used exclusively in transporting or delivering dairy products or to motor vehicles engaged exclusively in transporting or delivering freight within any city or village in this state or between contiguous villages or cities, or any transportation company engaged in operating taxicabs, or hotel busses from a depot to a hotel.

(i) The word "railroad" means the movement of cars on rails regardless of the motive power used therefor, whether operated on a private right of way or in a public highway. ('25, c. 185, § 2)

Held, that defendant is not operating "between fixed termini or over a regular route" so as to be subject to this act. 209+872.

5015-3. Operation by auto transportation companies only as provided—No auto transportation company shall operate any motor-propelled vehicles for the transportation of persons or property for compensation as a common carrier on any public highway in this state except in accordance with the provisions of this act. ('25, c. 185, § 3)

5015-4. Powers and authority of Commission as to rates, fares, charges, classifications, facilities, routes, accounts, services and operation of auto transportation companies—Revocation, etc., of certificates—The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every auto transportation company in this state; to fix just, reasonable and nondiscriminatory rates, fares, charges, and classifications; to regulate the facilities, accounts, service, and safety of operations of each such auto transportation company, and make rules and regulations for proper inspection of motor vehicles and to provide for the installation of safety devices thereon, and to require the installation of proper automatic speed control regulators if, in the opinion of the Commission, there is a necessity therefor; and may require the construction and maintenance or furnishing of suitable and proper depot or waiting room or accommodation or shelter in any village or city in this state or at any point on the highway traversed which the Commission may deem just and proper for the protection of passengers or property; to require the filing of annual and other reports, tariffs, schedules, or other data by such auto transportation companies; and to supervise and regulate auto transportation companies in all matters affecting the relationship between such auto transportation companies and the traveling and shipping public. The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all auto transportation companies.

In prescribing rates to be charged for the carrying of freight, persons, or property, the Commission shall take into consideration among other things, the kind and character of service to be performed, and the effect of such rates upon other common carriers, if any, and as far as possible avoid unreasonable competition with existing common carriers.

No time schedule, tariff or rates shall be put into effect or be changed or altered except upon hearing duly had and an order therefor by the Commission. Notice of such hearing shall be served upon any com-

peting common carrier; provided, however, that if it appears that an emergency exists or that there is need for a minor or unimportant change in the time schedule, the Commission may authorize a modification thereof without a hearing and the service of notice as herein provided, but in such event notice of such fact shall thereafter be served within a reasonable time upon any competing common carrier, which shall have the right within 15 days thereafter to complain that it is being injured by such change and a hearing shall thereupon be granted.

No auto transportation company shall abandon or discontinue any service established under this act without an order of the Commission therefor.

Any auto transportation company may depart from the route over which it is authorized to operate for the purpose of transporting chartered or excursion parties to any point in the State of Minnesota on such terms and conditions as the Commission may prescribe.

No auto transportation company shall charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges which have been duly approved therefor by an order of the Commission; nor shall any auto transportation company refund or remit in any manner or by any device, any portion of the rates, fares and charges required to be collected by the Commission's order, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as have been provided for by an order of the Commission.

The Commission may, at any time, by its order, duly entered after a hearing had upon notice to the holder of any certificate hereunder and an opportunity to such holder to be heard, at which it shall be proven that such holder wilfully violates or refuses to observe any of its proper orders, rules, or regulations or any provision of this act, suspend, revoke, alter, or amend any certificate issued under the provisions of this act; but the holder of any such certificate shall have all the rights of rehearing, review and appeal as to such order of the Commission as is provided for in this act. '25, c. 185, § 4)

5015-5. Certificates for operation—Necessity for—Applications for—Form and contents—(a) No auto transportation company shall hereafter operate for the transportation of persons or property for hire as a common carrier on any public highway without first having obtained from the Commission under the provisions of this act a certificate declaring that public convenience and necessity require such operation.

(b) The auto transportation company making application for such certificate, shall do so in writing, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.
2. The public highway or highways over which, and the fixed termini between which, or the route or routes over which it intends to operate.
3. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the weight of the vehicle to be used in freight traffic.
4. The proposed time schedule.
5. A schedule of the tariff or rates desired to be charged for the transportation of freight or passengers.
6. A complete and detailed description of the property proposed to be devoted to the public service.
7. A detailed statement showing the assets and liabilities of such applicant.
8. And such other or additional information as the Commission may by order require. ('25, c. 175, § 5)

5015-6. Hearings on petitions for certificates—Upon the filing of such petition the Commission shall fix a time and place for hearing thereon which shall not be less than 20 days after such filing. The Commission shall cause a copy of such petition and notice of hearing thereon to be served upon the managing agent, or an officer, or the owner of any common carrier operating into or through any village or city located on the proposed route of the applicant and on the Commissioner of Highways, and the chairman of any town board, and the county auditor of any county, and the governing board of any city or village into or through which any street or highway may pass, over which it is proposed to operate any such motor vehicle, at least 10 days before the date of the hearing, and any such common carrier, and the Commissioner of Highways, the town board and the Board of County Commissioners, and the governing board or boards of any village or city, are hereby declared to be interested parties to said proceedings and may offer testimony for or against the granting of such certificate. ('25, c. 185, § 6)

5015-7. Certificates from Commissioner of Highways to accompany petitions—No petition for such certificate shall be considered by the Commission unless such petition shall be accompanied by a certificate from the Commissioner of Highways stating that the motor vehicle or vehicles so to be used in all respects comply with the law and the rules and regulations of the Commissioner of Highways applicable to the use of such highways by such motor vehicles. ('25, c. 168, § 7)

5015-8. Certificates—When granted—If the Commission shall find from the evidence that public convenience and necessity require the service proposed, or any part thereof as the Commission shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the Commission shall give reasonable consideration to the interests of the public that might be affected thereby and shall give reasonable consideration to the transportation service being furnished by any railroad, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service, and to the traffic already existing upon the route proposed to be traveled and the effect that such proposed service may have upon the existing travel upon said route and the excess cost of maintaining such highway on account of the installation of such additional service, if any. The Commission may issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought; and may attach to the exercise of the rights granted by such certificate, such terms and conditions as, in its judgment, the public convenience and necessity may require. ('25, c. 185, § 8)

5015-9. Transfer, etc., of certificates—Any right, privilege or certificate held, owned, or obtained by any 5015[9] 33—170 33—397

auto transportation company may be sold, assigned, leased, or transferred as other property only by the authorization of the Commission. ('25, c. 185, § 9)

5015-10. Companies already operating—Any auto transportation company operating in good faith on the first day of the 1925 legislative session over the route for which such certificate shall be sought, if it shall within 30 days after the taking effect of this act make application to the Commission for a certificate as herein provided for, may continue in operation until the final determination of its application and petition therefor by the Commission. ('25, c. 185, § 10)

5015-11. Bonds of transporation companies — Indemnity insurance—Before a certificate shall be issued to any Transportation Company, it shall file with the Commission a bond in a penal sum to be fixed by the Commission, payable to the State of Minnesota, conditioned that such Transportation Company shall pay any and all penalties assessed under the provisions of this Act, and for the faithful compliance with all lawful decisions, orders, rules, regulations, demands and requirements of the Commission made, rendered, issued or promulgated under the provisions of this Act. In addition to said bond, such Company shall also secure and file with the Commission public liability or indemnity insurance satisfactory to the Commission and in such an amount as it shall prescribe, covering injuries and damages accruing to persons or property, arising out of its operations as such Transportation Company. Such insurance shall be subject to cancellation for non-payment of premiums or withdrawal from service of a vehicle or vehicles covered thereby upon fifteen (15) days' written notice to the insured and to the Commission. Such insurance and/or bond may be, from time to time, reduced or increased by the Commission. The Commission may, if so desired by the Company, accept in lieu of said bond and/or said insurance, such other form of security as may be satisfactory to the Commission. ('25, c. 185, § 11)

5015[14] 228nw 444 **5015-12. Laws applicable**—In all respects in which the Commission has power and authority under this act, proceedings may be instituted, complaints made and filed with it, process issued, hearings held, opinions and orders and decisions made and filed, and appeals taken by any aggrieved party from any order so made to the District Court or the Supreme Court of this state, under the conditions and subject to the limitations and with the effect specified in the Railroad and Warehouse Commission law of this state, contained in Chapter 28, General Statutes 1923, and Acts Amendatory thereof. Actions or proceedings against an auto transportation company may be tried in any county through which such company operates any of its motor vehicles. ('25, c. 185, § 12)

5015-13. Penalties—Any auto transportation company or any officer, agent or employe of any auto transportation company failing to comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or any provision of this act may be subject to a penalty of not more than $50 for each and every day of such failure to comply with such order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or any provision of this act to be recovered in a civil action brought by the Attorney General. ('25, c. 185, § 13)

5015-14. Interstate commerce excepted — Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union except in so far as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress. ('25, c. 185, § 14)

5015-15. Filing fees—Upon the filing of an application for a certificate the applicant shall pay into the state treasury of the State of Minnesota as a fee for the issuance thereof, the sum of $50, and for any transfer of such certificate the sum of $25, and for the issuance of a duplicate certificate the sum of $3. ('25, c. 185, § 15)

5015-16. Partial invalidity of law—If any section, sub-section, sentence, clause phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. ('25, c. 185, § 16)

5015-17. Subsequent applications for certificates—Where a petition for a certificate of public convenience and necessity has been in whole or in part denied, a new application therefor shall not be again considered by the Commission within one year from the date of the order of the Commission filed therein, unless it shall be made to appear to the Commission that there has been a material change in the transportation needs of the communities proposed to be affected. ('25, c. 185, § 17)

5015[18] 29 — 154 **5015-18. Municipal charter powers or regulations not affected**—No provision in this act shall authorize the use by any transportation company of any public highway in any city of the first class, whether organized under Section 36, Article 4, of the Constitution of the State of Minnesota, or otherwise, in violation of any charter provision or ordinance of such city in effect January 1, 1925; nor shall this act be construed as in any manner taking from or curtailing the right of any city or village to regulate and control the routing, parking, speed or the safety of operation of a motor vehicle operated by any transportation company under the terms of this act, or the general police power of any such city or village over its highways; nor shall this act be construed as abrogating any provision of the charter of any such city now organized and operating under said Section 36 of Article 4, requiring certain conditions to be complied with before such transportation company can use the highways of such city, and such rights and powers herein stated are hereby expressly reserved and granted to such city. ('25, c. 185, § 18)

5015-19. No vested rights—Nothing in this act shall prevent the legislature from repealing, amending or modifying said act, or any privilege or right granted thereunder. ('25, c. 185, § 19)

STORAGE AND SHIPMENT OF GRAIN TERMINAL WAREHOUSES

5016Etseq. 31 — 294

5016. Public terminal warehouses—Definition—The term, "Public Terminal Warehouse" wherever used in this act, shall be construed to mean and include all elevators or warehouses located within the switching limits of St. Paul, Minneapolis and Duluth or other points in the state, which are now or may hereafter be designated as terminal points in which grains not belonging to the warehouseman is received for storage, whether for hire or without charge, and shall include all such warehouses where grain stored for different owners is mixed together with the grain of other owners and where the identity of the different lots or parcels is not preserved and shall include all such warehouses where grain other than that of the

warehouseman is stored in separate bins and the identity thereof preserved.

Provided, that sections 4 and 5 of this act, and sections 7 and 10 of this act, insofar as relates to the requirements therein, in respect to grade and dockage, and wherever requirements in respect to the same occur in said sections 7 and 10, shall not apply to any such warehouse, which is used and operated exclusively for cleaning, drying, cooling, mixing and conditioning for the market, grain belonging to others, and storing such grain until disposed of by the owner thereof, in which warehouse the grain of each owner or depositor is stored in separate bins or tanks, and is kept separate from the grain of every other owner or depositor, and no grain belonging to such warehouseman is received, handled or stored.

Wherever the term "warehouseman" is used in this act, it shall be construed to mean and include the party, parties, co-partnership, association or corporation engaged in the operation of a "public terminal warehouse" as defined in this act.

Wherever the term "commission" is used in this act, it shall be construed to mean the Railroad and Warehouse Commission of the State of Minnesota.

In all cases where such grain is delivered to a terminal elevator the receipt shall be issued in the name of the owner or his agent unless otherwise ordered in writing. ('23 c. 201 § 1)

5017. What are included—All elevators or warehouses included within the foregoing definition of public terminal warehouses are hereby declared to be "public terminal warehouses" and subject to license and regulation as provided in this act. ('23 c. 201 § 2)

5018. Must be licensed by Railroad and Warehouse Commission—No public terminal warehouse as defined in this act, in the State of Minnesota, shall be operated or receive grain for storage, either to be mixed with the grain of other parties of like grade, or in separate bins, until the owners or parties in charge and operating such warehouse shall first obtain a license from the Railroad and Warehouse Commission authorizing such warehouseman to operate such warehouse under the provisions of this act. Licenses shall be for the term of one year. Before any such license shall be issued, written application under oath shall be made to the commission for license specifying the kind of warehouse, the nature of its construction, its capacity and location, the name of the firm or corporation operating the same and each member of the firm or officer of the corporation, and such other facts as the commission may require shall be contained in such application. Such application shall be acted upon with reasonable dispatch by the commission, and if no reason exists for refusing the same, such license may be issued upon the payment of the fee of $10.00 for each elevator. Such application shall be granted only upon the warehouseman furnishing to the commission a bond to the State of Minnesota, to be approved by the commission, in the penal sum to be fixed by the commission, but not less than $50,000.00 for each warehouse which shall be conditioned for the faithful discharge of his duties as such warehouseman and full compliance with all the laws of the state and rules of the commission relative to the operation of public terminal warehouses and for the delivery to parties storing grain in such warehouses under the terms of this act of the grain or an equal amount of the same kind and grade so stored or the payment therefor of the value of such grain in case of failure to make such delivery. Such license may be revoked by the commission for violation of the law or any rule or regulation prescribed by the commission, but shall only be revoked upon a written notice or complaint specifying the charges and after a hearing had before the commission. A license may be refused to any warehouseman whose license has been revoked within the preceding year. All moneys collected for license fees shall be deposited with the state treasurer and credited to the grain inspection fund. If such warehouseman applies for a license for more than one warehouse in the same county, but one bond need be furnished but the same shall in all cases be in proportion to the capacity of such warehouses. ('23 c. 201 § 3)

5019. Duties of warehousemen—Form of warehouse receipt—Every such warehouseman shall receive for storage and shipment so far as the capacity of his warehouse will permit, all grain in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. All grain shall be inspected on receipt and stored with other grain of the same grade except as herein otherwise provided. At the time of the receipt of said grain, the warehouseman shall issue and deliver to the owner or consignee a warehouse receipt in the following form:

STUB RECORD

Warehouse Receipt No.....

..... Elevator Co.

.....Minn. ..... 19....

The ..... Elevator Company has received in store in its elevator known as .....situated at ..... Minnesota, for storage from ..... owner, ... bushels of..... which has been duly inspected by a duly authorized inspector of grain appointed by the State Railroad and Warehouse Commission of Minnesota, or licensed by the Secretary of Agriculture of the United States, and has been graded by said inspector as No.....

Consigned by ..... Secretary.

and is that grade. Said grain, or an equal amount of grain of the same kind and grade is deliverable upon the return of this receipt properly indorsed by the owner above named and the payment of all lawful charges; in case of grain stored separately in a special bin, at the request of the owner or consignee, the identity of such grain will be preserved while in store and said grain will be delivered as such separate lot or parcel, in accordance with the law, upon surrender of the receipt. Loss by fire, heating or the elements is at owner's risk.

The ..... Elevator Company conducts said elevator as a public terminal warehouse and receives and stores therein grain of others for hire.

..... bushels .....grade

.....

By .....

Receipt No. .....19.....

Received in store from.....

Bush..... lbs..... grade.....

Initial	Car No.	Bushels

Car No.	Bushels	Car No.	Bushels

The receipts shall be consecutively numbered and delivered to the owner immediately upon receipt of each lot or parcel of grain, giving the true and correct grade and weight thereof. The manner of receipt of such grain shall be stated in the receipt, and with the number and distinctive mark of each car, and the name of each barge or other vessel. The failure to issue such receipt as directed or the issuance of any warehouse receipt differing in form or language from that prescribed shall be a misdemeanor. ('23 c. 201 § 4)

5020. Grain to be re-delivered on surrender of warehouse receipt—Upon return of the receipt for grain not stored in separate bins to the proper warehouseman, properly indorsed, and upon payment or tender of all advances and legal charges, grain of the same grade and quantity named therein shall be delivered to the holder of such receipt within twenty-four hours after facilities for receiving the same have been provided. The identical grain, if stored in separate bins, shall be so delivered. If such warehouseman shall fail so to deliver it, he shall be liable to the owner in damages at the rate of one cent a bushel for each day's delay, unless he shall deliver the property to the several owners in the order of demand, as rapidly as it can be done by ordinary diligence. If the warehouseman shall fail so to deliver such grain, the person entitled thereto may recover the same, if kept in separate bins, or the same amount of grain of like grade, if stored with other grain, or the value thereof, in a civil action; and such warehouseman shall also be guilty of larceny. ('23 c. 201 § 5)

5021. Warehouseman not to sell without authority from owner—No such warehouseman shall sell or otherwise dispose of or deliver out of store any grain stored in his warehouse without the express authority of its owner and the return of the storage receipt, except as herein provided, nor mix together grain of different grades in store, nor select grain of different qualities, but of the same grade, for storage or delivery, nor shall he in any way tamper with grain of others while in his possession or custody, with the purpose of securing any profit to himself or any other person, or attempt to deliver grain of one grade for that of another. Any person violating any provision of this section shall be punished by a fine of not more than one thousand dollars or imprisonment in the state prison for not more than five years, or both. ('23 c. 201 § 6)

5022. Grain to be stored in separate bins when requested—At the request of the owner or consignee, such warehouseman shall store any grain of the same owner or consignee in separate bins, which grain shall then bear the name of the owner or consignee. The warehouseman shall issue to the owner or consignee distinguishing whether owner or consignee, a warehouse receipt or receipts for all or any part of such grain. Every such receipt shall give the name of the owner or consignee and state the amount, kind and grade of grain for which the receipt is issued, and that the grain of such owner or consignee is stored separately from the grain of any other owner or consignee. The warehouseman shall, on presentation and surrender of the warehouse receipt bearing the proper endorsement of the person to whom it was issued, deliver to the person surrendering the receipt such amounts of the same grain as may be demanded and of the same grade as called for by reciept. The warehouseman, at the request of the owner or consignee, shall clean, dry, mix or otherwise improve the condition or value of such grain, and it shall be delivered separately from the grain of any other owner or consignee upon the order of the owner or consignee, in accordance with the terms of the warehouse receipt issued therefor and endorsed by such owner or consignee. ('23 c. 201 § 7)

5023. Inspection at terminal warehouse—All grain received at a terminal warehouse shall be inspected and graded by a state or federal inspector at the time of its receipt, and reinspected in like manner upon delivery from such warehouse. The charges for such inspections shall be paid by the warehouseman and added to the storage, and the chief inspector may recover such charges from the warehouseman. ('23 c. 201 § 8) 5023 29 — 175

5024. Commission to make rules—The commission shall make such rules as may be necessary in regard to the receipt, care and delivery of grain, the issuance, cancellation, division and consolidation of warehouse receipts and such other matters relative to the management of the business of public terminal warehouses as it shall deem proper, not inconsistent with the provisions of this act. ('23 c. 201 § 9)

5025. Warehousemen to post statement of grain in warehouse—Reports to commission—Every terminal warehouseman shall post conspicuously in his business office, on or before Tuesday morning of each week, a statement of the amount of grain of each kind and grade in store in his warehouse at the close of business on the preceding Saturday and render a like statement, verified by him or his bookkeeper having personal knowledge of the facts to the warehouse registrar of the commission. He shall also make a daily statement to said registrar of the amount of each kind and grade of such grain received in store in his warehouse the preceding day; the amount shipped or delivered, and the warehouse receipt cancelled on such delivery, stating the number of each receipt and the amount, kind and grade of grain shipped or delivered thereon; the amount, kind and grade of grain delivered for which no warehouse receipt was issued and how and when the same was received, the aggregate of such reported cancellation and delivery of unreceipted grain corresponding in amount, grade and kind with the shipments and deliveries reported; and shall also at the same time report the receipts cancelled upon issue of new ones, with the number of each such receipt cancelled and that issued in its place. He shall also furnish the registrar any further information regarding receipts issued or cancelled necessary for correct record of all such receipts and of grain received and delivered and shall make a further verified statement to the commission of the condition and management of any terminal warehouse under his control, at such times and in such form as the commission may require.

Every such warehouseman shall, on or before the fifteenth day of September in each year, render such

commission on blanks or forms prepared by it an itemized and verified report of all business transacted by him as a public warehouseman during the year beginning September 1st of the preceding year and ending August 31st of the current year. Such report shall state the grade, gross weight and dockage of all grain of various kinds in his warehouse at the beginning of the year, the grade, gross weight and dockage of all grain received, the grade, gross weight and dockage of all grain shipped or delivered from such warehouse and the grade, gross weight and dockage of all grain remaining in the warehouse at the end of the year, and such report shall particularly specify and account for any overage or shortage in any kind of grain accruing during the year. Such report shall also state the weight basis upon which all such grain has been received and the weight basis on which the same has been shipped or delivered. The commission may also require special reports from such warehouseman at such times as the commission may deem expedient. The commission may cause every such warehouse and business thereof and the mode of conducting the same to be inspected by one or more of its members, or by its authorized agent, whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. ('23 c. 201 § 10)

5026. Warehousemen to publish annual statements—Every such warehouseman shall annually, during the first week in September, publish in some newspaper, daily if there be one, published in the place where his warehouse is situated, a schedule of storage rates for the ensuing year, which shall not be increased during such year, and no discrimination in rates shall be made by any such warehouseman. The charge for receiving, handling, storing and delivering grain at such warehouse shall not exceed one and one-half cents per bushel for the first fifteen days or part thereof, and one-thirtieth of a cent per bushel for each day, or part thereof thereafter. ('23 c. 201 § 11)

5027. Warehouses subject to inspection—Every person having an interest in any grain stored in any such warehouse, and every state grain inspector, shall have the right to examine at all times during ordinary business hours any grain so stored, and all parts of such warehouse; and every such warehouseman, his agents and servants, shall furnish proper facilities for such examination. ('23 c. 201 § 12)

5028. State weighmaster to inspect scales—All scales in such terminal warehouses, or used for weighing grain in railroad yards at terminal points, shall be under the control of the state weighmasters and subject to inspection by them, exempt from the jurisdiction of sealers of weights and measures. They shall be inspected at the request of any person interested in any grain weighed or to be weighed thereon. If found incorrect, the cost of inspection shall be paid by the owner thereof; otherwise by the person requesting inspection. No scales found incorrect shall be used until re-examined and found correct. ('23 c. 201 § 13)

5029. Application—Every right and privilege granted by this act to the owner or shipper of grain for storage in terminal elevators and the rights granted to such owner while the same remains in and is removed from such elevator, shall be, and hereby is extended to and may be exercised by an individual or association of individuals, co-partnership, co-operative company or association or corporation and every right and privilege by this act granted to citizens, associations or corporations in this state may be exercised by any citizen, association or corporation of any other state, and such citizen, association or corporation of any other state shall have and may exercise the same rights and privileges as citizens, associations or corporation of this state, and be subject to the same restrictions and liabilities. ('23 c. 201 § 14)

5030. Statutes repealed—Sections 4438, 4439, 4440, 4441, 4442, 4443, 4444, 4446 and 4447, General Statutes of 1913; Section 4435, General Statutes of 1913, as amended by Chapter 349, Laws of 1915; Section 4436, General Statutes of 1913, as amended by Chapter 474, Laws of 1919, Section 4437, General Statutes of 1913, as amended by Chapter 272, Laws of 1921, and Section 4445, General Statutes of 1913, as amended by Chapter 215, Laws of 1921, are hereby repealed. ('23 c. 201 § 15)

5031. Boards of grain inspection—The boards heretofore known as the boards of appeals for the inspection of grain at Minneapolis and at Duluth shall hereafter be known as "the Minneapolis Grain Inspection Board" and "the Duluth Grain Inspection Board," respectively. Each board shall consist of three members appointed by the governor, who shall have the same qualification as grain inspectors, and not more than two of whom shall be of the same political party. Their term of office shall be for three years from August 1st succeeding their appointment, and until their successors qualify, except as hereinafter provided. At the expiration of the terms of the present members, on or before August 1st, 1909, the governor shall appoint one member of each of the above named boards to serve for one year, one member of each board to serve for two years and one member of each board to serve for three years. The governor may remove any member and fill any vacancy for the unexpired term. Members of either board shall have a right to act at either Duluth or Minneapolis. (R. L. § 2060, amended by '09 c. 158 § 1) [4448]

5032. Official title of boards—That the official titles of the two boards now known as "the Minneapolis Grain Inspection Board" at Minneapolis, and "the Duluth Grain Inspection Board" at Duluth, shall be, and the same are hereby changed to the board of grain appeals at Minneapolis and the board of grain appeals at Duluth. ('11 c. 72 § 1) [4449]

Section 3 repeals inconsistent acts, etc.

5033. Concurrent jurisdiction—Each of said boards of grain appeals shall have concurrent jurisdiction over all grain appeal cases brought before them and the decisions rendered by either board shall be final and conclusive as against all parties. ('11 c. 72 § 2) [4450]

5034. Bond—Before entering on the duties of his office, each member of such boards shall give bond to the state, with sureties to be approved by the governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office. No surety on any such bond shall be interested in or connected with any grain, warehouse or commission business, firm or corporation. (2061) [4451]

5035. Minnesota grades—Establishment by board of grain appeals—Dockage—Rules and regulations—The two boards or a majority of the six members thereof shall meet annually in joint session on or before September 15, and establish the grades of all grain subject to state inspection to be known as the "Minnesota Grades," and all grain received at any public warehouse shall be graded accordingly. Such grades shall not be changed before the next annual meeting without the concurrence of at least five mem-

bers of such boards. In establishing the grades, in addition to the physical qualities of the grain, there shall be taken into consideration the milling and bread-producing quality of all grain products used as human food. Each of said boards shall determine the grade and dockage, if any, of all grain in all cases where appeals from the decisions of the chief inspector have been taken and for such purpose they may request fresh samples of such grain to be furnished direct to the board having the case under consideration. Dockage shall be considered as being of two classes: First, that having value, and second, that having no value. The two boards shall annually, at the joint sessions at which Minnesota Grades are established, ascertain and determine what dockage contained in grain is of value and publish a list thereof in connection with the publication of said Minnesota Grades. Any foreign content of the grain shall not be considered in establishing the grade. They shall also render assistance and advice to the chief inspector of grain so as to enable him to instruct the deputy inspectors of grain under his jurisdiction in accordance with the decisions and work of the boards. Whenever grain containing dockage of value is sold to any public, local warehouse or mill, terminal warehouse, or to any flour mill located in St. Paul, Minneapolis, or Duluth, or any other point within the State of Minnesota, which is now or may hereafter be designated as a terminal point, such sale shall not be considered to include such dockage of value, but such dockage shall be paid for at its market value or shall be returned to the vendor of said grain at the option of the vendee. At the time of establishing "Minnesota Grades" it shall be the duty of said Boards of Grain Appeal to establish such rules and regulations as shall be deemed necessary for the carrying out of the provisions and purposes of this act, and to publish said rules in connection with the publication of the said "Minnesota Grades." (R. L. '05, § 2062; amended '11, c. 84, § 1; '17, c. 284, § 1; '21, c. 524, § 1; '25, c. 258) [4452]

5036. Duties of boards—Each of such boards shall recommend to such commission the discharge of any inspector deemed by them incompetent or otherwise unfit, and make such other reports and recommendations as they deem advisable. (2063) [4453]

5037. Salaries—The salaries of the members of such boards shall be fixed by the commission and approved by the governor, and such salaries and all their necessary expenses shall be paid out of the grain inspection fund on the order of the commission. (2064) [4454]

5038. Chief inspector—Such commission shall appoint a chief inspector, whose term of office shall be for two years, unless sooner removed by the commission. Such inspector shall give bond to the state in the sum of ten thousand dollars, with sureties to be approved by the commission, conditioned for the faithful and impartial discharge of the duties of his office according to law and the rules and regulations prescribed by the commission, and the payment of all damages sustained by any person, caused by his failure to perform such duties. (2065) [4455]

5039. Deputy inspectors—The chief inspector, with the approval of the commission, shall appoint such number of deputies as may be required. One such deputy in each of the cities of St. Paul, Minneapolis and Duluth shall be styled "chief deputy." Each deputy inspector shall give bond as required of the chief inspector, but in the sum of five thousand dollars. They shall be under the control and supervision of the chief inspector, and may be removed by him. (2066) [4456]

5040. Standard samples—The chief inspector shall furnish standard samples of grain of each Minnesota grade to any grain warehouseman in the state, upon request and payment of the actual cost thereof. (2067) [4457]

5041
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5041. Certificates of inspection to set forth test of weight—Such inspector shall inspect and grade all grain received at or shipped from any terminal warehouse in carload lots or boatload lots, and give a certificate of the inspection to the persons entitled thereto. Their decision shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon re-inspection and appeal. Every certificate of inspection so issued shall, in addition to other facts, set forth the test weight per bushel of the grain so inspected. (R. L. '05 § 2068; G. S. '13 § 4458, amended '17 c. 280 § 1)

192+357.

5042. Appeals—Any owner, consignee or shipper of grain, or any warehouseman, who is dissatisfied with the inspection of grain by any chief or deputy inspector, may appeal from his decision to the nearest grain inspection board by filing notice of such appeal with the chief deputy inspector and paying a fee, to be fixed by the commission, which shall be refunded if the appeal is sustained. Such deputy inspector shall forthwith transmit the notice to said board of appeals. The decision of said board, fixing the grade of such grain shall be final. (R. L. § 2069, amended '07 c. 55 § 1) [4459]

5043. Withholding grain from store—The owner or consignee of grain consigned to a terminal warehouse may have the same withheld from storage and delivered to him or his order by giving notice to the carrier in possession thereof, and to the warehouseman to whom such grain was consigned, and paying all charges that may be a lien thereon. Such grain shall be removed within twenty-four hours after the car or boat containing the same is placed in a proper and convenient place for unloading. If the grain be delivered contrary to such notice, such warehouseman, and the carrier so delivering the same, shall be jointly and severally liable to the owner for double its value. (2070) [4460]

5044. Unauthorized storage forbidden—No contract, agreement, understanding, or combination shall be entered into between any public warehouseman and any common carrier or other person for the delivery of any grain at any public warehouse contrary to the direction of the owner, nor shall any grain be so delivered or received. (2071) [4461]

5045. Weighmasters and weighers—The commission shall appoint at each terminal point a state weighmaster and such weighers as may be necessary, who shall have the control of the weighing of all grain subject to state inspection, except when otherwise ordered by the party shipping the same. Every such weighmaster and weigher shall give bond to the state in the sum of five thousand dollars, conditioned for the faithful discharge of his duty. (2072) [4462]

Cited (119-467, 138+674).

5046. Weighmasters' records and certificates—All weighmasters and weighers shall keep such records as may be prescribed by the commission, and shall furnish to any person for whom weighing is done a certificate under his hand, showing the amount of each weight, the number and initial letter or other distinctive mark of each car weighed, place and date of weighing, and

contents of car. Such certificate shall be prima facie evidence of the facts therein certified. (2073) [4463]

75-308, 77+973.

Certificates competent evidence without other authentication than signature (127-301, 149+471). Certificate not conclusive (148-441, 182+517, 192+357).

In an action to recover the value of wheat alleged to have been lost in transit, plaintiff made a prima facie case by introducing in evidence the bill of lading, the weighmaster's certificate, and proof of the market price of the wheat. 163-371, 204+47.

5047. Fees for inspection and weighing—The fees for inspection and weighing shall be fixed by the commission, and shall be a lien upon the grain. If the grain is in transit, such fees shall be paid by the carrier and treated as advance charges, and, if received for storage, by the warehouseman, and added to the storage charges. All moneys so collected, and all fines and penalties for violation of any provision of this subdivision, shall be paid into the state treasury, and known as the "Grain Inspection Fund," and paid out only on order of the commission and auditor's warrant. All interest received from deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the chief inspector. (2074) [4464]

5048. Qualifications of inspectors and weighmasters—No member of a board of appeals, chief or deputy inspector, weighmaster, or weigher shall during his term of service be in any way interested in the handling, storing, shipping, purchasing or selling of grain, or any of its products, nor in the employment of any person or corporation engaged therein, nor shall he be a member of any board of trade or organization of like character. (2075) [4465]

5049. Filing of bonds and suits thereon—All bonds required by this subdivision shall be filed with the secretary of state, and suit may be brought thereon by any person injured by the misconduct of the principal. (2076) [4466]

5050. Removal of inspectors and weighmasters—Upon written complaint filed with the commission, charging any inspector, deputy inspector, weighmaster, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the commission shall investigate such charge, and, if it be sustained, shall remove such officer. (2077) [4467]

5051. Penalties—Personating inspector—Any person not duly appointed and qualified, who shall assume to act as a state inspector or deputy inspector of grain, shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars nor more than one hundred dollars. (2078) [4468]

5052. Misconduct of inspectors and weighmasters—Any inspector or deputy inspector, weighmaster or weigher, who shall knowingly or carelessly inspect or weigh any grain improperly, or give any false certificate of inspection or weight, or accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall improperly influence, or attempt to influence, any such officer in the performance of his official duty, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. (2079) [4469]

5053. Certificates not issued under state authority—Use of certain words prohibited—Any person who is not connected with the state weighing department is hereby prohibited from using the term "weighmaster," "state weighmaster," any representation of the seal of the state, or any other words or device calculated or tending to indicate that the certificate or receipt is issued under state authority, or to otherwise deceive or mislead the public or any person interested, when issuing certificates or receipts purporting to show the weight of grain, hay or straw; provided, that where weighing is done under the authority of the charter or an ordinance of any city or village, or under the auspices of any incorporated chamber of commerce, board of trade or exchange, any certificate or receipt issued therefor shall on its face plainly show its source and the signature of the person signing the same shall be followed by a designation plainly showing the capacity in which the said signer is acting, and the term "weighmaster" may be a part of such designation. Provided, further, that every such certificate or receipt issued by anyone other than the duly authorized representatives of the state weighing department, shall have plainly stamped or printed across its face in red ink in letters not less than one-quarter of an inch high, the words, "This Certificate is Not Issued Under State Authority." ('07 c. 78 § 1) [4470]

5054. Penalty for violation—Any person found guilty of violating section 1 of this act shall be guilty of a misdemeanor. ('07 c. 78 § 2) [4471]

5055. Obstructing weighmaster—Any person or corporation who shall obstruct any state weighmaster or weigher in the performance of his official duties, by preventing his proper access to the scales used in the weighing of grain or otherwise, shall forfeit to the state one hundred dollars for each offence. (2080) [4472]

5056. Standing appropriation—All moneys which shall come into the state treasury on account of the grain inspection fund, or so much thereof as may be necessary, are hereby annually appropriated to the payment of the salaries, fees, and expenses provided in this subdivision, to be disbursed on the order of the commission. The commission shall fix the salaries of inspectors, weighers, and all other employees of the state grain department and prescribe the time and manner of payment thereof. (2081) [4473]

As to repeal of standing appropriations, see §§ 48, 49.

Laws 1927, c. 439, § 10 provides as follows: "The Railroad and warehouse commission is hereby authorized to appropriate from the Grain Inspection Fund such moneys as are properly chargeable to that activity, the same to be used in carrying on the work of its department."

5057. Inspectors to examine cars—The chief inspector of grain, and any deputies, or officials, serving under him, before opening the doors of any cars containing grain, upon their arrival at any of the several places designated by law as terminal points in this state, for the purposes of inspecting the same, shall first ascertain the condition of such cars and determine whether any leakages have occurred while said cars were in transit; also whether or not the doors are properly secured and sealed, making a record of such facts in all cases and recording the same in a proper book to be kept for the purpose. After such examination shall have been duly made and recorded and the inspection of such grain has been made, the said officials of the state grain inspection department, above mentioned, shall securely close and reseal such doors as have been opened by them, using a special seal of the said state grain inspection department for the purpose. A record of all original seals broken by said officials and the time when broken; also a record of all state seals substituted therefor and the time when such state seals were substituted, together with a full de-

scription of said seals, with their numbers, shall be made by the said officials. (2082) [4474]

5058. Police protection—All railroad companies, warehousemen and millers operating at the terminal points of this state shall furnish ample and sufficient police protection at all of their several terminal yards and on their terminal tracks to securely protect all cars containing grain, while the same are in their possession, shall prohibit and restrain all unauthorized persons, whether under the guise of samplers, sweepers, or under any other pretext whatever, from entering or loitering in or about their respective railroad yards or tracks and from entering any cars of grain under their control, or removing grain therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of the within section. Any failure to comply with the provisions of this section, and § 5057, shall be deemed a misdemeanor. (2083) [4475]

GRADING AND INSPECTION OF ALFALFA, SWEET CLOVER, RED CLOVER AND GRASS SEEDS.

5058-1. Laws applicable—Rules and regulations—That alfalfa seed, sweet clover seed, red clover seed, and all other grass seeds now or hereafter grown in commercial quantities in this state, be and the same hereby are made subject to and brought within the provisions of the laws of this state which authorize, provide for, and regulate the establishment of "Minnesota Grades" and the grading thereunder of wheat and similar grains, including Sections 5031 to 5058, both inclusive, General Statutes 1923, and all other applicable provisions of the statutes. Provided, however, that the railroad and warehouse commission shall have plenary power, so far as the same may be constitutionally delegated, to supplement the provisions of said statutes and adapt the same to the purposes of this act; and to that end said commission may make, promulgate and enforce all rules, regulations, directions and orders appropriate or convenient for the purposes aforesaid. ('27, c. 334, § 1, effective July 1, 1927)

5058-2. Grading and inspection—That the Railroad and Warehouse commission may determine from time to time, with or without public hearing, whether alfalfa seed, sweet clover seed, red clover seed, and other grass seeds, or any one or more of them, is being produced in this state in quantities and under conditions respecting sale or use thereof which permit of practical grading and inspection under the provisions of this act; and may defer, suspend, or discontinue such grading and inspection whenever and as long as the same is found by the commission to be impractical or without substantial public benefit. Appropriate findings and orders covering such matters shall be made by the commission, and may be appealed from or reviewed in the same manner as other orders of the commission. ('27, c. 334, § 2, effective July 1, 1927)

5058-3. Fees for grading and inspecting—Fees for grading and inspection under this act may be assessed and collected by the commission in the same manner as in case of grain grading and inspection; but such fees may be modified or varied in amount, from time to time, so as to cover the full cost of all grading and inspection hereunder. All such fees so collected shall be covered into the state treasury and shall become a part of the "Grain Inspection Fund" available for, and from which, all expenses of the commission incurred in carrying out the provisions and purposes of this act shall be paid. No further legislative appropriation of such fees so collected shall be necessary. ('27, c. 334, § 3, effective July 1, 1927)

5058-4. Employees and expenses—The Railroad and Warehouse commission is hereby authorized to employ such additional help, expert or otherwise, and to incur such additional expenses as are reasonably necessary in carrying out the provisions and purposes of this act. ('27, c. 334, § 4, effective July 1, 1927)

LOCAL WAREHOUSES.

5059. Public warehouses—All elevators, flour, cereal and feed mills, malthouses and warehouses in which grain is received, stored or handled, situate on the right of way of any railroad company or adjacent thereto, to be used in connection with a line of railway at any station or siding other than Minneapolis, St. Paul and Duluth, shall be public warehouses known as public local grain warehouses and shall be under the supervision and subject to the inspection of the commission.

All elevators, flour, cereal and feed mills, malthouses or warehouses located on any line of railway in either of said cities receiving grain direct from producers in less than minimum carload lots shall be required to conform to all laws relating to public local grain warehouses. ('23 c. 114 § 1)

5060. Warehouses must be licensed—All public local grain warehouses shall be licensed annually by the commission. Application for license must be filed with the commission and the license issued before transacting warehouse business.

Every license shall expire on the thirty-first day of August, the fee shall be five dollars for each license issued and a license shall be required for each such warehouse operated. The fees collected under this section shall be paid into the state treasury and credited to the state grain inspection fund.

Such license shall be revocable by the commission for cause upon notice and hearing.

All licenses, grade rules and all rules regulating public local grain warehouses shall, upon receipt thereof by the warehouseman, be posted in a protected place in the driveway to his warehouse.

Any person, firm or corporation desiring to purchase grain in small lots from producers for the purpose of loading the same in cars on track of any railway company for shipment shall be known as track buyers and shall procure a license therefor from the railroad and warehouse commission before transacting such business and shall be subject to the same laws, rules and regulations as may govern public local grain warehousemen insofar as they may apply. The license fee shall be five dollars for each station. Nothing of this act shall apply to anyone purchasing seed grain for his own use.

Any public local grain warehouseman or track buyer of grain operating without first obtaining a license shall forfeit to the State for each day's operation fifty ($50.00) dollars, and such operation may be enjoined upon complaint of the commission. ('23 c. 114 § 2)

5061. Must be kept open—All duly licensed public local grain warehouses shall be kept open for business in order to properly serve the public. Upon application and sufficient cause shown the commission may allow any such warehouse to close for such length of time as may be stated in the order issued therein. Provided, that nothing in this section contained shall

apply to flour, cereal and feed mills and malthouses, doing a manufacturing business only. ('23 c. 114 § 3)

5062. Licenses may be revoked—Any person, firm or corporation operating a public local grain warehouse who shall fail to keep the same open for the transaction of the business for which license has been issued, without first having received written permission from the commission to close, shall be guilty of a misdemeanor and the license issued may be revoked by the commission and no reissue of license will be made to such warehouseman, or anyone associated or connected with him or them for a period not exceeding two years.

In case of the destruction by fire or other cause of any licensed public local grain warehouse it shall be the duty of the licensee thereof to notify the commission in writing within ten (10) days thereafter of such loss.

Upon the sale or lease of a public local grain warehouse, a transfer of the license for such warehouse shall be necessary and such transfer of license may be had free of charge by applying to the railroad and warehouse commission for the same, provided, however, that the party or parties selling or leasing shall first file with the railroad and warehouse commission a report of the business done from the preceding first day of July up to the time of such sale or lease, and shall satisfy the commission that proper provision has been made for the purchase, redelivery, or continuation of storage of such grain as may be outstanding on storage receipts. ('23 c. 114 § 4)

5063. Grain to be received for storage—Receipts for —Penalties—(a) Every public local grain warehouseman licensed to store grain shall receive for storage, so far as the capacity of his warehouse will permit, all grain tendered him, without discrimination of any kind; provided such grain is sound and in a warehouseable condition and of proper grade for delivery on terminal market contracts. Upon delivery of grain for shortage a legal warehouse storage receipt shall be issued to the owner or his agent, which shall state the place and date when the grain was received, the name of the owner of the grain, the kind and grade of the grain, according to the official terms established by the state board of grain appeals, or by the Secretary of Agriculture of the United States, the gross weight, dockage and net weight of the grain as per Minnesota standard weight and in addition thereto such receipt shall contain either on its face or reverse side the following specific warehouse and storage contract:

(b) This grain is received, insured and stored to July 31st, following, unless it is shelled corn, when the date shall be March 31st following delivery, and terms expressed in the body of this receipt shall constitute due notice to the holder thereof of the expiration of the storage period. The charges for receiving, insuring, handling and storing for the first fifteen days or part thereof shall be free. Storage after the first fifteen days shall be charged and hereby is fixed in the sum of one-thirtieth of a cent per bushel per day for the balance of the storage period, which shall be collected by the warehouseman upon presentation of the storage receipt for the sale or delivery of the grain represented by such receipt, or the termination of the storage period. It shall be and hereby is made unlawful for any person, firm, association or corporation to charge or collect a greater or lesser amount than the one herein fixed. If grain is cleaned at owner's request, the charge shall be two cents per bushel. This grain has been received and stored with grain of the same lawful grade. Upon the return of this receipt and payment or tender of a delivery charge per bushel of four cents for flax, three cents for wheat and rye and two cents for all other grains, and all other stated lawful charges accrued up to the time of said return of this receipt, the above amount, kind and grade of grain will be delivered within the time prescribed by law to the person above named or his order, either from this warehouse, or if the owner so desires, in quantities not less than a carload in a public bonded warehouse at any terminal point upon the same line of railway within this state where state or federal inspection and weighing is in force, the grade and weight thereof to be determined by state or federal inspection and weighing as provided by law, and such grain to be subject to the usual freight, inspection, weighing and switching charges.

(c) Attached to the receipt shall be a stub record stating number and date of receipt and the gross weight, dockage and net weight; such stub record to remain in the possession of the warehouseman for inspection by the commission or interested parties. The receipts shall be consecutively numbered and delivered to the owner or his agent. All storage receipts shall state the date of delivery, except where the delivery of a certain lot for storage is not completed, when such receipt shall be dated not later than Saturday of the week of delivery. All special bin receipts and stub records thereof shall have plainly marked thereon the words "Special Bin." Public local grain warehousemen may insert on said receipt the following clause: "If any of the grain embraced in this receipt shall prove to be covered by any chattel mortgage or other lien, or the partial or absolute title prove to be in another than the party to whom this receipt was issued, the same shall, if discovered before the delivery of the grain, be a sufficient reason for a refusal to deliver to the holder of the receipt, or, if discovered after the delivery of the grain, such delivery shall be deemed an overdelivery, for which said holder of this receipt to whom such delivery is made, shall be accountable."

(d) Any provision or agreement in such receipt not contained in the aforesaid specific warehouse and storage contract shall be void. The failure to issue such receipt as directed, or the issuance of slips, memoranda or any other form of receipt embracing a different warehouse or storage contract shall be deemed a misdemeanor, and no such slip, memoranda, or other form of receipt shall be admissible in evidence in any civil action; provided, nothing in this act contained shall be construed to require or compel any party or parties operating a flour, cereal or feed mill or malthouse, doing a manufacturing business only, to receive, store or purchase at said mill any kind of grain.

(e) Public local grain warehousemen shall be held liable to the owner for the delivery of the kind, grade and net quantity of grain called for by said storage receipts. The term "grain" is held to signify and include the following products: Wheat, corn, oats, rye, barley, flaxseed and speltz.

(f) All public local grain warehousemen shall purchase grain in conformity with the official grades of grain established from time to time by the state board of grain appeals or by the Secretary of Agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by state or federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that

may be made from time to time.

(g) No public local grain warehouseman shall issue a receipt for grain not actually received into his warehouse.

(h) Any person, firm, association or corporation, or any officer or agent of any person, firm, association or corporation, who shall violate the provisions of Section 5 of this act as herein amended shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than three months. The Railroad and Warehouse Commission of this state shall have the power and it shall be their duty whenever they find, after a hearing, that the provisions of this act have been violated by any person holding a license to conduct a public local grain warehouse in this state, to revoke and annul such license, and in such case no new license shall be granted to the person whose license is so revoked, nor to anyone either directly or indirectly engaged with him in said business for the period of one year. ('23, c. 114, § 5; amended '27, c. 200, § 1, effective August 1, 1927)

Action for conversion. 161–380, 201+615.

Only those storage tickets containing a contract differing from the prescribed contract are declared by statute to be inadmissible in evidence. 212+198.

The surety, having made itself responsible for the performance by the warehouseman of all duties imposed upon him by statute, cannot avoid liability on the ground that he failed to issue the prescribed storage ticket. 212+198.

5064. Form of storage receipt—There may be printed on such storage receipt a receipt to be executed by the owner in case the grain represented thereby is purchased by such warehouseman. The warehouseman shall record such purchase as to the total amount paid and the amount paid per bushel on the stub record of his storage receipt book. Such receipt shall be in substantially the following language and form:

Received from .....
.....Dollars net in full payment for the grain represented by this storage receipt. Gross price per bushel....., storage per bushel....., net price per bushel..... All blank spaces in this receipt were filled in before the same was signed by me, and I hereby certify that I am the owner of the grain for which this receipt was issued and that there are no liens, chattel mortgages or other claims against the grain represented by this receipt.

Signed.....
Owner

Dated.....19...

Provided, that nothing in this section contained shall be construed to affect in any manner the conditions of the storage contract specified in section 5 of this act. ('23 c. 114 § 6)

5065. Grain delivered on surrender of receipt—On the return and surrender of any receipts and payment of all lawful charges, the grain represented therein shall be immediately deliverable to the owner, or his order, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided.

If not delivered within twenty-four hours after such demand and proper facilities have been provided, the warehouseman shall be liable to the owner in damages not exceeding one cent a bushel for each day's delay, unless he shall deliver to different owners in the order demanded as rapidly as it can be done by ordinary diligence. The owner of the receipt shall order the car or cars in which the grain covered by his receipt is to be transported, and the grain shall be delivered immediately when the car so ordered is in proper condition for loading and placed at the warehouse.

If any dispute or disagreement arises between the party receiving and the party delivering the grain at any public local grain warehouse in this state as to the proper grade or dockage, or both, of any grain, an average sample of at least three quarts of said grain in dispute may be taken by either or both of the parties interested. Said sample or samples shall be certified to by both the owner and warehouseman as being true samples of the grain in dispute on the day upon which the grain is delivered. Such samples shall be forwarded in a suitable sack by parcel post or express, prepaid, with the name and address of both parties, to the chief inspector of grain at St. Paul or Minneapolis, who will, upon request examine said grain, and adjudge what grade or dockage or both said samples of grain are entitled to under the inspection rules, in his judgment and opinion. If the grain in question is damp, or otherwise out of condition, a pint of such samples placed in an airtight container shall be forwarded with such sample or samples. ('23 c. 114 § 7)

Action for conversion. 161–380, 201+615.

5066. Warehouseman shall keep record—Every public local grain warehouseman shall keep in proper books a record of all grain received, stored or shipped, stating the weight, grade, dockage for dirt or other cause, and the name of the owner. ('23 c. 114 § 8)

5067. Standard weights to be used—No person purchasing, selling or storing grain in any public local grain warehouse in this state, as the same is now or may be hereafter defined by law, shall use any other measure for such grain than the standard bushel, and no other number of pounds shall be used or called a bushel than the number of pounds provided by law as the standard weight of the kind of grain in question; provided, however, that during the months of October and November not exceeding eighty pounds and during the months of December and January not exceeding seventy-two pounds may be so used as the standard bushel of new ear corn. ('23 c. 114 § 9)

5068. Pooling to be prohibited—It shall be unlawful for any person, firm or corporation engaged in the buying, selling or handling of grain in any public local grain warehouse in this state, or for the local agent in charge of such warehouse, or any other agent of the person, firm or corporation, operating the same, to enter into any contract, agreement, combination or understanding, with any other person, firm or corporation, owning or operating any other public local grain warehouse at any railway station, their agent or agents, whereby the amount of grain to be received or handled by said warehouses, at such station, shall be equalized or pooled between said warehouses, or whereby the profits or earnings derived from said warehouses shall be divided or pooled, or apportioned in any manner, or whereby the price to be paid for any kind of grain at such station shall be fixed or in any manner affected, and each day of the continuance of any such agreement, contract or understanding shall constitute a separate offense. ('23 c. 114 § 10)

5069. Penalties for violations—Any person, firm or corporation, or any officer or agent of any person, firm or corporation, who shall violate the provisions of section 10 of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less

than fifty dollars or more than one hundred dollars, and by imprisonment in the county jail for not less than thirty days, or more than three months. The railroad and warehouse commission of this state shall have the power, and it shall be their duty, whenever they find, after a hearing, that the provisions of this act have been violated by any person holding a license to conduct a public local grain warehouse in this state, to revoke and annul such license, and in such case no new license shall be granted to the person whose license is so revoked nor to any one either directly or indirectly engaged with him in said business, for the period of one year. ('23 c. 114 § 11)

5070. Reports to be filed—Every such warehouseman shall on or before the first day of August of each year render such commission on blanks or forms prepared by it an itemized and verified report of all business transacted by him as a public local grain warehouseman during the year beginning July 1st of the preceding year and ending June thirtieth of the current year.

Such report shall state the gross bushels of all grain of various kinds in his warehouse at the beginning of the year, the net bushels and dockage of all grain received, the net bushels and dockage of all grain shipped or delivered from such warehouse and the gross bushels of all grain remaining in the warehouse at the end of the year, and such report shall particularly specify and account for any overage or shortage in any kind of grain accruing during the year; provided, that flour, cereal and feed mills and malthouses, doing a manufacturing business only, shall be only required to render a report showing gross bushels of all grain on hand at beginning of the year, net bushels and dockage of grain received, and gross bushels milled, as well as gross bushels on hand at the end of the year.

All public local grain warehousemen engaged in the handling or sale of any other commodity than grain shall keep an entirely separate account of their grain business and under no circumstances shall their grain account and other accounts be mixed.

The commission may also require special reports from such warehouseman at such times as the commission may deem expedient.

No license shall be reissued to any public local grain warehouseman who fails to make the annual report as required herein.

The commission may cause every such warehouse and the business thereof and the mode of conducting the same to be inspected by one or more of its members or by its authorized agent whenever deemed proper, and the property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. The expense incurred by the commission in carrying out the provisions of this section shall be paid out of the state grain inspection fund. ('23 c. 114 § 12)

5071. Warehouseman to be licensed—All public local grain warehousemen, before receiving any grain for storage in any public local warehouse, shall first apply to and secure from the railroad and warehouse commission a grain storage license for such warehouse. A license fee of five dollars shall be paid to said commission for each license issued and shall be deposited in the state treasury and credited to the grain inspection fund. All such licenses shall expire on the thirty-first day of August following their issuance. Before any such license is issued to any warehouseman such warehouseman shall file with the commission a bond in such sum as the commission may prescribe, which sum shall not be less than one thousand dollars. Such bonds shall be filed annually and cover the period of the license. Such bonds shall run to the State of Minnesota and be for the benefit of all persons storing grain in such warehouse. They shall be conditioned upon the faithful performance by the public local grain warehouseman of all of the provisions of law relating to the storage of grain by such warehouseman and the rules and regulations of the said commission relative thereto. The commission is authorized to require such increases in the amount of such bonds from time to time as it may deem necessary for the protection of the storage receipt holders. The surety on such bonds must be a surety company holding a certificate of the insurance commissioner authorizing it to execute the same; provided, that the commission may accept a bond executed by personal sureties, in lieu of a surety company, whenever such bond has attached to it the justification provided for in section 8232, General Statutes of 1913, and an affidavit of the president of a bank in the county in which such local warehouse is situated, who is not interested in such warehouse, stating that such justification is true and correct.

Only one bond need be given for any line of elevators, mills or warehouses owned, controlled or operated by one individual, firm or corporation.

Every such bond shall specify the location of each public local grain warehouse intended to be covered thereby and shall at all times be in a sufficient sum to protect the holders of outstanding storage receipts.

Any warehouseman who shall violate the provisions of this section shall forfeit to the state for each violation the sum of fifty dollars and such violation shall be cause for revocation of license. ('23 c. 114 § 13)

Rule of bailment applicable to intermingled grain applied to elevator though it gave no bond. 161–380, 201+615.

The surety, having made itself responsible for the performance by the warehouseman of all duties imposed upon him by statute, cannot avoid liability on the ground that he failed to issue the prescribed storage ticket. 212+198.

5072. Termination of licenses—All storage contracts on grain in store at public local grain warehouses shall terminate on July 31st of each year, except storage contracts on shelled corn, which shall terminate on March 31st of each year. Storage on any or all such grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the storage receipt together with a demand for delivery of such grain, or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, as prescribed in this act, the warehouseman shall, upon the expiration of the storage contract, sell such stored grain at the local market price on the close of business on that day, deduct from the proceeds thereof all legal accrued charges, and pay the balance of such proceeds to the owner upon surrender of the storage receipt. ('23 c. 114 § 14)

5073. Storage receipt may be renewed—Upon the payment of all legal accrued charges and the return of the storage receipt, the public local grain warehouseman and the storage receipt holder may by mutual consent enter into an agreement for the renewal of such storage. When such renewal is mutually agreed to, the warehouseman shall issue a new storage receipt to the owner and cancel the former receipt by endorsing thereon the words "Cancelled by the issu-

ance of storage receipt No. ——," inserting the number of the new storage receipt thereafter. The cancelled storage receipt shall be signed by the warehouseman, his agent, or manager, and the holder. ('23 c. 114 § 15)

5074. Discrimination prohibited — No public local grain warehouseman, licensed by the commission to store grain, shall discriminate in the charges made or the services rendered to the owners of stored grain, nor shall he discriminate in the receiving of grain offered for storage. ('23 c. 114 § 16)

5075. Must arrange for storage—All grain delivered to public local grain warehousemen shall be considered sold at the time of delivery, unless arrangements shall have been made with such warehousemen prior to or at the time of delivery to apply the same on contract, for shipment or consignment, or for storage. ('23 c. 114 § 17)

5076. Must issue scale tickets—Every public local grain warehouseman, upon receiving grain into his warehouse, shall issue for each load of grain so received, a uniform scale ticket. Such tickets shall be bound in books of convenient size, shall be consecutively numbered and provisions made in said books for at least one carbon copy of each ticket. One carbon copy of each ticket shall not be detached from said book and shall remain in the possession of the warehouseman as a permanent record. The original ticket shall be delivered to the person from whom grain is received upon receipt of each load of such grain. Such tickets shall have printed across the face "This is a memorandum, non-negotiable, possession of which does not signify that settlement has or has not been consummated." Such tickets shall state specifically whether such grain is received on contract, for storage, or for shipment on consignment, or sold. If such grain is received on contract or sold the price shall be indicated on such ticket. All such tickets shall be signed by the warehouseman, or his agent or manager. ('23 c. 114 § 18)

212+198, note under § 5063.

5077. Inconsistent acts repealed—That sections 4482, 4484, 4485, 4486, 4487 and 4488, General Statutes of 1913, sections 4476, 4477, 4478, 4479, 4483 and 4489, General Statutes of 1913, as amended by Chapter 254, Laws of 1919, and section 4481, General Statutes of 1913, as amended by Chapter 254, Laws of 1919, and by Chapter 272, Laws of 1921, and Chapter 428, Laws of 1921, are hereby repealed. ('23 c. 114 § 19)

MISCELLANEOUS PROVISIONS.

5078. Delivery for storage a bailment—The delivery of grain to any warehouseman for storage, although it be mingled with that of others, or shipped or removed from the original place of storage, shall be deemed a bailment, and not a sale. (2092) [4490]

33–111, 121, 22+244; 34–149, 157, 24+699; 40–182, 41+971; 41–116, 42+865; 43–33, 44+673; 44–471, 47+152; 63–314, 65+631; 77–128, 79+656; 79–94, 81+750; 89–98, 119, 94+218.

Wheat in storage not taxable to warehouseman (101–192, 112+68, 1142).

Thresher's lien not lost by depositing grain in elevator (112–482, 128+1118).

Action for conversion. 161–380, 201+615.

5079. Carriers' receipts — Every common carrier transporting grain shall give the shipper, on request, a receipt for the number of pounds of grain received from him, and shall deliver such quantity to the consignee or proper connecting carrier, less loss from transportation, not to exceed sixty pounds to each car. (2093) [4491]

137–217, 163+164; 138–100, 164+79; 140–384, 168+134.

5080. Penalties—Such carrier shall forfeit to the state, for each refusal to give such receipt, not less than ten dollars nor more than fifty dollars, and for each failure to deliver the proper quantity of grain, not less than fifty dollars nor more than one hundred dollars. (2094) [4492]

5081. Elevator charges, when forbidden—No railroad company shall charge or collect elevator or other charges for handling grain or for the use of any elevator, when such grain is loaded by the shipper and not passed through an elevator, or make any distinction in charges of any kind against a person shipping grain otherwise than through an elevator. (2095) [4493]

5082. Unlicensed warehouses—Any person or corporation operating such warehouse without license shall forfeit to the state, for each day's operation, fifty dollars, and such operation may be enjoined upon complaint of the commission. (2096) [4494]

5083. Overloading grain cars—Every railway company shall place painted lines inside of each of its cars used for the carriage of grain, indicating the height to which the various kinds of grain can be loaded therein, and no car shall be loaded with any kind of grain above its appropriate line. The person loading any such car shall state in the bill of lading, prior to its being signed by the agent of the railway company, that the car is loaded to or below such line, and such agent, before signing the bill, shall verify such statement. The bill of lading so signed shall be prima facie evidence of the loading, and no charges for loading in excess of the quantity so limited shall lie against such car. No railway company that fails to equip any car as aforesaid shall collect any charges for the transportation of grain in said car above the regular tariff rates for carload lots. Every person who shall load any car above the appropriate line, and every agent of any railway company who shall refuse to sign any such bill of lading, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than twenty-five dollars. (2099) [4496]

5084. Supervision by Commission over buying, selling, etc., of grain, public warehouses, public grain markets, chambers of commerce, boards of trade and grain exchanges—Unfair practices—The Commission shall exercise general supervision over the grain interests of the state and of buying and selling, handling, inspection, weighing and storage of grain, and of the management of public warehouses and public grain markets, including chambers of commerce, boards of trade and grain exchanges, shall investigate on complaint or upon its own motion all cases of fraud and injustice in grain trade, unfair practices, or unfair discrimination in the buying or selling of grain, and shall have the power to compel the discontinuance of such unfair practices or unfair discrimination, and shall make all proper rules and regulations for carrying out and enforcing the provisions of this chapter, and of all laws of the state relating to such subjects. The expenses of supervision and investigations in carrying out the provisions of this section shall be paid from the Grain Inspection Fund. (R. L. '05, § 2100, G. S. '13, § 4497; amended '19, c. 254, § 8; '21, c. 314, § 1; '25, c. 266)

127–301, 149+471.

5085. Shipper to affix tags—Every shipper of grain shall fasten upon the inside of each car shipped by him a card giving the number and initials or other distinctive mark of such car, the date of shipment, and the exact weight of the grain in such car, as claimed by the shipper. If he fail so to do, the official weight shall be prima facie evidence of the quantity of grain shipped in such car. (2101) [4498]

Intrastate shipments 131–157, 154+955.

5086. Breaking seals—Any person who, without legal authority, shall break or remove any seal upon any car loaded with grain, or otherwise break or enter such car, shall be guilty of a misdemeanor. (2102) [4499]

5087. Violation of provisions of this subdivision—Any person who shall violate any of the provisions of this subdivision, where no specific penalty is prescribed, shall be guilty of a gross misdemeanor, and punished by a fine of not less than fifty dollars nor more than five hundred dollars. Any corporation which shall violate any such provision shall forfeit to the state, for each violation, not less than fifty dollars nor more than five hundred dollars. (2103) [4500]

5088. Grain includes flax seed—The term "grain" wherever used in this subdivision shall be held to include flax seed. (2104) [4501]

79–94, 81+750.

5089. Samples to be furnished—The railroad and warehouse commission is hereby authorized to furnish, to persons entitled thereto, when requested by them, samples of grain from any or all cars from which samples are taken for inspection and grading. ('19 c. 398 § 1)

5090. Breaking of seals—No person shall knowingly break the seal on any car of grain subject to state inspection prior to the delivery thereof, except the employes of the railroad and warehouse commission, and the owner of said grain or his authorized agent under rules prescribed by the railroad and warehouse commission. ('19 c. 398 § 2)

5091. Fees—The fees for the furnishing of such samples shall be fixed by the railroad and warehouse commission. ('19 c. 398 § 3)

5092. Warehouse receipts—Numbering—All warehouse receipts for grain issued by the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." (2105) [4502]

5093. Inspection and weighmaster's certificates—Every elevator company, corporation, co-partnership, association or individual, operating any elevator, building or place in this state for the purchase, storage or deposit of any grain or other farm commodity, shall be entitled to receive from, and shall demand of, the officer whose duty it is to issue the same, the official certificate of inspection in duplicate, together with the weighmaster's certificate in duplicate for any grain or other farm commodity shipped from any such elevator, building or place and inspected and weighed as provided by the laws of this state. ('09 c. 344 § 1) [4503]

5094. Duplicate to be delivered to buyer, etc.—Within ten days from the delivery of any such certificate as provided in section one of this act, the company, corporation, co-partnership, association or individual receiving the same shall deliver to the local buyer at the place where such grain or other farm commodity is purchased, stored or deposited, one of said duplicate certificates and the same shall be retained by such local buyer in his office or place of business for thirty days thereafter and be subject to examination by any person or persons desiring to inspect same. ('09 c. 344 § 2) [4504]

5095. Failure to deliver—Penalty—Any company, corporation, co-partnership, association or individual mentioned in section one of this act, who shall fail to deliver any certificate mentioned in this act within the time and as provided in section 2 of this act, shall be guilty of a misdemeanor, and the weight and grade of the grain or other farm commodity, as shown by the records of the local buyer, shall be taken as a basis of settlement between the local buyer of any such grain or farm commodity and the company, corporation, co-partnership, association or individual failing to deliver said certificate. ('09 c. 344 § 3) [4505]

5096. Unlawful discrimination in sale, or purchase of grain prohibited—Any person, firm, copartnership or corporation engaged in the business of buying grain, either for himself or others, who shall with the intention of creating a monopoly or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this state, by purchasing such grain at a higher price or rate in one locality than is paid for grain of same grade and condition by said purchaser in another locality after making due allowance for the difference, if any, in actual *cost of transportation from the locality of purchase*, to the locality of manufacture, use, or distribution, shall be deemed guilty of unfair discrimination and upon conviction thereof shall be punished by a fine not exceeding $500.00, or by imprisonment in the county jail not to exceed six months. ('17 c. 377 § 1)

5097. Railroad and warehouse commission to enforce provisions of act—The state railroad and warehouse commission shall enforce the provisions of this act, and in so doing shall have and exercise all the powers heretofore conferred upon them by law. ('17 c. 377 § 2)

SITES FOR PUBLIC WAREHOUSES, ELEVATORS, COAL SHEDS, ETC.

5098. Use of right of way for warehouse—Any person shall have the right to use, as a site for a public warehouse, a proper portion of the right of way of any railroad, within the outside switches at any station or siding, upon the payment of reasonable compensation. (2106) [4506]

63–70, 73, 65+136; 65–515, 68+208.

A railway company, being under no legal obligations to grant privilege of building elevator upon right of way, may grant privilege by contract on conditions (98–22, 107+742). Right of way may be used for public elevator (140–442, 168+181).

5099. Application—Whoever wishes to exercise such right may make written application to the person or company operating such railroad for such site, describing it, stating the size and capacity of the proposed warehouse, the station or siding at which it is to be built, the time for which such site is desired, and the amount of compensation the applicant is willing to pay. (2107) [4507]

5100. Acceptance or rejection of offer—Within ten days after the receipt of such application, the operator of such railroad shall notify the applicant in writing of his acceptance or rejection of the compensation offered. If he fail so to do, he shall be deemed to have accepted the same. Upon acceptance and pay-

ment or tender of the compensation, the applicant shall thereupon be entitled to the site described. (2108) [4508]

5101. Proceedings on rejection—If the offer be rejected, and the parties fail to agree on compensation, the applicant may present to and file in the district court of the county a verified petition, setting forth the making of the application, with a copy thereof, the compensation offered, its rejection, and the failure of the parties to agree. The court shall thereupon by order fix a time and place for hearing such petition, not more than thirty days from its presentation. Such order shall be served as a summons in said court is served, at least twenty days before the time set for such hearing, which service shall give the court jurisdiction of both person and property. (2109) [4509]

65–515, 68+208.

5102. Trial—If such hearing be set at a time other than a term of court where a petit jury is in attendance, the court, unless a jury be waived, shall order the selection of twenty-four jurors from the list returned by the county board in the manner provided for drawing jurors for a general term of such court, and the case shall be tried as other civil actions, and the compensation to be paid shall be assessed, both as a gross sum and an annual rental. The respondent shall elect either to receive the gross sum or the annual rental, and, if he fail to elect, the petitioner may do so, and judgment shall be entered accordingly. (2110) [4510]

5103. Appeal—Either party may appeal as from a judgment in a civil action within thirty days from the entry of judgment; but such appeal shall not stay the right of the petitioner to use the site designated, if the petitioner shall give bond with sureties approved by the court, in double the gross sum or annual rental fixed by the judgment, conditioned to pay such sum or rental, and abide and satisfy any judgment the supreme court may render in the premises. (2111) [4511]

5104. Costs—If the amount fixed by the final judgment be more than that offered in the application, the respondent shall recover costs and disbursements as in a civil action; otherwise, the petitioner. (2112) [4512])

5105. Abandonment—If the compensation, as finally fixed or agreed upon, be not paid within thirty days after the amount is finally settled, or if the applicant shall not begin the erection of such warehouse within two months, and complete the same and open it for business as a public warehouse within five months, after designation of the site, the application shall be deemed abandoned. (2113) [4513]

5106. Railroad rights of way usable for warehouses, etc.—Any person, firm or corporation shall have the right to use as a site for a public elevator, warehouse, coal shed, ice house, buying station, selling station, or weighing scales or other instrumentalities for weighing live stock, or use ground space, for receiving, storing or distributing any article of commerce, transported or to be transported, a proper portion of the right of way of any railroad within the outside switches at any station or siding upon the payment of reasonable compensation therefor. ('21, c. 140, § 1; amended '25, c. 177, § 1)

5107. Same—Procedure upon disagreement with railroad—Any such person, firm or corporation desiring to construct, operate or use a public elevator, warehouse, coal shed, ice house, buying station, selling station, or weighing scales or other instrumentalities for weighing live stock, or use ground space for receiving, storing or distributing any article of commerce transported or to be transported, or to continue the use and operation of any such buildings, structures, instrumentalities or ground space where the same are already constructed or used, upon such right of way of any railroad, if unable to agree with the person, firm or corporation operating such railroad upon the site for such buildings, structures, instrumentalities and ground space, or the compensation to be paid therefore, may file a verified complaint with the Railroad and Warehouse Commission setting forth the facts and requesting the commission to establish the location of the site for such buildings, structure, instrumentalities and ground space or the compensation to be paid therefor, or both, as the case may be. Such complaint shall be served upon such railroad company and twenty days, exclusive of the day of such service, shall be allowed for answer. After the time for answering has expired the Commission shall fix the time and place for hearing and give at least ten days' notice thereof to both parties. ('21, c. 140, § 2; amended '25, c. 177, § 2)

5108. Hearing—Order—That the hearing shall be held pursuant to such notice and thereafter the Commission, if it finds that the complainant is entitled thereto, may make an order establishing the location of the site for such buildings, structures, instrumentalities and ground space, at a suitable place within the outside switches at any station or siding, and fixing the reasonable annual compensation to be paid therefor. Where such buildings, structures, instrumentalities and ground space are already established or used upon such right of way and the compensation therefor is not fixed by order of the Commission or by contract, the Commission may fix the reasonable compensation to be paid for the occupation thereof. ('21 c. 140 § 3)

5109. Chap. 490, G. L. 1919 repealed—That Chapter 490 of the General Laws 1919, be, and the same is hereby repealed. ('21 c. 140 § 4)

147–313, 180+114.

WAREHOUSE RECEIPTS.

PART I. THE ISSUE OF WAREHOUSE RECEIPTS

5110. Persons who may issue receipts—Warehouse receipts may be issued by any warehouseman. ('13 c. 161 § 1) [4514]

5111. Form of receipts—Essential terms—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored,

(b) The date of issue of the receipt,

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) In the case of a negotiable receipt, a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien.

If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein requried. ('13 c. 161 § 2) [4515]

150-470, 185+511.

5112. Form of receipts—What terms may be inserted—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. ('13 c. 161 § 3) [4516]

5113. Definition of non-negotiable receipt—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. ('13 c. 161 § 4) [4517]

5114. Definition of negotiable receipt—A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void. ('13 c. 161 § 5) [4518]

5115. Duplicate receipts must be so marked—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. ('13 c. 161 § 6) [4519]

5116. Failure to mark "not negotiable"—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. ('13 c. 161 § 7) [4520]

PART II. OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS.

5117
247nw 392

5117. Obligation of warehouseman to deliver—A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a written demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

(a) An offer to satisfy the warehouseman's lien,

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a written demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. ('13 c. 161 § 8) [4521]

5118. Justification of warehouseman in delivering—A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is:

(a) The person lawfully entitled to the possession of the goods, or his agent,

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. ('13 c. 161 § 9) [4522]

5119. Warehouseman's liability for misdelivery—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. ('13 c. 161 § 10) [4523]

5120. Negotiable receipts must be cancelled when goods delivered—Except as provided in section 36 [5145], where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. ('13 c. 161 § 11) [4524]

5121. Negotiable receipts must be canceled or marked when part of goods delivered—Except as provided in section 36 [5145], where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. ('13 c. 161 § 12) [4525]

5122. Altered receipts—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,
(b) Authorized, or
(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. ('13 c. 161 § 13) [4526]

5123. Lost or destroyed receipts—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. ('13 c. 161 § 14) [4527]

5124. Effect of duplicate receipts—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability. ('13 c. 161 § 15) [4528]

5125. Warehouseman cannot set up title in himself—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. ('13 c. 161 § 16) [4529]

5126. Interpleader of adverse claimants—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. ('13 c. 161 § 17) [4530]

5127. Warehouseman has reasonable time to determine validity of claims—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. ('13 c. 161 § 18) [4531]

5128. Adverse title is no defense except as above provided—Except as provided in the two preceding sections and in sections 9 and 36 [5118, 5145], no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. ('13 c. 161 § 19) [4532]

5129. Liability for non-existence or misdescription of goods—A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. ('13 c. 161 § 20) [4533]

5130. Liability for care of goods—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. ('13 c. 161 § 21) [4534]
122-453, 142+727.

5131. Goods must be kept separate—Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited. ('13 c. 161 § 22) [4535]

5132. Fungible goods may be commingled, if warehouseman authorized—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. ('13 c. 161 § 23) [4536]

5133. Liability of warehouseman to depositors of commingled goods—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. ('13 c. 161 § 24) [4537]

5134. Attachment or levy upon goods for which a negotiable receipt has been issued—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be

compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. ('13 c. 161 § 25) [4538]

5135. Creditors' remedies to reach negotiable receipts—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. ('13 c. 161 § 26) [4539]

5136. What claims are included in the warehouseman's lien—Subject to the provisions of section 30 [5139], a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; *also for all reasonable charges and expenses* for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. ('13 c. 161 § 27) [4540]

5137. Against what property the lien may be enforced—Subject to the provisions of section 30 [5139], a warehouseman's lien may be enforced:

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. ('13 c. 161 § 28) [4541]

5138. How the lien may be lost—A warehouseman loses his lien upon goods:

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act. ('13 c. 161 § 29) [4542]

5139. Negotiable receipt must state charges for which lien is claimed—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is *claimed. In such case there shall be a lien for the* charges enumerated so far as they are within the terms of section 27 [5136], although the amount of the charges so enumerated is not stated in the receipt. ('13 c. 161 § 30) [4543]

5140. Warehouseman need not deliver until lien is satisfied—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. ('13 c. 161 § 31) [4544]

5141. Warehouseman's lien does not preclude other remedies—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. ('13 c. 161 § 32) [4545]

5142. Satisfaction of lien by sale—A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

*At any time before the goods are so sold any per*son claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a *person entitled, under the provisions of this act, to the* possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

(e) The warehouseman, his representatives or assigns, may fairly and in good faith purchase any property sold under the provisions of this act, provided that the sale is conducted by the sheriff or his deputy, or by any constable of the county where such sale is made. ('13 c. 161 § 33) [4546]

5143. Perishable and hazardous goods—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. ('13 c. 161 § 34) [4547]

5144. Other methods of enforcing liens—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. ('13 c. 161 § 35) [4548]

5145. Effect of sale—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. ('13 c. 161 § 36) [4549]

PART III. NEGOTIATION AND TRANSFER OF RECEIPTS

5146. Negotiation of negotiable receipts by delivery—A negotiable receipt may be negotiated by delivery:

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. ('13 c. 161 § 37) [4550]

5147. Negotiation of negotiable receipts by indorsement—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. ('13 c. 161 § 38) [4551]

5148. Transfer of receipts—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such receipt gives the transferee no additional right. ('13 c. 161 § 39) [4552]

5149. Who may negotiate a receipt—A negotiable receipt may be negotiated:

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery. ('13 c. 161 § 40) [4553]

5150. Rights of person to whom a receipt has been negotiated—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. ('13 c. 161 § 41) [4554]

5151. Rights of person to whom a receipt has been transferred—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. ('13 c. 161 § 42) [4555]

5152. Transfer of negotiable receipt without indorsement—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. ('13 c. 161 § 43) [4556]

5153. Warranties on sale of receipt—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

(a) That the receipt is genuine,

(b) That he has a legal right to negotiate or transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the

goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. ('13 c. 161 § 44) [4557]
146-109, 177+1021.

5154. Indorser not a guarantor—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations. ('13 c. 161 § 45) [4558]

5155. No warranty implied from accepting payment of a debt—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. ('13 c. 161 § 46) [4559]

5156. When negotiation not impaired by fraud, mistake or duress—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. ('13 c. 161 § 47) [4560]

5157. Subsequent negotiation—Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. ('13 c. 161 § 48) [4561]

5158. Negotiation defeats vendor's lien—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. ('13 c. 161 § 49) [4562]

PART IV. CRIMINAL OFFENSES

5159. Issue of receipt for goods not received—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('13 c. 161 § 50) [4563]

5160. Issue of receipt containing false statement—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('13 c. 161 § 51) [4564]

5161. Issue of duplicate receipts not so marked—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "duplicate" except in the case of a lost or destroyed receipt after proceedings as provided for in section 14 [5123], shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. ('13 c. 161 § 52) [4565]

5162. Issue for warehouseman's goods of receipts which do not state that fact—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('13 c. 161 § 53) [4566]

5163. Delivery of goods without obtaining negotiable receipt—A warehouseman, or any officer, agent or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36 [5123, 5145], be found guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('13 c. 161 § 54) [4567] 5163 251nw 686

5164. Negotiation of receipt for mortgaged goods—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and, upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. ('13 c. 161 § 55) [4568]

PART V. INTERPRETATION

5165. Cases not provided for in act—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern. ('13 c. 161 § 56) [4569]

5166. Interpretation shall give effect to purpose of uniformity—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. ('13 c. 161 § 57) [4570]

5167. Definitions—(1) In this act, unless the context or subject matter otherwise requires:

"Action" includes counter claim, set-off and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. ('13 c. 161 § 58) [4571]

5168. Act does not apply to existing receipts—The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act. ('13 c. 161 § 59) [4572]

5169. Inconsistent legislation repealed—All acts or parts of acts inconsistent with this act are hereby repealed. ('13 c. 161 § 60) [4573]

5170. Time when the act takes effect—This act shall take effect on the first day of January, one thousand nine hundred and fourteen. ('13 c. 161 § 61) [4574]

5171. Name of act—This act may be cited as the uniform warehouse receipts act. ('13 c. 161 § 62) [4575]

WAREHOUSES IN CITIES AND VILLAGES WITH POPULATION OF 5,000 OR MORE.

5172. Supervision by Commission over warehousemen—That the Railroad and Warehouse Commission shall have general supervision of all warehousemen doing business in cities and villages in this state having a population of 5,000 or more persons according to the last federal census, as warehousemen are defined in this act, and shall keep itself informed as to the manner and method in which their business is conducted. It shall examine such business and keep itself informed as to its general condition, capitalization, rates and other charges, its rules and regulations, and the manner in which the plants, equipments and other property, owned, leased, controlled or operated, are constructed, managed, conducted and operated, not only with reference to the adequacy, security and accommodation afforded to the public by their service, but also in respect to the compliance with the provisions of this act or with the orders of the commission. ('15, c. 210, § 1; amended '25, c. 199)

See Taxation—'21 c. 527 requiring warehousemen to list goods for assessment. Rep. by '25, c. 246.

5173. Construction of various terms—(a) The word "commission" when used in this act shall mean the Minnesota State Railroad and Warehouse Commission.

(b) The term "commissioner" when used in this act means one of the members of the commission.

(c) The term "warehouseman" when used in this act means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their trustees, assignees or receivers appointed by any court whatsoever, controlling, operating or managing in any city of the first class in this state, directly or indirectly, any building or structure or any part thereof, or any buildings or structures, or any other property whatsoever and using the same for the storage or warehousing of goods, wares or merchandise for hire, but shall not include persons, corporations or other parties operating grain or cold storage warehouses.

(d) The term "corporation" when used in this act includes any corporation, company, association, joint stock company or association.

(e) The term "person" when used in this act includes any individual, firm or co-partnership.

(f) The term "service" when used in this act is used in its broadest sense and includes not only the use and occupancy of space for storage purposes, but also any labor expended and the use of any equipment, apparatus and appliances or of any drayage or other facilities, employed, furnished or used in connection with the storage of goods, wares and merchandise, subject to the provisions of this act.

(g) The term "rate" when used in this act includes every individual or joint rate, charge or other compensation of any warehouseman, either for storage or for any other service furnished in connection therewith, or any two or more such individual or joint rates, charges or other compensations of any warehouseman, or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto. ('15 c. 210 § 2)

Explanatory note—See supra, § 5172, as amended.

5174. What is required of warehousemen—Every warehouseman shall furnish all information required by the commission to carry into effect the provisions of this act and make specific answers to all questions submitted by the commission, under oath; and if such warehouseman is a corporation, then it shall answer under oath of one of its duly authorized officers.

Every warehouseman shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation, made or prescribed by the commission, in the matters specified in this act, and shall do everything necessary or proper to secure the compliance with and the observance of the same, by all its officers, agents and employes.

Nothing in this act shall be construed as limiting the rights of any warehouseman to lease or let for any storage purpose any floor of his building or any portion thereof; provided, however, that any warehouseman who so leases any portion or portions of his warehouse shall first file with the commission a sched-

ule showing his rates for such spaces and the monthly rental per square foot or per cubic foot. ('15 c. 210 § 3)

5175. Right to inspect books and property, and to examine agents of warehousemen—The commission, each commissioner and each officer and person employed by the commission, has the right, at any and at all times, to inspect the papers, books, accounts and documents, plant, equipments or other property, of any warehouseman; and the commission, each commissioner and any officer of the commission authorized to administer oath, shall have the power to examine under oath, any officer, agent or employee of such warehouseman, in relation to any matter within the jurisdiction of the commission; provided, that any person other than a commissioner demanding such inspection shall produce, under the seal of the commission, his authority to make such inspection; and, provided further, that a written record of the testimony or statement so given, under oath, shall be made and filed with the commission. Information so obtained shall be not admitted in evidence or used in any proceedings except in proceedings provided for in this act. ('15 c. 210 § 4)

5176. Duties of the commission—It is hereby made a duty of the Railroad and Warehouse Commission to see that the provisions of the constitution and the statutes of this state affecting warehousemen, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the state. ('15 c. 210 § 5)

5177. Accounts—The commission shall have the power to compel every warehouseman to keep and maintain accurate, complete and comprehensive accounts, including records of service furnished and commissions paid, as well as accounts of earnings and expenses, and it may examine and audit such accounts from time to time. Such accounts shall provide for forms showing all sources of income, the amounts due and received from each source, and the amounts expended and for each purpose, distinguishing clearly all payments for operating expenses from those for new construction, extensions, additions, repairs or replacements, and for balance sheets showing assets and liabilities.

The commission may require every warehouseman engaged, directly or indirectly, in any business other than the warehouse business, as defined by this law, to keep separately, in like manner and form, the accounts of all such other business, and the commission may provide for the examination and inspection of the books, accounts, papers and records of such other business, in so far as may be necessary to enforce any provisions of this act. The commission shall have the power to inquire as to, and prescribe the apportionment of capitalization, earnings, debts and expenses, fairly and justly to be awarded or borne by, the ownership, operation, management or control of such warehouse as distinguished from such other business. ('15 c. 210 § 6)

5178. Appreciation and depreciation accounts—The commission shall have the power, after a hearing, to require all warehousemen to keep such accounts as will adequately reflect appreciation, depreciation or obsolescence. The commission may from time to time ascertain and determine, and by order fix, the proper and adequate rate of appreciation or depreciation of the property of each warehouseman, and each warehouseman shall conform his appreciation and depreciation accounts to the rate so ascertained, determined and fixed. ('15 c. 210 § 7)

5179. Accounts to be kept in state—Each warehouseman shall have and maintain an office in the city in which it has its principal place of business, and shall keep in said office all such books, accounts, papers, records and memoranda as shall be ordered by the commission to be kept within the state. The address of such office shall be filed with the commission. No books, accounts, papers, records or memoranda ordered to be kept within the state shall be at any time removed from the state, except on such conditions as may be prescribed by the commission. ('15 c. 210 § 8)

5180. Falsification or destruction of accounts—Any person who shall wilfully make any false entry in the account or in any record or memorandum kept by a warehouseman, or who shall wilfully destroy, mutilate, alter or by any other means or device, falsify a record of any such account, record or memorandum, or who shall wilfully neglect or fail to make full, true and correct entries in such accounts, records or memoranda, of all facts and transactions appertaining to the business of the warehouseman, or shall keep any accounts or records with the intent to evade the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to imprisonment not exceeding one year, or to a fine not exceeding $1,000, or both. ('15 c. 210 § 9)

5181. Penalty for divulgence of information—Any officer or employe of the commission, who divulges to any person other than a member of the commission, any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any accounts, records, memoranda, books or papers of a warehouseman, except in so far as he may be authorized by the commission, or by a court of competent jurisdiction, or a judge thereof, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to imprisonment not exceeding one year or to a fine not exceeding $1,000, or to both. ('15 c. 210 § 10)

5182. Obligation to issue uniform receipts—Every warehouseman receiving goods in store shall issue for all such a receipt embodying the terms of such receipts as authorized by the Uniform Warehouse Receipts Act of the State of Minnesota. ('15 c. 210 § 11)

5183. General duties of warehousemen—All rates made, demanded or received by any warehouseman for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable rate demanded or received for such service is hereby prohibited and declared unlawful.

Every warehouseman licensed under this act shall receive, store and forward all property offered for storage by any person, persons or corporation, impartially, and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as he at the same place receives, stores and forwards in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons or corporations. ('15 c. 210 § 12)

5184. Filing schedule of rates—Every warehouseman shall file with the commission and shall print and keep open for public inspection a schedule of rates. The commission may determine and prescribe the form in which the schedules required by this act to be filed with the commission and to be kept open for public inspection, shall be prepared and arranged, and may change the form from time to time if it shall be found

expedient; and no warehouseman shall undertake to perform any service, or store any goods, wares or merchandise, unless or until such schedule of rates has been filed and published in accordance with the provisions of this act; provided, that in case of emergency, a service or storage not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this act. ('15 c. 210 § 13)

5185. Change of rates—Unless the commission otherwise orders, no change shall be made by any warehouseman, in any rate except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection, new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The commission for good cause shown, may, after hearing, allow changes without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. ('15 c. 210 § 14)

5186. Charging more or less than the published rate—Except as specified in Sections 13 and 14, no warehouseman shall have, demand, collect or receive, a greater or less or different compensation for any service rendered or for storing any goods, or wares, or merchandise, than the rate or rates applicable to such service or storage, as specified in the schedules on file and in effect at the time.

Provided, nevertheless, that when a warehouseman shall have had goods in store for such a period that the storage charges thereon accumulated are more than such goods would bring at a forced sale, the commission, upon written application and proof thereof, may authorize such warehousemen to compromise such charges for a sum not less than the amount which such goods would bring at such forced sale. ('15 c. 210 § 15)

5187. Discrimination in rates, etc.—Except as herein otherwise specified, no warehouseman, or any officer, agent or employe thereof, shall directly or indirectly by remittance, rebate, or any device, inducement or other means whatsoever, suffer or permit any corporation or person to obtain any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force as shown by the schedule filed and in effect at the time. No person or corporation shall directly or indirectly by any device, inducement or means whatsoever, either with or without the consent or connivance of a warehouseman or any of the officers, agents or employes thereof, obtain or seek to obtain, any service, or the storage of any goods, wares or merchandise, at less than the rate or rates then established and in force therefor. Any warehouseman or the officers, agents or employes thereof, or any person acting for or employed by it, or transacting business with it, or any other person who shall violate any provision of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to imprisonment not exceeding one year, or to a fine not exceeding $1,000, or both. ('15 c. 210 § 16)

5188. Commission to fix rates and regulations—Whenever the commission, after a hearing upon its own motion, or upon complaint, shall find that the rate or rates demanded, observed, charged or collected by any warehouseman, for any service or storage of goods, wares, merchandise, or in connection with such service or storage, are unjust, unreasonable, discriminatory, preferential, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rate or rates to be thereafter effective and in force, in such warehouse, and shall fix the same by an order, which shall also determine when such rate or rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon reasonable notice to be determined by the commission. ('15 c. 210 § 17)

5189. Obligation to obtain license—Every warehouseman shall be licensed annually by and shall be under the supervision and subject to the inspection of the commission. Written application, under oath in such form as shall be prescribed by the commission, shall be made to the commission for license, specifying the city in which it is proposed to carry on the business of warehousing, the location, size, character and equipment of the building or buildings or premises to be used by the said warehouseman, the kind of goods, wares and merchandise intended to be stored therein, the name of the person or corporation operating the same, and of each member of the firm or officer of the corporation, and any other facts necessary to satisfy the commission that the property proposed to be used is suitable for warehouse purposes, and that the warehouseman making the application is qualified to carry on the business of warehousing. Should the commission decide that the building or other property proposed to be used as a warehouse is suitable for the proposed purpose, and that the applicant or applicants are entitled to a license, notice of such decision shall be given the interested parties, and upon the applicant or applicants filing with the commission the necessary bond, as provided for in this act, the commission shall issue the license provided for, upon payment of the license fee, as in this section provided. A warehouseman to whom a license is issued shall pay for such license a fee of one hundred dollars ($100.00). Such license may be renewed from year to year, but shall never be valid for a period of more than one year, and always upon payment of the full license fee, as provided for in this section for such renewal; provided, that no license shall be issued for any portion of a year for less than the full amount of the license fee, as provided for in this section. Each license obtained under this act shall be publicly displayed in the main office of the place of business of the warehouseman to whom it is issued. Such license shall authorize the warehouseman to carry on the business of warehousing only in the one city named in said application, and in the buildings therein described. But the commission, without requiring an additional bond and license, may issue permits from time to time to any warehouseman already duly licensed under the provisions of this act, to operate an additional warehouse or warehouses in the same city for which his original license was issued during the term thereof, upon his filing an application for such permit, and in such form as shall be prescribed by the commission.

Licenses and permits may be revoked by the commission for violation of law, or of any rule or regulation by it prescribed, upon notice and hearing. A license may be refused to any warehouseman whose license has been revoked during the preceding year. ('15 c. 210 § 18)

5190. Bonds of warehousemen—Every warehouseman applying for and receiving a license from the

commission as provided for in this act, shall file with the commission, and acceptable to the commission, a surety bond to the State of Minnesota. Such bonds shall be in the amount of $50,000.00 for warehousemen operating in cities of the first class, and in an amount to be determined by the commission as reasonable for warehousemen in cities and villages subject to this act other than in cities of the first class, said bonds to be conditioned for the faithful discharge of all duties as a warehouseman operating under this Act, and full compliance with the laws of the state and rules, regulations and orders of the commission relative thereto. ('15, c. 210, § 19; amended '27, c. 360)

5191. Penalty for transacting business without a license—Any person or persons who shall transact the business of a warehouseman as defined in this act, except for the purpose of winding up the same under the supervision of the commission, without first procuring a license and giving a bond as provided for in this act, and any licensed warehouseman who shall operate any warehouse without obtaining the permit herein provided for, or who shall continue to transact such business after such license has expired, or such bond may have become void or found insufficient security for the penal sum in which it is executed, by the commission approving the same, shall be guilty of a misdemeanor, and, upon conviction, be fined in a sum not less than $100 nor more than $500 for each and every day such business is carried on before said license or permit, as the case may be, is issued or after the expiration of such license or permit, or after receiving notice from the commission that such bond has become void or has been found insufficient security; and the operation of such warehouseman may be enjoined, upon complaint of the commission, before a court of competent jurisdiction. ('15 c. 210 § 20)

5192. Proceedings before the commission—How commenced — Proceedings before the commission against any warehouseman, shall be instituted by complaint, verified as pleadings in a civil action, stating in ordinary language the facts constituting the alleged omission or offenses. The parties to such proceedings shall be termed, respectively, "Complainant" and "Respondent." ('15 c. 210 § 21)

5193. Notice to respondent—Upon filing such complaint, if there appear reasonable grounds for investigating such matter, the commission shall issue an order, directed to such warehouseman, requiring him to grant the relief demanded, or show cause by answer within 20 days from the service of such notice, why such relief should not be granted. Such order, together with a copy of the complaint, shall forthwith be served upon the respondent. ('15 c. 210 § 22)

5194. Answer—The respondent may file and serve by mail, upon the complainant within 20 days after the service of the order, an answer alleging that it has already granted the relief demanded, or setting up any matter of defense. If the answer alleges the granting of the relief, the complainant shall within 20 days reply, admitting or denying such allegation. If he fails to reply, or admits the allegation, the proceeding shall be dismissed. ('15 c. 210 § 23)

5195. Hearing—If the matter be not adjusted to the satisfaction of the commission, it shall set a time and place of hearing, and give at least ten days' notice thereof to each party. The parties shall appear either in person or by attorney. The commission shall hear evidence and otherwise investigate the matter and shall make findings of fact upon all matters involved, and such order or recommendation in the premises as may be just. A copy of such findings and order or recommendation, shall forthwith be served upon each party. No proceeding shall be dismissed on account of want of pecuniary interest in the complainant. ('15 c. 210 § 24)

5196. Notice and orders—Service—All notices and orders in proceedings before the commission shall be signed by the secretary. Service may be made of all notices, orders or other papers provided for in this act, by mail, upon any person or firm, or upon the president, general manager or other proper executive officer of any corporation interested. If any party has appeared by attorney such service shall be made upon such attorney. ('15 c. 210 § 25)

5197. Witnesses—The commission in any hearing or investigation, may require the attendance of any witnesses and the production of any books, papers or records. Witnesses shall receive the same fees and mileage as in civil actions. The disobedience of any subpoena in such proceedings, or contumacy of any witness, may, upon application of the commission, be punished by any district court in the same manner as if the proceedings were pending in such court. ('15 c. 210 § 26)

5198. Complaint that rate is unreasonable—Duty of commission—Upon verified complaint of any person or of any corporation that any rates are unjust, unreasonable, discriminatory, preferential or in any way in violation of law, the commission shall proceed to investigate the matters alleged in such complaint, and for the purposes of such investigation they may require the attendance of witnesses and the production of books, papers and documents. If, upon the hearing, such rates are found to be unjust, unreasonable, discriminatory, preferential or in any way in violation of law, the commission shall make an order, stating wherein the same are so unjust, unreasonable, discriminatory, preferential or in any way in violation of law, and shall make a rate or rates which shall be substituted for that or those so complained of. Rates so made by the commission shall be deemed prima facie reasonable in all courts, and shall be in full force during the pendency of any appeal or other proceedings to review the action of the commission in establishing the same. ('15 c. 210 § 27)

5199. Investigation without complaint—Notice—The commission shall also, upon its own motion, investigate any matter relating to the management by any warehouseman of his business, or the reasonableness of all rates whenever in its judgment the public interest so requires. If any such rates are found unreasonable or discriminatory, the commission shall find what is reasonable under the circumstances, and may make new schedules of any or all rates under consideration in such investigation, and its own order shall fix the date when such rates shall go into effect. Before making any order under the provisions of this section, the warehouseman shall have an opportunity to be heard upon such notice as the commission shall deem reasonable. The rates established under the proceedings instituted under this section, shall be in force during the pendency of any appeal or other proceedings to review the action of the commission. ('15 c. 210 § 28)

5200. Appeals to the district court—Any party to a proceeding before the commission, or any party affected by any order thereof, may appeal therefrom to the district court of the county in which the principal place of business of the respondent is located, or in case the order is made in a proceeding commenced by the commission on its own motion without complaint,

to the district court of any county in which the warehouseman has his principal place of business, at any time within thirty days after service of a copy of such order on the parties of record, as in this act provided, by service of a written notice of appeal, on said commission, or on its secretary. Upon service of said notice of appeal, said commission, by its secretary, shall forthwith file with the clerk of said district court, to which said appeal is taken, a certified copy of the order appealed from, together with the findings of fact on which the same is based. ('15 c. 210 § 29)

34 5201 — 83 **5201. Proceedings on appeal—Orders not appealed from**—The appellant serving such notice of appeal shall, within five days after service thereof, file the same with proof of service, with a clerk of the court to which said appeal is taken, and thereupon said district court shall have jurisdiction over said appeal, and the same shall be tried therein, according to the rules relating to a trial of civil actions, so far as the same are applicable. The complainant before the commission, if there is one (otherwise the State of Minnesota), shall be designated as the complainant in the district court, and the warehouseman as the defendant. No further pleadings than those filed before the commission shall be necessary. Such findings of fact shall be prima facie evidence of the matters therein stated, and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed, and the order enforced as provided by law. If it shall be determined that the order is unlawful or unreasonable, it shall be vacated and set aside. Such appeal shall not supersede the order appealed from, unless the court, upon an examination of said order and the return made on said appeal, and after giving the respondent notice and opportunity to be heard, shall so direct. If such appeal is not taken, such order shall be final, and it shall thereupon be the duty of the warehouseman affected, to adopt and publish the rates therein prescribed, and abide the order of the commission. When no appeal is taken from an order, as herein provided, the parties affected by such order shall be deemed to have waived the right to have the merits of such controversy reviewed by a court, and there shall be no trial of the merits or reexamination of the facts of any controversy in which said order was made, by any district court to which application may be made for the writ to enforce the same. ('15 c. 210 § 30)

5202. Failure to obey order or law—Whenever any warehouseman shall fail to obey any law of this state, or any order of the commission, the commission may, upon verified petition alleging such failure, apply to the district court of the county in which said warehouseman has his principal place of business, for the enforcement of such law, or order, or other appropriate relief. The court, upon such notice as it may direct, shall hear such matter as in case of an appeal from an order. On such hearing, the findings of fact upon which such order is based shall be prima facie evidence of the merits therein stated, and the court may grant any provisional or other relief, ordinary or extraordinary, legal and equitable, which the nature of the case may require, and may impose a fine of not more than $50 for each day's failure to obey any writ, process or order of the court, in addition to all other penalties or forfeitures provided by law. A temporary mandatory or restraining order may be made in such proceedings, notwithstanding any undetermined issue of fact, upon such terms as to security as the court may direct. ('15 c. 210 § 31)

5203. Trial—The district court shall be deemed always open for all civil proceedings under this act, and any such proceedings may be brought to trial in any county in the judicial district where the same are pending, and shall take precedence over all other matters except criminal cases. Except when there is a constitutional right to a trial by jury, not expressly waived, all such proceedings shall be tried summarily by the court. ('15 c. 210 § 32)

5204. Incriminating questions—In any proceedings under this act or any law relating to warehousemen, the court, at its discretion, may require a witness to answer any question, although his answer may tend to convict him of a crime, but no person so compelled to answer shall thereafter be liable to any prosecution for such crime.

In any proceedings in district court under the provisions of this act, or any law relating to warehousemen, either by appeal or otherwise, the court may order the payment by either party of such counsel fees and disbursements, as it deems just and reasonable. ('15 c. 210 § 33)

5205. Proceedings in the name of the state—All acts or proceedings instituted by the Railroad and Warehouse Commission under this act shall be brought in the name of the state, and shall be prosecuted by the attorney general.

Appeal to the supreme court—Any party to an appeal or other proceeding in district court, under the provisions of this act, may appeal from the final judgment or from any final order therein, in the same cases and manner as in civil actions. The appeal may be filed in the supreme court before or during any term thereof, and shall be immediately entered on the calendar and heard, upon such notice as the court may prescribe. ('15 c. 210 § 34)

5206. Action on bond in the name of the state—When any one licensed to do business as a public warehouseman fails to perform his duty, or violates any of the provisions of this act, any person, persons or corporations injured by such failure or violation may, with the consent of the commission, and the attorney general, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction on the bond of such warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. ('15 c. 210 § 35)

5207. Persons violating act or order—Penalty—Any warehouseman and each person, who, either individually, or acting as an officer, agent or employe of a warehouseman, violates or fails to comply with any provisions of this act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof of the commission, made or issued under authority of this act, or who procures, aids or abets any warehouseman in his violation of this act, or in his failure to observe, obey or comply with this act, or any such order, decision, rule, regulation, direction or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this act, is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Each violation of the provisions of this act, or of

any order, decision, rule, regulation, direction or requirement of the commission, or any part or portion thereof, by any warehouseman, is a separate and distinct offense.

In construing and enforcing the provisions of this act, relating to penalties, the act, omission or failure of any officer, agent or employe of any warehouseman, acting within the scope of his official duties or employment, shall in each case be and be deemed to be the act, omission or failure of such warehouseman. ('15 c. 210 § 36)

5208. Saving clauses—Constitutionality—If any section, subdivision, sentence or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. ('15 c. 210 § 37)

5209. Technical omissions not to invalidate acts of commission—A substantial compliance with the requirements of this act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the commission, and they shall not be declared inoperative, illegal or void, for any omission of a technical nature in respect thereto. ('15 c. 210 § 38)

PUBLIC HAY TRACKS.

5210. Terminal points—Terminal points as designated by this act shall mean the cities of St. Paul, Minneapolis, Duluth and South St. Paul. ('05 c. 196 § 1) [4576]

By section 23 all acts or parts of acts, general or special, inconsistent with the provisions of the act, are repealed.

5211. Public hay tracks—The railroad and warehouse commission, hereinafter designated "the commission," shall designate at convenient places, on the several lines of railway entering terminal points in this state, tracks to be known as public hay tracks. The different railway companies either separately or jointly are hereby required to provide suitable tracks to meet the requirements of this act. Such public hay tracks may be established on each individual line of railway, or they may be so established as to serve for two or more railways. ('05 c. 196 § 2) [4577]

5212. Hay and straw—Delivery at tracks—All hay and straw shipped to terminal points unless otherwise directed by the consignor shall, by the common carrier transporting the same, be brought to and delivered at one or another of such public hay tracks, for the purpose of being weighed and inspected as hereinafter provided. ('05 c. 196 § 3) [4578]

5213. Weighing and inspection—Duties of carrier as to certain cars—Penalty—All hay and straw so received shall be weighed and inspected by duly appointed weighers and inspectors of hay and straw under such rules and regulations as the commission shall establish.

All carriers shall return, free of switching charge for weighing empty, all cars not reconsigned that have been weighed loaded with hay or straw, to the scale on which the same was weighed, or some other scale under the charge of the state, used for weighing hay and straw. Weight on reconsigned cars may be had by the use of the weight of the loaded car and the marked stencilled weight on the car. Any carrier failing to comply with any of the provisions of this act shall be subjected to a penalty of twenty-five dollars ($25.00) to be recovered by the aggrieved shipper. ('05 c. 196 § 4, amended '11 c. 186 § 1) [4579]

1911 c. 186 § 2 repeals inconsistent acts, etc.

5214. Carrier to maintain scales—Powers of commission—State weighmasters—Cost of inspecting scales—It shall be the duty of all common carriers transporting hay to such terminal points to construct and maintain at such public hay tracks as may be established by the commission, suitable track scales of such size and capacity as the commission shall direct. If in its judgment it is necessary, the commission may order that such track scales be housed in such a manner as to insure accuracy. All scales at such hay tracks shall be under the control of state weighmasters and subject to inspection by them, exempt from the jurisdiction of sealers of weights and measures. They shall be inspected at the request of any person interested in any hay or straw to be weighed thereon. If found incorrect the cost of inspection shall be paid by the owner thereof; otherwise by the person requesting inspection. No scales found incorrect shall be used until re-examined and found correct. Provided that nothing in this act shall be so construed as to prevent the use of such scales by the owner for the purpose of weighing any other commodities in carload lots. ('05 c. 196 § 5) [4580]

5215. Weighers and inspectors—Chief inspector of grain—Appeals—Reinspecting and final review—The commission shall appoint a suitable number of persons to perform such weighing and inspecting of hay and straw. Such weighers and inspectors shall be under the immediate supervision of the chief inspector of grain. In case of dissatisfaction of any interested person with the official acts of any inspector reinspecting may be had upon application to the aforesaid chief inspector of grain or either of his chief deputies. A final appeal from the decision of said chief inspector of grain or his deputy inspectors may be made to the board of final review, to be provided for by the commission under the rules it shall establish. The decision of such board of review shall be final, provided the commission may provide suitable rules for the cancellation of any certificate of inspection issued upon original inspection; reinspecting or upon final review when it appears that owing to the manner in which cars of hay or straw were loaded it was impossible for the inspector to obtain a fair sample. ('05 c. 196 § 6) [4581]

5216. Rules and regulations—The commission shall adopt all necessary rules and regulations for the weighing and inspecting of hay and straw at such terminal points. ('05 c. 196 § 7) [4582]

5217. Weighers and inspectors—Obstructing performance—Penalty—Oath—Bond—In case any person or railway corporation or any of their agents or employees shall refuse or prevent the aforesaid weighers and inspectors of hay and straw from having free access to their scales and tracks in the regular performance of their duties as such weighers or inspectors of hay and straw, they shall forfeit to the state of Minnesota the sum of one hundred dollars for each offense, such penalty or forfeiture to be paid to the state treasurer for the benefit of the hay inspection fund hereinafter created, and shall also be required to pay all costs of prosecution. All weighers and inspectors of hay and straw shall take an oath of office the same as required of deputy grain inspectors, and shall give a bond to the state of Minnesota in the penal sum of five thousand dollars with good and sufficient sureties to be approved by the commission, and conditioned in like manner as the commission require from the chief inspector of grain. The bonds given by such weighers and inspectors of hay and straw shall

be filed in the office of the secretary of state and suit may be brought upon said bond, or bonds, in any court having jurisdiction thereof for the use of the person so injured. ('05 c. 196 § 8) [4583]

5218. Removal—The chief inspector of grain shall have the power to remove any of said weighers or inspectors of hay and straw at pleasure. ('05 c. 196 § 9) [4584]

5219. Charges—Compensation—Such weighers and inspectors of hay and straw shall be governed in the performance of their duties by such rules and regulations as may be provided by the commission; the commission shall have power to fix the rate of charges for the weighing and inspecting of hay and straw and the manner in which the same shall be collected, which charges shall be regulated in such manner as will in the judgment of the commission produce sufficient revenue to meet the necessary expenses of the weighing and inspecting service, and no more; the commission shall fix the amount of compensation to be paid to the weighers and inspectors of hay and straw and prescribe the time and manner of payment thereof, which compensation shall be paid out of a hay inspection fund, hereinafter created, on the order of the commission. ('05 c. 196 § 10) [4585]

5220. Disqualifications—No weigher nor inspector of hay or straw nor any of the sureties on their bond, or bonds as the case may be, shall during his term of service be in any way interested in the handling, storing, shipping, purchasing or selling of hay or straw, or any of their products, nor in the employment of any person or corporation engaged therein, nor shall they be members of any board of trade or organization of like character. ('05 c. 196 § 11) [4586]

5221. Grounds for removal—Upon complaint in writing of any person to the commission, supported by reasonable and satisfactory proof that any weigher or inspector of hay and straw has violated any of the rules prescribed for his government, or has been guilty of any improper official act, or has been found inefficient or incompetent for the duties of this position, such person shall be by the commission immediately removed from office. ('05 c. 196 § 12) [4587]

5222. Impersonating weigher or inspector—Penalty—Any person not duly appointed and qualified, who shall assume to act as a weigher or inspector of hay and straw, shall be guilty of a misdemeanor and be punished by a fine of not less than fifty nor more than one hundred dollars. ('05 c. 196 § 13) [4588]

5223. Neglect of duty, etc.—Penalty—Any duly authorized weigher or inspector of hay and straw who shall be guilty of any neglect of duty or who shall knowingly or carelessly weigh or inspect any hay or straw improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty or any improper performance of duty as such weigher or inspector of hay and straw, or any person who shall improperly influence or attempt to influence any weigher or inspector of hay and straw in the performance of his duties as such weigher or inspector, as the case may be, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars or shall be imprisoned in the county jail not less than thirty (30) days nor more than one year, or both, in the discretion of the court. ('05 c. 196 § 14) [4589]

5224. Public hay scales—Disposition of funds—The charges for the weighing and inspecting of hay and straw shall be and constitute a lien on the hay and straw so weighed or inspected, and whenever such hay and straw is in transit the said charges shall be considered as advance charges, to be paid by the common carrier in whose possession the same is at the time of weighing or inspecting. All money so collected, and all fines and penalties for violation of any of the provisions of this act, shall be paid into the state treasury and credited to the Grain Inspection Fund, and paid out on order of the Commission and Auditor's warrant. All interest received from deposits of said moneys shall be credited on the first of each month to such fund and notice of the amount of such interest shall be sent to the chief inspector. ('05 c. 196 § 15, amended '21 c. 11 § 1) [4590]

5225. Duty of inspectors—Certificate—Such inspectors shall inspect all hay and straw shipped to any such public hay tracks and give a certificate of the inspecting to the person entitled thereto. Their decisions shall be conclusive as to the grade of such hay or straw, and the certificate shall be evidence thereof, unless changed upon reinspecting or appeal, in which case the final certificate shall be conclusive. ('05 c. 196 § 16) [4591]

5226. Reinspection—Appeal—In case any owner, consignee or shipper of hay and straw shall be aggrieved by the decision of such inspectors of hay and straw, said owner, consignee or shipper may ask for a reinspecting of said hay and straw from the chief inspector of grain or his chief deputies; provided that a final appeal from the decision of said chief inspector of grain or his chief deputies may be had to the board of final review provided for in section 6 [5215] of this act, and a decision by a majority of such final board of review shall be final, and the commission is hereby authorized to make all necessary rules governing such reinspecting or appeal, provided that the party asking for such reinspecting shall pay to the chief inspector of grain or his chief deputies a sum not to exceed five dollars per case before such case be entertained, which sum shall be refunded in case such case is sustained. ('05 c. 196 § 17) [4592]

5227. Duty of weighers—Record—All weighers of hay and straw provided for by this act shall be required to make true weights under the penalties hereinbefore provided, and in addition thereto shall keep a correct record of all weighing done by them at the hay tracks where they are stationed, in which record shall be entered an accurate account of all hay, straw or other property weighed, or the weighing of which was supervised by them or their assistants, giving the amount of each weight, the number of the car or cars weighed, if any, the initial letter of said car or cars weighed, where weighed, date of weighing and contents of car. ('05 c. 196 § 18) [4593]

5228. Certificates of weighers and inspectors as evidence—Said weighers and inspectors of hay and straw shall give upon request of any person interested certificates under their hand and seal showing the amount of each weight, or if inspected, the grade, number of car or cars weighed or inspected, if any, the initial of said car or cars, hay yard where weighed or inspected, date of weighing or inspecting and contents of car, provided that such certificate of weights shall be admitted in all actions either at law or in equity as prima facie evidence of the facts therein contained, and as prima facie evidence that any contract of sale and purchase of such hay was made upon such weights and grades, but the effect of such evidence may be rebutted by other competent testimony. ('05, c. 196, § 19; amended '25, c. 328) [4594]

5229. Minnesota grades—Publication—The commission shall before the first day of July in each year establish a grade for all kinds of hay and straw bought, handled or delivered at any public hay yard at terminal points in this state, which grade so established shall be known as "Minnesota grades" of hay and straw, and the grades so established shall be published in some daily newspaper at each of said terminal points each day for the space of one week. ('05 c. 196 § 20) [4595]

5230. Duties of commission—It shall be the duty of the commission to assume and exercise a constant supervision over the hay and straw interests of this state; to supervise the handling, weighing, inspecting and storage of hay and straw; to establish all necessary rules and regulations for the weighing, grading, inspecting and reinspecting of hay and straw, and for the management of all public hay tracks at terminal points in this state as far as such rules and regulations may be necessary to enforce the provisions of this act, or any law in this state in regard to the same; to investigate all complaints of fraud or oppression in the hay and straw trade, and to correct the same as far as may be in their power. ('05 c. 196 § 21) [4596]

5231. Sale by sample—Nothing in this act shall be so construed as to prevent any person from selling hay or straw by sample, regardless of grade. ('05 c. 196 § 22) [4597]

LIVE STOCK DEALERS.

5232. Live stock dealers licensed—All persons, other than live stock commission merchants, commonly known as dealers, speculators, traders or scalpers, engaged in the business of buying and selling live stock at any public stock yards, shall for the purposes of this act be known as "Live Stock Dealers." Every such live stock dealer before engaging in such business shall first procure a license from the Railroad and Warehouse Commission, hereinafter called the Commission, and shall file with the Commission, and acceptable to the Commission, a surety bond to the State of Minnesota in the sum of $1,000. Such bonds shall be continuous surety bonds, and be conditioned for the faithful discharge of all duties—as a live stock dealer operating under this act, and full compliance with the law of the state and rules and regulations of the Commission relative thereto. The said Commission may provide rules and regulations relating to said live stock dealers in the buying and selling of live stock at such public stock yards. ('21 c. 9 § 1)

5233. Application. Fee. Term — Licenses shall only be issued upon written application which shall state the name of the individual firm or corporation, and each member of the firm or officer of the corporation; the point or points at which the applicant intends to do business, postoffice address and the location of the general office of such applicant. All licenses shall expire upon the 31st day of December following the date of issuance. Such license shall be posted in a conspicuous place in the office of the licensee. The fee for each license must accompany the application and shall be $10.00. All license fees shall be deposited in the State Treasury, to be credited to the "Live Stock Weighing Fund," and paid out only on order of the Commission and the Auditor's warrant. The interest received from deposits of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the Commission. ('21 c. 9 § 2)

5234. Violations—Penalties—Any person, persons, firm or corporation engaged in the business of buying and selling any live stock as such dealer, who fails or neglects to comply with any of the provisions of this act or any of the rules and regulations of the Commission therein provided for, shall be guilty of a misdemeanor, and upon conviction thereof in any court having competent jurisdiction shall be punished by a fine or imprisonment. The Commission is hereby authorized either upon such conviction or upon its own findings, after investigation and hearing, if the facts warrant it, to cancel the license of any person, persons, firm or corporation guilty of any violation of law, subject to the right of the licensee to appeal from such order to the court. Where a license has been cancelled and the order of the Commission cancelling same is sustained by the court, in case of appeal, the Commission may refuse to issue any license to such person, persons, firm or corporation for the term of one year. ('21 c. 9 § 3)

5235. Railroad and Warehouse Commission shall examine books—The Commission shall have the right to examine any and all books, records and accounts of any live stock dealer. Any live stock dealer, and any agent or employee in charge of such books, records or accounts, who shall fail or refuse to submit such books, records or accounts for the examination of said Railroad and Warehouse Commission shall be guilty of a misdemeanor. ('21 c. 9 § 4)

5236. Exemptions—The term "Live Stock" shall include cattle, sheep, hogs, horses and mules. Nothing in this act shall apply to any person, persons, firm, copartnership, association or corporation, who ship their own consignment of live stock, or who shall buy live stock for their own use or for the purpose of feeding. ('21 c. 9 § 5)

5237. Live stock exchanges to be open market—Any rule, by-law, regulation or requirement of a live stock exchange or association maintaining a place of business for its members where any live stock is bought, sold or exchanged for themselves or for others, to the effect that no member thereof shall buy, sell or exchange live stock with a person who is not a member thereof, is hereby declared to be contrary to public policy and is made null and void, and the dealing in live stock by a member of such an association with a non-member shall not work any penalty to such member, nor shall such dealing be cause for a cancellation or forfeiture of membership in such live stock exchange or association. ('21 c. 344 § 1)

5238. Violations — Penalties — Whenever any such live stock exchange or association, or any officer or agent thereof, shall violate any of the provisions of this act, the attorney general shall prosecute such organization, officer or agent for such violation, and shall, by appropriate legal proceedings in the name of the state, ask the dissolution of such organization and prevent its further operation, and said attorney general shall also, by injunction or other appropriate legal remedy, restrain such organization and all members thereof from thereafter continuing in such violations and from any further trading in such exchange or association either directly or indirectly. ('21 c. 344 § 2)

LIVE STOCK COMMISSION MERCHANTS.

5239. Defined — License — Bond — All commission merchants, brokers, or agents, or any person whomsoever engaged in soliciting consignments of live stock to be handled for the account of the shipper handling,

buying or selling any live stock at any public stock yards, shall be known as "Live Stock Commission Merchants," and as such shall be required to first procure a license from the railroad and warehouse commission, hereinafter designated as the commission, and furnish a bond to the state of Minnesota for not more than the sum of twenty thousand dollars ($20,000.00), which bond shall be a continuous surety bond to be made in such form as the commission may prescribe. The railroad and warehouse commission may prescribe as bond for such an amount for dealers as will in its opinion be sufficient for the protection of persons doing business with any dealer taking into consideration the volume of business done by such dealer.

For the purpose of this subdivision the term "Live Stock" shall include cattle, sheep, hogs, horses and mules. Nothing in this act shall apply to any person, firm, copartnership, association or corporation, who shall sell their own consignment of live stock or to any person, firm, copartnership, association or corporation, who shall buy live stock for their own use or for the purpose of feeding. (Ex. Sess. '19 c. 39 § 1)

5240. Application for license—Revocation of license—On or before the first of December in each year the persons specified in section one (1) of this act shall make an application to the commission in writing for a license to conduct the business of a live stock commission merchant. This application shall set forth the name of the individual, firm or corporation and each member of the firm or officer of the corporation, the point or points at which the applicant intends to do business, postoffice address and the location of the general office of such applicant. A separate bond and license shall be required for each point at which such applicant intends to do business.

On or before the first of January each year the commission shall furnish such applicant with a license good for one year, such license to be posted in a conspicuous place in the office of the licensee. The fee for each license must accompany the application for license, and shall be twenty-five dollars ($25.00). All moneys so collected shall be deposited in the state treasury and known as the "Live Stock Weighing Fund," and all moneys at present credited to the Live Stock Commission Fund to be transferred to the Live Stock Weighing Fund, and paid out only on order of the commission and the auditor's warrant. The interest received from deposit of said moneys shall be credited on the first of each month to such fund, and notice of the amount of such interest shall be sent to the commission.

Such license may be revoked by the commission for cause upon notice and hearing. (Ex. Sess. '19 c. 39 § 2, amended '21 c. 312 § 1)

5241. Schedule of charges—The commission shall establish a schedule of reasonable charges, rules and regulations, that may be made by any licensed live stock commission merchant at any public stock yard for the buying or selling of any live stock, and may change said schedule whenever they deem it necessary. Any licensee charging any amount in excess of the fixed charge in said schedule may have his or their license revoked by the commission after a hearing; provided, however, that any interested person being aggrieved by the action of the commission may appeal to the district court of the county of his residence, or the county in which the transaction involved took place within thirty days from notice to him by said commission of their decision.

Said appeal may be perfected by notice thereof served on said commission or any member thereof, and the determination of said court when certified to said commission shall be carried out and performed by the commission. (Ex. Sess. '19 c. 39 § 3)

5242. Statement to shipper—Whenever a licensee sells any live stock he shall render a true statement in writing to the consignor within twenty-four (24) hours, of the number of animals sold, weight, price received, name and address of purchaser and the day of sale. (Ex. Sess. '19 c. 39 § 4)

5243. Complaint may be filed—Whenever a consignor of live stock, after demand therefor, shall have received no remittance or reports of its sale, or shall be dissatisfied with the remittance or report, he may file a complaint in writing, under oath, to the commission, who shall investigate the matter complained of. In making the investigation the commission may compel the licensee to produce all information, books, records and memoranda concerning the matter, and they shall give the complainant a written report of the investigation. This report shall be prima facie evidence of the matters therein contained. (Ex. Sess. '19 c. 39 § 5)

5244. Statement filed—It shall be the duty of every licensed commission merchant to make and file with the state supervisor of stockyards on or before the tenth day of each month a statement showing the total amount of hay or other feed delivered by them to shippers and the amount charged for same during the preceding month. Such report shall be verified and in such form as the commission may prescribe. (Ex. Sess. '19 c. 39 § 6)

5245. Failure to account—If any licensee shall fail to account for any consignment of live stock, the consignor, or his agent may file with the commission an affidavit setting forth the matters complained of. Thereafter, such consignor may bring an action upon the bond of the licensee, and recover the amount due him on account of such consignment. If such licensee has become liable to more than one consignor, and the amount of his bond be insufficient to pay the entire liability, the consignors shall be compensated in proportion to their several claims. (Ex. Sess. '19 c. 39 § 7)

5246. Penalty for failure to comply with the provisions of this act—Any person, persons, firm or corporation engaged in selling any live stock as herein specified, who fails or neglects to comply with any of the provisions of this act, or any of the rules and regulations of the commission therein provided for, shall be guilty of a misdemeanor, and, upon conviction thereof in any court having competent jurisdiction, shall be punished by a fine or imprisonment. The Railroad and Warehouse Commission is hereby authorized, either upon such conviction or upon its own findings after investigation, if the facts warrant it, to cancel the license of any person, persons, firms or corporation guilty of any violation of law, or conduct prejudicial to the interest of those making consignments for sale. Where a license has been cancelled and the order of the commission cancelling the same is sustained by the court in case of appeal, the Railroad and Warehouse Commission may refuse to issue any license to such person, persons, firm or corporation for a term of one year. (Ex. Sess. '19 c. 39 § 8)

5247. Investigation upon request—Penalty for failure to produce books, etc.—Whenever requested to do so by an interested shipper, the Railroad and Warehouse Commission shall have power to investigate any sale or transaction carried on by any person, persons, firm or corporation licensed under this act, and for that

purpose shall have the right to examine any and all books, records and accounts of any licensed commission merchant. Any licensed commission merchant or any agent in charge of such books, records or accounts who shall fail or refuse to submit such books, records or accounts for the examination of said Railroad and Warehouse Commission shall be guilty of a misdemeanor. (Ex. Sess. '19 c. 39 § 9)

5248. Unlawful representations—It shall be unlawful to use the words "agent," "factor," "broker," "commission merchant" or "commission company" on any advertising matter, letter or billheads of any person not having a license from the commission. Any person, firm or corporation who shall hold themselves out or claim to be licensed and bonded commission merchants, either by written, printed or verbal representation, or by the use of any letter head, statement or advertisement, without having a license from the commission shall be guilty of a misdemeanor. (Ex. Sess. '19 c. 39 § 10)

PACKING HOUSE CERTIFICATES

5249. Certificates on products—Every person engaged in the slaughter of cattle, sheep or hogs, and dealing in the products thereof, who owns or controls the building wherein such business is conducted or such commodities stored, may issue warehouse certificates for any of the commodities actually in store, and may sell, assign, transfer, pledge or encumber the same to the amount described therein. Such certificate shall contain the name and address of the person issuing it, the location of the warehouse, the date of issue, the quantity of each commodity, and its brand or mark of identification, if any, and be signed by the person issuing the same. (2121) [4605]

5250. Interest in warehouse—Certified copy—Before issuing any such certificate, he shall file with the register of deeds of the county where the warehouse is located a written declaration, stating his name and residence, that he intends controlling a warehouse for the storage and sale of such commodities, a correct description of the warehouse, its location, and the name of any other person in any way interested therein. It shall be signed, acknowledged and recorded in a book kept for that purpose, and a certified copy thereof shall be filed with the clerk of the city, village or town wherein such business is conducted, and be kept in the same manner as chattel mortgages are required to be filed and kept, and the party making the declaration shall be indexed as the vendor, and the public as the vendee. (2122) [4606]

5251. Statement printed on back—Every such certificate issued shall have printed on the back thereof a statement that the party issuing it has complied with the law, and shall give the book, page and place where the record of such declaration may be found, and the day of filing. Such certificate, when so issued and delivered, shall transfer to the holder the title to the commodities therein described, shall be assignable by indorsement, and thereupon shall be prima facie evidence of title to such commodities in the indorsee. It shall be registered by the party issuing the same in a book kept for that purpose, which shall show the date, number and name of party to whom issued, the kind and quantity of the commodities, and any brands or marks thereon, and be open to inspection by any person holding any outstanding certificate in force, his agent or attorney; and when the commodity specified therein has been delivered, or it has in any other manner become inoperative, that fact, with the date of such delivery or other termination of liability, shall be entered in the register in connection with the entry of its issuance. (2123) [4607]

5252. Property in warehouse—No person shall issue such warehouse certificate unless the property therein described is actually in the warehouse; and it shall remain there until otherwise ordered by the holder of the certificate, subject to the conditions of the contract between the warehouseman and the person to whom such certificate was issued, or his assigns, as to the time of its remaining therein; and no second certificate shall be issued for the same property or any part thereof while the first is outstanding and in force, nor shall the property be sold, encumbered, shipped, transferred or removed by the warehouseman without the written consent of the certificate holder. (2124) [4608]

5253. Damages for injury—Any person injured by any violations of §§ 5251, 5252 may recover the actual damages sustained, and, if the violation was wilful, in addition thereto exemplary damages not exceeding double the actual damages, which shall be found by special verdict. (2125) [4609]

5254. Penalties—Every person who shall wilfully alter or destroy any register of such certificates, or issue any receipt of certificates without entering and preserving in such book the registered memorandum, or shall knowingly issue any such certificates when the commodities therein described are not in the warehouse, or who, with intent to defraud, shall issue a second or other certificate for which a former valid certificate is outstanding, or who shall, under such circumstances, sell, encumber, ship, transfer or remove from the warehouse any such certified property, or knowingly permit the same to be done, without the written consent of the certificate holder, or who knowingly receives, or helps to remove, any such property, shall be guilty of a felony and punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars. (2126) [4610]

PUBLIC STOCKYARDS.

5255. Definition of public stockyards — "Public stockyards" as used herein means all stockyards into which live stock is received for the purpose of exposing the same for sale or for feeding the same and doing business for compensation. "Person" as used herein includes any person, co-partnership, association or corporation doing business in this state. "Operator" as used herein means any person owning or operating a public stockyard in this state. "Commission" as used herein means the Railroad and Warehouse Commission. In construing this act gender and number may be disregarded. ('19 c. 461 § 1)

5256. Railroad and Warehouse Commission given jurisdiction—The Railroad and Warehouse Commission is hereby vested with the same jurisdiction and supervisory power over public stockyards doing business in this state as it now has over railroad companies. ('19 c. 461 § 2)

5257. Report to be filed—Every public stockyard operator shall annually on the 31st day of December file with the commission, on a form prepared by it, a statement certified and sworn to, stating the number of head of cattle, calves, hogs, sheep, horses and mules received in such stockyard during the preceding year and such other facts as the commission may require. ('19 c. 461 § 3)

5258. Reasonable accommodation to public—It shall

be the duty of every public stockyard operator to furnish reasonable, adequate service and facilities for the accommodation of the public, and the rates, charges and prices of such stockyards for the services performed by it shall be fair and reasonable. All unreasonable and excessive rates, charges and prices are hereby declared unlawful. ('19 c. 461 § 4)

5259. Schedule of rates, charges, etc., to be filed—Within sixty days after the taking effect of this act it shall be the duty of every public stockyard operator to forthwith file with the commission a schedule of its rates, charges and prices for driving, watering, feeding, yarding, weighing and caring for stock and for every kind of service performed by it, together with all rules and regulations used in the conduct of the business of public stockyards, all of which shall be kept on file by the commission and shall be open to public inspection. The commission may require each such operator to post for public inspection at designated places so much of said schedule and regulations as it deems necessary for the information of the public. ('19 c. 461 § 5)

5260. Commission to establish reasonable rates—Whenever such rates, schedules or regulations are found to be unreasonable by the commission, said commission shall, upon its own motion, or upon complaint, prescribe reasonable rates, charges and regulations to supersede those found unreasonable, and such new rates, charges or regulations shall be filed in place of those superseded. No charges, rates or regulations filed with the commission shall be changed by any such operator without an order of the commission sanctioning the same. Proceedings before the commission shall be commenced and conducted in the same manner that proceedings affecting railroads are now commenced and conducted and appeals from orders of the commission may be taken in the same manner and to the same extent as appeals may be taken from orders of the commission affecting railroads. ('19 c. 461 § 6)

5261. Compliance with the order—Whenever, in the judgment of the commission, any public stockyards fails in any respect to comply with the law, or any repairs or improvements are necessary, or reasonable addition to or change of its stockyard facilities, or any change in the mode of operating such stockyards or conducting its business will promote the security or convenience of the public, said commission by a written order to be served as a summons in a civil action shall require compliance with such law or the making of such repairs, additions or change. In case of disobedience to said order said commission may cause an action to be commenced for the enforcement thereof. ('19 c. 461 § 7)

5262. Rules and regulations—Said commission is hereby authorized and empowered to adopt and enforce reasonable rules and regulations governing the sanitary conditions in such public stockyards, the care of the animals therein, the receiving and shipping of the same and the general service performed by such stockyards. ('19 c. 461 § 8)

5263. Charges for hay and corn—It shall be unlawful for any public stockyards operator to sell and deliver at the rate of less than two thousand pounds for a ton of hay or any part thereof, or to sell and deliver less than seventy pounds of corn in the ear for a bushel or less than fifty-six pounds of shelled corn for a bushel. ('19 c. 461 § 9)

5264. Sale of dead stock—It shall be unlawful for any public stockyards operator or any agent or employe to prohibit or prevent the owner or his representative of any dead stock in such yard from selling or otherwise disposing of such stock. ('19 c. 461 § 10)

5265. Violation a gross misdemeanor—Any persons violating the provisions of this act shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be punished accordingly. ('19 c. 461 § 11)

5266. Inconsistent acts repealed—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('19 c. 461 § 12)

5267. Valuation of public stockyards—The Railroad and Warehouse Commission, hereinafter designated the commission, shall whenever it deems the same necessary for the purpose of establishing and fixing a reasonable schedule of charges and prices for driving, watering, feeding, yarding, weighing and caring for stock and for every kind of service, performed by any public stockyards, pursuant to chapter 461, General Laws 1919, determine the value of all the property of any public stockyards devoted to public use, and shall after notice to the companies operating such public stockyards, hold such public hearings as will give all interested parties a chance to furnish evidence and be heard. For the purpose of this act the commission is authorized to appoint engineers, examiners, experts, clerks, accountants and other assistants as it may deem necessary at such rates of compensation as it may prescribe.

In the discharge of their duties such appointees shall have every power of any inquisitorial nature granted in this act to the commission. The commission may conduct any number of investigations contemporaneously through its individual members or appointees, and may delegate to its individual members the taking of all testimony on any investigation or hearing. (Ex. Sess. '19 c. 41 § 1)

Explanatory note—For Laws 1919, c. 461, see §§ 5255 to 5266, herein.

5268. Statement to be filed—It shall be the duty of the commission at all times to keep up the physical valuation of the property of public stockyards, and for this purpose may require a detailed statement showing the changes in the physical conditions of the properties of any stockyards company. Such statement shall be filed each year at such time as the commission may direct, and shall be verified by the president, chief engineer, or the proper accounting officer of such stockyards company. (Ex. Sess. '19 c. 41 § 2)

5269. Appropriation—For the purpose of making the valuation herein provided, there is appropriated out of the general revenue fund not otherwise appropriated, the sum of ten thousand dollars ($10,000.00), to be available January 1st, 1920. (Ex. Sess. '19 c. 41 § 3)

Appropriation for supervision of public stockyards. Ex. Sess. '19 c. 43.

CHAPTER 28A

DEPARTMENT OF WEIGHTS AND MEASURES

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5270. Department created—Jurisdiction of Railroad and Warehouse Commission—There is hereby created a department to be known as the department of "weights and measures," hereafter referred to as the department, and it shall be under the jurisdiction of the Railroad and Warehouse Commission, hereafter referred to as the commission, which shall have supervision and control over all weights, weighing devices and measures in the state. ('11 c. 156 § 1) [4611]

Act construed and held not unconstitutional as interference with freedom of contract. Nor does it violate Const. art. 4 § 27. (118–128 136+565). Ordinance not in conflict with Statute (121–202, 146+106). Not violative of constitution (124–308, 144+963).

5271. Commissioner of weights and measures—Deputies and employes—The commission shall appoint a commissioner of weights and measures and such deputies and other employes as may be necessary to carry out the provisions of this chapter, and fix their compensation. The commissioner of weights and measures and the deputies shall give a bond in a sum to be fixed and approved by the commission. The commission shall provide for such examinations as it may deem necessary to determine the qualifications and fitness of appointees. ('11 c. 156 § 2) [4612]

118–128, 136+565.

165–268, 206+396.

5272. Commissioner of weights and measures salary $2,500 and deputies $1,500—The salary of the commissioner of weights and measures shall be twenty-five hundred ($2,500.00) dollars per annum, and all deputies not to exceed fifteen hundred ($1,500.00) dollars per annum. ('19 c. 454 § 1)

5273. Fees to be paid into state treasury—All moneys collected by the department for special services, fees and penalties shall be paid into the state treasury, and credited to a fund known as the weights and measures fund, and available for the use of the department of weights and measures. ('19 c. 454 § 2)

5274. Inconsistent acts repealed—All acts or parts of acts conflicting with this act are hereby repealed. ('19 c. 454 § 3)

5275. Rules and regulations—The commission shall prescribe and adopt such rules and regulations as it may deem necessary to carry out the provisions of this chapter, and it may change, modify or amend any or all rules whenever deemed necessary, and the rules so made shall have the force and effect of law. ('11 c. 156 § 3) [4613]

5276. Duties and powers of department—Standard of weights and measures—The department shall take charge of, keep and maintain in good order the standard of weights and measures of the state and submit them to the bureau of standards of Washington, D. C., for certification when it is deemed necessary; and shall keep a seal so formed as to impress the letters "MINN" and the date of sealing upon the weights and measures that are sealed; it shall test, correct and seal, when found to be accurate, at least once every year and as much oftener as may be necessary, all the copies of the standards used throughout the state for the purpose of testing the weighing or measuring apparatus used in the state, and keep a record thereof; it shall have general supervision of the weights, measures and weighing or measuring devices offered for sale, sold or in use in the state; and shall, upon the written request of any person, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as standards in the state; it shall keep a complete record of the standards, balances and all testing and sealing apparatus owned by the state, and shall annually during the first fifteen (15) days of January, make a report of its actions to the governor of the state. ('11 c. 156 § 4) [4614]

5277. Inspecting, testing, sealing — Incorrect weights, measures, etc.—The department or any of its employes shall have power to inspect and test all weights, scales, beams and measures of every kind, instruments and mechanical devices for measurement, and tools, appliances or accessories connected with any or all such instruments for measurement that are kept, offered or exposed for sale, or sold, or used or employed within this state by any person in determining the size, quantity, extent, area or measurement of quantities, things, produce, articles for distribution or consumption, offered or submitted by any person for sale, hire or reward; and it shall, at least once in each year, and as much oftener as may be deemed necessary, see that the weights, measures and all apparatus used in the state are correct. In the general performance of this duty the department, or any of its employes, may enter or go into and upon any stand, place, building or premises to stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon or any dealer whatsoever and require him, if necessary, to proceed to some place which the scaler may specify for the purpose of making proper tests. Scales, weights, measures or weighing or measuring instruments that are found, upon inspection, to correspond with the standards in the possession of the department shall be sealed with proper devices to be approved by the commission. Any employe shall condemn, seize and destroy incorrect weights, measures or weighing or measuring devices which, in the judgment of the department cannot be satisfactorily repaired, and such

as are incorrect and yet may be repaired, shall be marked as "condemned for repair," in the manner to be prescribed by the department. The owners or users of any scales, weights, measures or weighing or measuring instrument which have been so disposed of shall have the same repaired or corrected within thirty (30) days, and the same shall not be used or disposed of in any way without the consent of the department. ('11 c. 156 § 5) [4615]

5278. Offenses and penalties, etc.—Any person who shall offer or expose for sale, sell or use, or have in his possession a false scale, weight or measure, or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed within one year, as provided by this law, or use the same in the buying or selling of any commodity or thing; or who shall dispose of any condemned weight, measure or weighing or measuring device, or remove any tag placed thereon by any authorized employe of the department, or shall sell or offer or expose for sale less than the quantity he represents; or sell or offer or expose for sale any such commodities in the manner contrary to law; or shall sell or offer for sale or have in his possession for the purpose of selling, any device or instrument to be used to, or calculated to, falsify any weight or measure, or shall refuse to pay any fee charged for testing and sealing or condemning any scale, weight or measure, or weighing or measuring device, shall be guilty of a misdemeanor, and shall, upon conviction, be fined a sum not less than twenty dollars ($20) nor more than one hundred dollars ($100) or by imprisonment for not less than ten (10) days nor more than ninety (90) days, and the costs of such proceeding. No scale, weight, measure, or weighing or measuring device that has been sealed by the department shall be used, sold or exposed for sale until the fee charged for the service has been paid. ('11 c. 156 § 6) [4616]

Statute is a police regulation 124-307, 144+963.

Intent to defraud is not a necessary element of the crime; deceit through carelessness being just as much prohibited as that due to clear intent. 158-334, 197+738.

An "offer to sell," is accomplished by an attempt to sell, as a ton of coal, a quantity less than a ton. 158-334, 197+738.

5279. Hindering official a misdemeanor—Any person hindering, impeding or restricting in any way any employe of the department while in the performance of his official duty shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not less than twenty dollars ($20) nor more than one hundred dollars ($100) or by imprisonment for not less than ten (10) days nor more than ninety (90) days for each offense. ('11 c. 156 § 7) [4617]

5280. Powers as special policemen—The said department and all authorized employes under the provisions of this act are hereby made special policemen and are authorized and empowered to arrest, without formal warrant, any violator of the statute in relation to weights and measures, and to seize for use as evidence and without formal warrant, any false weight, measure, or weighing or measuring device or package or kind of commodity found to be used, retained or offered or exposed for sale or sold in violation of law. ('11 c. 156 § 8) [4618]

Section 9 made an appropriation.

5281. Duty of treasurers—The state treasurer and the county treasurers of the various counties shall deliver to the department all standards of weights and measures, balances, testing apparatus and sealing equipment now in their possession within ninety (90) days after the passage of this act. ('11 c. 156 § 10) [4619]

5282. Abolishing fee for inspection of weights and measures—No fee shall be charged for the regular annual inspection of scales, weights, measures and weighing or measuring devices. At all other times, the cost of the inspection shall be paid by the owner when the same is performed at his request; and when made at the request of some other person the cost shall be paid by the owner, if the scale, weight, measure and weighing or measuring device is found to be incorrect; otherwise by the person making the request. *The commission shall have power to fix the* fees and expenses for all special services. The sum of ten thousand dollars ($10,000.00), together with the sum in the weights and measures fund, is hereby appropriated for the payment of salaries of employes and expenses of said department for the fiscal year ending July 31st, 1915, and thirty thousand dollars ($30,000.00) annually for the fiscal years ending July 31st, 1916 and 1917, and the same or so much thereof as may be necessary, shall be allowed and paid by the state, upon the approval of a member of the Railroad and Warehouse Commission, and the state auditor. All moneys collected by the department for special services, fees and penalties shall be paid into the state treasury, and credited to the state revenue fund. ('11 c. 156 § 11, amended '15 c. 281 § 1) [4620]

5283. Construction of "person"—The word "person" shall be construed to mean person or persons, corporation, partnership, stock company, or the agent or employe thereof. ('11 c. 156 § 12) [4621]

5284. Laws unrepealed—This act shall not apply to nor repeal section 2059 of the Revised Statutes of 1905, chapter 357 of the Laws of 1907, or chapter 319 of the Laws of 1909. ('11 c. 156 § 13) [4622]

5285. Laws repealed—All acts or parts of acts conflicting with the provisions of this law are hereby repealed, and this act shall take effect and be in force from and after the first day of July, 1911. ('11 c. 156 § 14) [4623]

INSPECTION OF METERS AND DEVICES FOR MEASURING OF ELECTRICITY, GAS AND WATER.

5285-1. Inspection and test by railroad and warehouse commission—Petition for by residents of municipalities—Fees—Sealing and labeling devices—The railroad and warehouse commission shall have power to inspect and test all meters, mechanical devices and measures of every kind, and tools, appliances and accessories connected therewith, used, employed, kept, sold or offered or exposed for sale within this state for the purpose of measuring the amount, quantity or extent of electricity, gas or water furnished, sold or distributed to the public by any person, association, corporation or municapality except cities of the first class having, or which may hereafter have meter inspection departments. Upon petition of at least 25 consumers of electricity, gas or water within the territorial limits of any municipality and upon the deposit with the clerk of such municipality by each of such consumers of a fee of 25 cents for each such meter, mechanical device and measure installed or used upon the premises of each such petitioning consumer, the governing body of such municipality may request the commission to make an inspection and test of all such meters, mechanical devices and measures upon the premises of such petitioning consumers. Thereupon the commission, within a reasonable time after the re- 5285¹ 31 — 98

ceipt by it of such request, shall proceed to make an inspection and test of all such meters, mechanical devices and measures upon the premises of all such petitioning consumers and upon the premises of all other consumers within such municipality who, at the time of such inspection and test, shall have deposited with the clerk of such municipality said fee of 25 cents for each such meter, mechanical device and measure upon the premises of such consumers. All such fees collected by the clerk of any such municipality shall be remitted by such municipality to the commission within 30 days of the completion of such inspection and test, and deposited to the credit of the Weights and Measures fund. All such meters, mechanical devices and measures found, upon inspection, to be correct and accurate, shall be sealed with proper devices to be approved by the commission. The commission, or any of its employes, shall condemn, seize and destroy all incorrect and inaccurate meters, mechanical devices and measures which, in the judgment of the commission cannot be satisfactorily repaired; and such as are incorrect and inaccurate and yet may be repaired, shall be marked as "Condemned for Repair," in the manner to be prescribed by the commission. The owners of any such meters, mechanical devices and measures which have been so "Condemned for Repair" shall have the same repaired and corrected within 30 days; and such meters, mechanical devices and measures shall not be disposed of without the consent of the commission. In the general performance of its duty the commission, or any of its employes, may enter or go into or upon any premises, building, stand or place at all reasonable times. ('27, c. 291, § 1, effective July 1, 1927 by § 3)

5285-2. Same—Obstruction of inspection—Penalty—Every person, association or corporation that shall refuse to allow entrance upon or into his or its premises, building, stand, or place for the purpose of inspection as prescribed herein, or that shall use, employ, keep, sell or offer or expose for sale any such meters, mechanical devices or measures in violation of this act shall be guilty of a misdemeanor, and each violation thereof shall constitute a separate offense. ('27, c. 291, § 2, effective July 1, 1927 by § 3)

CHAPTER 28A-1

TELEPHONE COMPANIES

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5286. Telephone companies placed under jurisdiction of Railroad and Warehouse Commission—The Railroad and Warehouse Commission, now existing under the laws of this state, is hereby vested with the same jurisdiction and supervisory power over telephone companies doing business in this state, as it now has over railroad and express companies, and wherever the term "commission" is used in this act it shall mean said Railroad and Warehouse Commission. ('15 c. 152 § 1)

Commission has jurisdiction over unorganized association (141–125, 169+480). Regulation of poles and wires remains in municipality (138–281, 164+989).
164–279, 204+873, note under § 5304.

5287. Construction of "Telephone Company"—The term "Telephone Company" as used in this act shall mean and apply to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public. ('15 c. 152 § 2)

5288. Scope of law—Except as otherwise provided in this act, all the provisions of Chapter 28 of the Revised Laws of 1905 and acts amendatory thereof applying to railroad and express companies shall, in so far as the same are applicable, apply also to telephone companies. ('15 c. 152 § 3)

See Chapter 28 of these statutes.
148–219, 181+333; 274 Fed. 384.

5289. Rates to be fair and reasonable—It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls and charges are hereby declared to be unlawful. ('15 c. 152 § 4)

Advisability of continuing rates in effect (146–247, 178+604). Contract rates ambiguous (148–219, 181+333).

5290. Schedule of rates to be filed with the commission—Upon the taking effect of this act it shall be the duty of every telephone company to forthwith file with the commission a schedule of its exchange rates, tolls and charges for every kind of service, together

with all rules, regulations and classifications used by it in the conduct of the telephone business, all of which shall be kept on file by the commission subject to public inspection. The commission shall require each telephone company to keep open for public inspection at designated offices, so much of said schedules and regulations as it deems necessary for the public information. ('15 c. 152 § 5)

Rates under federal control in excess of those fixed by commission (146–247, 178+604). Toll charges (148–219, 181+333).

5291 248nw 220 US Const. Amend. 14

5291. Commission to fix reasonable rates—Whenever such rates or schedules are found to be unreasonable by the commission, upon its own motion or upon complaint, it shall prescribe reasonable rates to take the place of those found unreasonable and such new rates shall be filed in place of the rates or schedule superseded. No rates filed with the commission shall be changed by any telephone company without an order of the commissioner sanctioning the same. It shall be unlawful for any telephone company to collect or receive a greater or less rate or charge for any intrastate service rendered by it than the rate or charge named in the schedules on file with the commission, and no new rate shall take effect till the date named by the commission, which shall not be less than ten days after it is filed. ('15 c. 152 § 6)

Order of commission approving federal rates as temporary rates (146–247, 178+604; 274+384.

5292. Discrimination prohibited—No telephone company or any agent or officer thereof shall, directly or indirectly, in any manner whatsoever, knowingly or *wilfully, charge, demand, collect or receive from any* person, firm or corporation, a greater or less compensation for any intrastate service rendered or to be rendered by it than it charges, demands, collects or receives from any other firm, person or corporation for a like and contemporaneous intrastate service under similar circumstances. ('15 c. 152 § 7)

5293. Commission to prescribe uniform rules—It shall be the duty of the commission to prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business and a system of accounting to be used by telephone companies in transacting said business, and it shall prescribe and furnish blanks and forms for reports, all of which shall conform as nearly as practicable to the rules, classifications, accounting systems and reports prescribed by the Interstate Commerce commission for the interstate business of like size companies.

The commission shall by correspondence, or conference where necessary, use its best endeavors toward establishing uniformity in practice in all matters pertaining to regulation of the business of telephone companies between the federal government and state government of this and adjacent states. ('15 c. 152 § 8)

5294. Inspection of books of telephone companies in case of failure to make reports—Every telephone company subject to the provisions of this act, wherever organized, shall keep an office in this state, and shall make such reports to the commission as it shall from time to time require. All books, records and files and all of its property shall be at all times subject to inspection by the commission it shall close its accounts and take therefrom a balance sheet on December 31st each year, and on or before March 1st following, such balance sheet, together with such other information as the commission shall require, verified by an officer of the telephone company, shall be filed with the commission.

In the event that any telephone company shall fail to file its annual report, as provided by this section, the commission is authorized to make such an examination of the books, records and vouchers of said company as is necessary to procure the necessary data for said annual report and cause the same prepared. The expense of procuring said data and preparing said report shall be paid by the telephone company failing to report, and the amount paid shall be credited by the state treasurer to funds in his hands appropriated for the expense of the Railroad and Warehouse Commission.

The commission is authorized to force collection of such sum by an action at law in the name of said commission. ('15 c. 152 § 9, amended '19 c. 183 § 1)

5295. Connections between telephone companies not to be discontinued without order from commission—Whenever public convenience requires the same, every telephone company shall, for a reasonable compensation, permit a physical connection or connections to be made, and telephone service to be furnished between any telephone exchange system operated by it, and the telephone toll line or lines operated by another company, or between its telephone toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another company, whenever such physical connection or connections are practicable and will not result in irreparable injury to the telephone system so compelled to be connected. The term "physical connection" as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonable and adequate service between such telephone lines and exchanges and shall not be deemed to provide for any connection whereby one line or circuit is to be bridged upon another line or circuit. In case of failure of the telephone companies concerned to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the commission for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the commission shall find that such physical connections will not result in irreparable injury to such telephone properties, *it shall by order direct that such* connections be made, and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. Whenever application is made to the commission requesting physical connection it shall be presumed that such connection is necessary, and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the part resisting such application. The telephone companies so connecting shall give service over the connecting line or lines without preference to or discrimination against any service or telephone company whatever.

Wherever a physical connection or connections exist between any telephone exchange system operated by a telephone company and the toll line or lines operated by another telephone company or between its toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company, neither of said companies shall cause such connection to be severed or the service between said companies to be discontinued without first obtaining an order from the commission upon an application for permission to discontinue such physical connection. Upon the filing of an application for discontinuance of such a connection, the commission shall investigate and ascertain whether

public convenience requires the continuance of such physical connection, and if the commission so finds, shall fix the compensation, terms and conditions of the continuance of said physical connection and service between said telephone companies. ('15 c. 152 § 10, amended '19 c. 183 § 2)

5296 248nw 220 US Const. Amend. 14

5296. Telephone companies required to permit physical connection—Whenever public convenience requires the same, every telephone company operating an exchange in any city or village shall for a reasonable compensation permit a physical connection or connections to be made and telephone service to be furnished between any telephone exchange system operated by it and the telephone line or lines owned and operated by another telephone company, serving rural subscribers located within a territory reasonably tributary to and outside of the corporate limits of the city or village in which said telephone company is operating an exchange, whenever such physical connection or connections are practicable and will not result in irreparable injury to the telephone system so compelled to be connected. The term "physical connection" as used in this section shall mean such number of complete wire circuits and connections as may be required to furnish reasonable and adequate service between such telephone lines and exchanges. In case of failure of the telephone companies concerned to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the commission for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the commission shall find that such physical connections will not result in irreparable injury to such telephone properties, it shall by order direct that such connections be made, and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid; provided, however, that the public convenience shall not be deemed to demand a connection between an exchange and any rural telephone line where by existing connections or telephone lines, adequate service is already furnished or available to the inhabitants of the territory affected. The telephone companies so connecting shall give service over the connecting line or lines without preference to or discrimination against any service or telephone company whatever. ('21 c. 354 § 1)

5297. Free or reduced rates to officers, etc.—A telephone company may furnish service free or at reduced rates to its officers, agents or employees in furtherance of their employment, but it shall charge full schedule rates without discrimination for all other services. Provided that nothing herein shall release any telephone company from carrying out any contract now existing between it and any municipality for the furnishing of any service free or at reduced rates. Provided further that any contract for telephone service, at discriminatory rates, other than those with municipalities, shall be terminated by the company as soon as the same becomes terminable by its terms or if the company has the option to terminate such contract, said option shall be exercised and the contract terminated within three months after the passage of this act. ('15 c. 152 § 11)

138-285, 164+991.

5298. Commission given power to delegate authority to employes—The commission shall, whenever it deems the same necessary, determine the value of all the property of any telephone company devoted to the public use, and in so doing it shall, after notice to the telephone company, hold such public hearing as will give all interested parties a chance to furnish evidence and be heard. For the purpose of this act the commission is authorized to appoint engineers, examiners, experts, clerks, accountants and other assistants as it may deem necessary at such rates of compensation as it may prescribe.

In the discharge of their duties such appointees shall have every power, of any inquisitorial nature granted in this act to the commission. The commission may conduct any number of investigations contemporaneously through its individual members or appointees, and may delegate to its individual members and employes the taking of all testimony on any investigation or hearing. ('15 c. 152 § 12, amended '19 c. 183 § 3).

165-268, 206+396.

5299. Telephone lines and exchanges—Powers of commission—For the purpose of bringing about uniformity of practice, the commission shall have the exclusive right to grant authority to any telephone company to construct telephone lines or exchanges for furnishing local service to subscribers in any municipality of this state, and to prescribe the terms and conditions upon which construction may be carried on, and whenever the commission grants such authority, it shall be in the form of a permit of indeterminate duration—coupled with the right to the municipality to purchase the telephone plant within the city, as hereinafter provided. No lines or equipment shall be constructed or installed for the purpose of furnishing local rural or toll telephone service to the inhabitants or telephone users in any locality in this state, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the commission a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment; but the governing body of any municipality shall have the same powers of regulation which it now possesses with reference to the location of poles and wires so as to prevent any interference with the safe and convenient use of streets and alleys by the public. ('15, c. 152, § 13; amended '25, c. 184, § 1)

138-285, 164+991.

5300. Extension of long distance lines—Any telephone company may extend its long-distance lines into or through any city or village of this state for the furnishing of long-distance service only, subject to the regulation of the governing body of such village or city relative to the location of the poles and wires and the preserving of the safe and convenient use of such streets and alleys to the public, provided that if such lines are to furnish service between communities or localities then served by another company, a certificate of public convenience must first be obtained as required by the preceding section. ('15, c. 152, § 14; amended '25, c. 184, § 2)

5301. Surrendering of license and securing of new authority—Any telephone company operating under any existing license, permit or franchise or which shall hereafter before the taking effect of this act, acquire any license, permit or franchise, may, upon filing with the clerk of the municipality which granted such franchise, a written declaration that it surrenders such license, permit or franchise, receive in lieu thereof, an indeterminate permit as defined in this act; and such telephone company shall thereafter hold such permit

under all the terms, conditions and limitations of this act. The filing of such declaration shall be deemed a waiver by such telephone company of the right to insist upon the fulfillment by any municipality of any contract theretofore entered into relating to any rate, charge or service made subject to regulation by this act. Upon filing such written declaration by the telephone company, the clerk of the municipality shall file with the commission a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the commission conferring the same rights as if originally granted under this act. ('15 c. 152 § 15)

Declaration of surrender (138-281, 164+989).

5302. Municipalities given right to operate telephone exchanges—Any municipality shall have the right to own and operate a telephone exchange within its own borders, subject to the provisions of this act, and it may construct such plant, or purchase an existing plant by agreement with the owner, or where it cannot agree with the owner on price, it may acquire an existing plant by condemnation as hereinafter provided, but in no case shall a municipality construct or purchase such a plant or proceed to acquire an existing plant by condemnation until such action by it is authorized by a majority of the electors voting upon the proposition at a general election or a special election called for that purpose, and if the proposal is to construct a new exchange where an exchange already exists, it shall not be authorized to do so unless sixty-five (65%) per cent of those voting thereon vote in favor of the undertaking. ('15 c. 152 § 16)

5303. Notice to commission and procedure—When a municipality decides in the manner above provided to acquire an existing plant by condemnation it shall give notice to the commission whose duty it shall be thereupon to determine the just compensation which the owner of the plant is entitled to receive therefor from said municipality. Before deciding upon such compensation said commission shall at a public meeting which may be adjourned from time to time hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the municipality, and to the telephone company concerned. An appeal may be taken to the district court of the county wherein such plant is situated from that part of the order fixing the compensation to be paid, within thirty days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the commission shall become final at the end of thirty days, and when appeal is taken the decision of the district court or of the supreme court if taken there from the district court shall be final. ('15 c. 152 § 17)

5304. Valuation of telephone property—In determining the value of any telephone property for rate making purposes, no valuation shall be allowed upon the value of any franchise granted by the state or any municipality where no payment was or is being made to the state or municipality on account thereof. The requirement as to reasonableness of rates shall apply to each exchange unit as well as to telephone plants as a whole. No telephone rates or charges shall be allowed or approved by the commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected. ('15 c. 152 § 18)

The statute placing telephone companies under the supervision of the Railroad and Warehouse Commission gives the Commission power to fix reasonable rates for particular localities without making a state-wide adjustment of rates. 164-279, 204+873.

5305. Commission given right to change annual depreciation charge—The commission may fix and from time to time change the annual depreciation charge which shall be made by each telephone company which charge shall be sufficient to provide the amounts required over and above the expense of current maintenance, to keep its property in a state of efficiency corresponding to the needs and progress of the industry. Such depreciation fund shall be carried in a separate account and moneys in this fund may be invested and the income thereof returned to such depreciation fund or said moneys may be expended in renewals or in new construction. ('15 c. 152 § 19)

5306. Companies given right to purchase property of other companies with consent of commission—It shall be unlawful for any telephone company subject to the provisions of this act to purchase or acquire the property, capital stock, bonds, securities or other obligations, or the franchises, rights, privileges and immunities of any other telephone company doing business within the state without first obtaining the consent of the commission thereto, and telephone companies are hereby given the right with the consent of the commission to purchase and acquire the property, capital stock, bonds, securities or other obligations together with all franchises, rights, privileges and immunities owned or enjoyed by said companies. The owner and the proposed purchaser of said property shall both join in the application filed with the commission for the approval of such transfer, and in the case of a corporation desiring to sell all of its property it shall require a vote of a majority of its stockholders to ratify the same. Provided, however, that telephone companies may sell and dispose of any property not used by said telephone companies in the conduct of their business at the time of the sale without the consent of the commission.

Nothing herein shall be deemed to prevent the holding of stock heretofore lawfully acquired or to prevent the acquisition of additional stock by any telephone company owning a majority of the stock of any telephone company. ('15 c. 152 § 20, amended '19 c. 183 § 4)

5307. Expense of furnishing transcribed copy of records—A full and complete record shall be kept by the commission of all proceedings had before it upon any formal investigation or hearing and all testimony received or offered shall be taken down by the stenographer appointed by the commission and a transcribed copy of such record shall be furnished to any party to such investigation upon the payment of the expense of furnishing said transcribed copy.

Whenever an appeal is taken from any order of the commission under the provisions of this act, the commission shall forthwith cause a certified transcript of all proceedings had, of all pleadings and files, and all testimony taken or offered before it upon which such order was based, showing particularly what, if any evidence, offered was excluded, to be made and filed with the clerk of the district court where such appeal is pending. ('15 c. 152 § 21, amended '19 c. 183 § 5)

5308. Mode of procedure for appeals from decisions of commission—Any party to a proceeding before the commission or the attorney-general may make and perfect an appeal from such order as provided in Sections 1971-1972, Revised Laws of 1905, and acts amendatory thereof.

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Upon such appeal being so perfected it may be brought on for trial at any time by either party upon ten days' notice to the other and shall then be tried by the court without the intervention of a jury, and shall be determined upon the pleadings, evidence and exhibits introduced before the commission and so certified by it. At such trial the findings of fact made by the commission shall be prima facie evidence of the matters therein stated, and said order shall be deemed prima facie reasonable, and if the court finds that the order appealed from is unjust, unreasonable and not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it. If the court finds from an examination of the record that the commission erroneously rejected evidence which should have been admitted, it shall remand the proceedings to the commission with instructions to receive such evidence so rejected and any rebutting evidence and make new findings and return the same to the court for further proceedings. In such case the commission after notice to the parties in interest shall proceed to rehear the matter in controversy, and shall receive such wrongfully rejected evidence and any rebutting evidence offered and shall make new findings as upon the original hearing and shall transmit the same and such new record, properly certified, to the court wherein said appeal is pending, whereupon said matter shall be again considered in said court in the same manner as in an original appeal. Either party may appeal to the supreme court from the judgment of the district court, as in other civil actions except that the appeal must be taken within thirty days from the date of notice of the entry of such judgment.

Where an appeal is taken to the supreme court the appellant shall cause a return to be made to said court within thirty days from the date of appeal, otherwise said appeal shall be deemed abandoned and may be dismissed upon motion of the respondent. When said return on said appeal is received by the clerk of the supreme court, said cause shall be placed on the calendar of the term then pending, or if none is then pending, then of the one next ensuing and it shall be assigned and brought on for hearing as other causes on such calendar. ('15 c. 152 § 22)

For R. L. '05, §§ 1971, 1972, see supra, §§ 4650, 4651.

The order of the Commission is presumed to be reasonable and is sustained by the record 164-279, 204+873.

Appeal from order of commission by "party to proceeding" (146-247, 178+604; 274 Fed. 384).

5309. Order to be final and conclusive—If no appeal is taken from any order of the commission as above provided, then in all litigation thereafter arising between the state and any telephone company or between private parties and any telephone company, the said order shall be deemed final and conclusive. ('15 c. 152 § 23)

Order of commission, no appeal taken is final and not subject to attack or review on mandamus (141-125, 169+480).

5310. Violation a gross misdemeanor—That section 24, chapter 152, General Laws 1915, be amended to read as follows:

Any telephone company, and if it be a corporation, the officers thereof, violating any provisions of this act shall be guilty of a gross misdemeanor. ('15 c. 152 § 24, amended '19 c. 183 § 6)

5311. Attorney General to apply for writ compelling obedience—Whenever any telephone company fails to comply with any law of the state or any order of the commission after it has become final, or any order or judgment of the district court or the supreme court in any cases taken to the said courts or either of them on appeal, after such judgment or order has become final, it shall be the duty of the attorney general to apply to the district court in the name of the state in any county in which the plant of said telephone company or any part thereof is situated, for a mandatory injunction or other appropriate writ to compel obedience to said law, order or judgment, and the district court shall punish any disobedience of its orders in such enforcement proceedings as for contempt of court. ('15 c. 152 § 25)

141-125, 169+480; 146-247, 178+604; 148-219, 181+333; 274 Fed. 384.

5312. Town boards may construct telephone systems for fire protection—For the purpose of preventing the starting and spreading of forest or prairie fires and extinguishing the same, promoting public welfare, public health and public safety, and facilitating the work of public improvements, the electors of any organized town of this state shall have power, at their annual town meeting or at any special town meeting called in the manner provided by law for special town meetings, to authorize the town to construct, or otherwise acquire and to operate and maintain a township telephone system, including the necessary poles, wires, telephones and telephone equipment, and by itself or in conjunction with one or more other towns to construct, equip, acquire, operate and maintain a local telephone exchange, or one or more trunk lines of wires connecting such town or towns with said local exchange, or with a local exchange owned by some other corporation, person or persons, and to determine by ballot the amount of money to be raised for the purposes aforesaid; provided, however, that no such local exchange as herein provided for shall be constructed or maintained in municipalities where a local exchange is already in operation. ('21 c. 439 § 1)

5313. Town telephone lines outside corporate limits—For the purpose of carrying out the provisions of Section 1 of this act, any town may, by itself or in conjunction with one or more other towns, construct, maintain, acquire, own or lease telephone lines, telephone equipment or a local exchange, outside the corporate limits of such town; provided, however, that the authority herein granted to any town to acquire, construct or maintain, by itself, lines outside of its corporate limits shall be solely for the purpose of connecting telephones inside its corporate limits with a telephone exchange or switching center outside its corporate limits. Provided, further, that the railroad and warehouse commission may order any service to be extended across any township line to any person or concern adjacent thereto, whenever in the judgment of the commission such person or concern is entitled to telephone service and the same cannot be reasonably required of any other telephone company. ('21, c. 439, § 2; amended '27, c. 193, § 1)

5314. Tax levy for construction—Whenever any town shall have authorized the construction, acquiring operation or maintenance of a telephone system as set forth in Sections 1 and 2 of this act, and determined the amount of money to be raised for that purpose, the town board of supervisors may levy a tax for the amount of money to be raised therefor, provided, however, that the annual tax levy for such purpose shall not exceed five mills upon the taxable property of such town. ('21 c. 439 § 3)

5315. Town meetings and town boards to fix rentals—The electors of such town shall have power at their

annual town meeting or at any special meeting, to determine, and in case the electors fail so to do, the town board of supervisors shall determine, the manner of payment of rentals and charges to be paid per phone for operating and local exchange service and such charges and all tolls payable by the users of such township system shall in the first instance be collected by the town board or under its direction, provided, however, that any local exchange may, by agreement with any town board of supervisors, collect the long distance tolls directly from said users, and provided, further, that no such township shall be subjected to or liable for any gross earnings or other tax by reason of moneys collected or property owned by it for such township telephone system. In case of the failure on the part of any user to pay such charges or tolls in the manner so provided, the town board may institute an action at law to collect such charges or tolls in arrears, and may also discontinue telephone service to such user, until all charges and tolls in arrears, the court costs, if any, taxed and allowed in an action to collect such arrears, and the reasonable cost of disconnecting the telephone from the general service, and reconnecting the same shall have been paid. ('21 c. 439 § 4)

5316. Town may sell bonds to construct—For the purpose of constructing, acquiring, operating or maintaining a township telephone system or local exchange as in this act provided, any organized town of this state is hereby authorized to issue and sell its bonds in the same manner and under the same procedure and within the same limitations as provided by law for the issuance and sale of township road and bridge bonds, and the board of supervisors and their successors are hereby authorized to levy and in due form certify to the auditor of the county in which such town is situated, a tax upon the taxable property of said town to provide for the payment of installments of principal and interest as they mature, in the manner provided in the case of township road and bridge bonds. ('21 c. 439 § 5)

5317. Local exchanges shall permit connection—Whenever public convenience requires the same, every local telephone exchange shall for a reasonable compensation permit a physical connection or connections to be made and telephone service to be furnished between such local telephone exchange system and township telephone system. In case of failure of the local telephone exchange to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the Railroad and Warehouse Commission of this State for an order requiring such connection, and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the said commission shall find that such physical connections will not result in irreparable injury to such telephone properties, it shall by order direct such connections to be made and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. Whenever application is made to said commission requesting physical connection, it shall be presumed that such connection is necessary and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the party resisting such application. ('21 c. 439 § 6)

5318-19
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5318. Private owners may sell to township—Railroad and Warehouse Commission to fix value—When, under the provisions of this act, a township telephone system shall be established in any township wherein any of the inhabitants of such town are already provided with telephone service furnished by any other telephone company, person or persons, such township shall, when so requested by said telephone company, person or persons, acquire from said telephone company all telephone equipment used by said telephone company, person or persons, in furnishing telephone service to the inhabitants of such township exclusively. For the purpose of determining the purchase price of such equipment application shall be made to the State Railroad and Warehouse Commission whose duty it shall be thereupon to determine the just compensation which the owner of such telephone equipment is entitled to receive therefor from the township. Before deciding upon such compensation, said commission shall at a public meeting which may be adjourned from time to time hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the township, and to the telephone company, person or persons concerned. An appeal may be taken to the district court of the county wherein such township is situated from that part of the order fixing the compensation to be paid, within thirty days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the commission shall become final at the end of thirty days, and when appeal is taken the decision of the district court or of the supreme court if taken there from the district court shall be final. ('21 c. 439 § 7)

5319. Town boards to manage—The Board of Supervisors of any such township is hereby vested with all necessary authority to manage, maintain and operate any township telephone system constructed under the provisions of this Act, and, to that end, may, among other things, contract for the connection of such township lines with exchanges owned by others for switching, local exchange and toll connections, hire and discharge such employees as may be necessary to operate and maintain such township system, establish rules and regulations, and, subject to the approval of the Railroad and Warehouse Commission establish and from time to time change rates and charges, covering the service furnished to the users. ('21 c. 439 § 8)

CHAPTER 28B

DEPARTMENT OF BANKING [DIVISION OF BANKING IN DEPARTMENT OF COMMERCE]

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Department of Commerce with banking division and commissioner of banks; office of superintendent of banks abolished. See §§ 53-28 to 53-32, herein.

5320
33 — 57
See 7659

5320. Department established — There is hereby established within this state a department of banking which shall have charge of the execution of all laws relating to state banks, savings banks, trust companies, building and loan associations and other financial corporations chartered under the laws of Minnesota, and the business thereof. Such department shall be designated as the department of banking of the state of Minnesota, and it shall be under the management and control of a chief officer to be known as the superintendent of banks. ('09 c. 201 § 1) [4624]

Constitutional (121–381, 141+526).

5321. Superintendent of banks—Term—Qualifications—Bond—The governor, by and with the consent of the senate, shall appoint a superintendent of banks for the term of three years, and until his successor in office shall qualify; and in case of a vacancy in such office, it shall be filled by like appointment for the remainder of the term. Such superintendent of banks shall be a practical banker of not less than five years' active experience, and shall not, during the term of his office, hold any other public office under the state, or under any county, municipality or public institution therein, nor shall he be a stockholder, director, or an officer, trustee, assignee, or employe of any banking, *savings or other financial institution or corporation* herein named, within or outside the state. Said superintendent of banks shall give a bond to the state in the sum of fifty thousand dollars, to be approved by the governor, conditioned for the faithful performance of his duties. ('09 c. 201 § 2) [4625]

5322. Seal—The superintendent of banks shall devise a seal for the use of his office which shall continue to be the seal of said department. A description of the seal with an impression thereof shall be filed in the office of the secretary of state. ('09 c. 201 § 3) [4626]

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5323. Powers and duties of superintendent—The superintendent of banks shall be vested with all the powers, authority and privileges at present conferred by law on, and shall take over all the duties of the public examiner in relation to state banks, savings banks, trust companies, building and loan associations and other financial corporations within the state, not herein specifically provided for; it being the intention of this act to completely divorce the banking department from the office of the public examiner and to confer upon said superintendent of banks all the powers, duties, authority and privileges of the public examiner in relation to said corporations. Said superintendent of banks shall exercise a constant supervision, either personally or through the examiners hereinafter provided for, over the books and affairs of all state banks, *savings banks, trust companies, building and loan associations* and other financial corporations doing business within the state; and shall, through the examiners hereinafter provided for, visit at least twice each year all of said state banks, savings banks, trust companies, building and loan associations, and other financial corporations, inspecting and verifying the assets and liabilities of each, and so far investigate the character and value of the assets of each such corporation as to ascertain with reasonable certainty that the values are correctly carried on its books. He shall further investigate the methods of operation and conduct of said corporations and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound banking principles. *He may examine or cause to be examined by the examiners* hereinafter provided for, on oath, any of the officers, directors, trustees, owners, agents, clerks, customers or depositors of any such financial corporations touching the affairs and business thereof, and may, in the performance of his official duties, issue or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths; provided, that in case of any refusal to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the district in which the bank or other financial corporation is located, and such court shall enforce obedience to such subpoenas in the manner provided by law for enforcing obedience to subpoenas of said court. *In all matters relating to his official duties, the superintendent* of banks shall have the same power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees and employes of state banks, savings banks, trust companies, building and loan associations and other financial corporations within the state, and all persons having dealings with or knowledge of the affairs or methods of such institutions, shall at all times afford reasonable facilities for such examinations, make such returns and reports to the superintendent *of banks, as he may require; attend and answer*, under oath, his lawful inquiries, produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties. ('09 c. 201 § 4) [4627]

Where a state bank has become insolvent and is taken charge of by the Superintendent of Banks, the assets are in custodia legis, and the superintendent or receiver may, under direction of the court, bring suit to collect, compound, or sell all claims belonging to the bank, which furnishes to the depositors a speedy and ade-

quate remedy at law, so that a suit in equity by 193 depositors for the benefit of themselves and all others, to recover against the directors for malfeasance, will not be entertained. 157–366, 196+270.

5324. Supervision over banks and other financial corporations—Every state bank, savings bank, trust company, building and loan association and other financial corporations shall be at all times under the supervision and subject to the control of the superintendent of banks, in like manner as they are now under the supervision and subject to the control of the public examiner, and all rights, duties, powers and privileges conferred upon the public examiner, in regard to such corporations, by the laws of Minnesota are hereby conferred upon the superintendent of banks. ('09 c. 201 § 5) [4628]

164–265, 204+938.

5325. Refusal to obey directions of examiner, etc.—Penalty—Every person who shall refuse or neglect to obey any lawful direction or order of the superintendent of banks; withhold any information, book, record, paper or other thing called for by him for the purpose of examination and ascertaining the true condition of the corporation; wilfully obstruct or mislead him in the execution of his duties, or falsely swear concerning any matter stated under oath, shall be guilty of a felony; the minimum penalty thereof shall be a fine of one thousand dollars, or imprisonment in the state prison for one year. ('09 c. 201 § 6) [4629]

Felony for bank officer to withhold information demanded by superintendent of banks (121–381, 141+526).

5326. Records—Annual Report—The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report to the governor biennially, previous to the opening of the regular biennial session of the legislature, touching his official acts, giving general information as to banking conditions within the state, and the conditions as to other corporations to which his duties relate, and making such recommendations and suggestions as he may deem proper. The report shall contain a list of state banks, trust companies, building and loan associations and other financial corporations within the state, their capital stocks and surplus funds; also a list of suspended banks and financial corporations and a list of charter applications, together with their disposition, for the biennial period, but such report shall not contain a detailed statement of the condition of each bank or other financial corporation, which report shall be printed and bound in a satisfactory and substantial manner and distributed among all of the state banks, savings banks, trust companies, building and loan associations and other financial corporations within the state. ('09 c. 201 § 7, amended '21 c. 250 § 1) [4630]

5327. Employes in office of superintendent of banks—The Superintendent of Banks may appoint, and at pleasure remove, a deputy superintendent, twelve examiners, ten assistant examiners, two second assistant examiners, one chief clerk, two assistant clerks, four stenographers and such other employees as are needed to discharge in the proper manner the duties imposed by law upon the superintendent of banks. Such deputy and examiners shall each give bond to the state in the sum of Ten thousand ($10,000.00) Dollars, and the clerks and other assistants, whenever so provided, shall each give bond to the state in such sum as may be designated by the superintendent of banks; all such bonds to be approved by the superintendent of banks and filed in the office of the secretary of state. During the absence or disability of the superintendent of banks, said deputy superintendent shall have charge of the office and administer its affairs. The examiners and assistant examiners so to be appointed shall have had at least three years' active experience in the banking business, or at least five years' experience in the Department of Banking of the State of Minnesota, and shall furnish such evidence of their qualifications as expert accountants and general fitness for their duties as may be demanded by the superintendent of banks. Such examiners shall confine their work to the examination of state banks, savings banks, trust companies and other financial corporations located within the districts to which they shall be appointed as hereinafter provided, save and except that any such examiner may be temporarily transferred from his district to some other district by the superintendent of banks when it shall appear that the interests of the department shall be better served by so doing; and whenever it shall appear that the number of such banks and other financial corporations within any such examiner's district is more than can be properly examined twice during each year by the examiner, he shall be provided with such clerks or assistants as may be considered necessary by the superintendent of banks.

No examiner shall have the right to examine any bank, savings bank or other financial corporation in which he may have an interest, either directly or indirectly. ('09 c. 201 § 8, amended '19 c. 121; '21 c. 42; '23 c. 371 § 1) [4631]

5328 31 — 43

5328. State bank examiners or employees prohibited from holding bank stock—No person who is a bank examiner, or other officer or employee of the department of banking of this state shall be a stockholder, director, officer, trustee, assignee or employee of any banking, savings or financial institution or corporation within the state. Any person violating the provisions of this act shall be removed from such office or employment by the superintendent of banks. ('15 c. 164 § 1)

5329. Examiners' districts—For the purpose of the better administration of his department, the superintendent of banks shall immediately after his appointment, as herein provided, proceed to divide the counties of the state into eight districts in such manner that the banks in each of such districts shall be, as nearly as may be, of an equal number. In arranging said districts, the superintendent of banks shall also consider the matter of convenience and economy in covering the same by the examiners. After the superintendent of banks shall have completed the arrangement or division of counties into districts as in this section provided, he shall at once designate the district in which each of the eight examiners to be appointed under the provisions of this law, shall make examinations as herein provided. ('09 c. 201 § 9) [4632]

5330. Reports of examiners—Each examiner appointed under this act shall make report to the superintendent of banks immediately after the completion of an examination of the actual financial condition of the institution examined with such recommendations and suggestions as he may deem advisable. ('09 c. 201 § 10) [4633]

5331. First appointment of superintendent—Term—The governor shall appoint a superintendent of banks, as herein provided, within thirty days after this act shall take effect and be in force, whose term of office shall expire on the first Monday in January in the year 1911. ('09 c. 201 § 12) [4634]

5332. Fees for examination of banks, etc.—Each bank, trust company, savings bank, local or general building and loan association organized under the laws of this state, shall pay into the state treasury for each authorized regular or special examination made at any time by the superintendent of banks of such institution, a fee to be determined as follows:

In case of state banks, trust companies, or savings banks, for each examination a minimum fee of $37.50 plus an amount equal to three cents for each $1,000 of assets in excess of $25,000, and not exceeding $5,000,000, and plus an amount equal to one and one-half cents for each $1,000 of assets over $5,000,000, and in the case of trust companies an additional amount equal to one and one-half cents for each $1,000 value of properties held in trust for the benefit of others.

In the case of local or general building and loan associations, for each examination, a minimum fee of $15.00 plus an amount equal to 2c for each $1,000 of assets in excess of $15,000 and not exceeding $5,000,000 and plus an amount equal to 1c for each $1,000 of assets over $5,000,000.

Said fees shall be paid by the institution examined within twenty days after a statement of the amount thereof shall have been rendered the institution examined by the superintendent of banks, and if not so paid shall bear interest at the rate of six per cent per annum. ('09 c. 201 § 14, amended '17 c. 299; '19 c. 136; '23 c. 247 § 1) [4635]

5333. Inconsistent acts repealed—All acts and parts of acts inconsistent herewith are hereby repealed. ('23 c. 247 § 2)

5334. Certain securities to be deposited with State treasurer—All securities required or permitted by law to be assigned to and deposited with the superintendent of banks for any purpose shall hereafter be assigned to and deposited with the state treasurer who shall give his receipt therefor, and such receipt shall be filed with the superintendent of banks, in lieu of the securities, and in such case, neither the superintendent of banks nor his bondsmen shall be responsible for the safekeeping of such securities, and the state treasurer shall perform all the duties with regard to the safekeeping of such securities which the superintendent of banks is now required to perform, and the state treasurer shall be subject to the same obligations and under the same liability, with reference to the safekeeping of such securities, as the superintendent of banks.

Forthwith, after the taking effect of this act, the superintendent of banks shall duly assign to the state treasurer all securities heretofore assigned to him under any law of this state, and shall deposit with the state treasurer all securities now in his possession under any law of this state, and the state treasurer shall issue his receipt therefor to the superintendent of banks who shall file the same in his office; and thereafter, the state treasurer shall be responsible for the safekeeping of such securities to the same extent as if assigning to and depositing with him after the passage of this act. The state treasurer shall accept, release, surrender and permit substitution of securities assigned to and deposited with him under the provisions of this act, upon order of the superintendent of banks. The superintendent of banks is hereby authorized to deliver to the state treasurer the steel vault fixtures and safety deposit boxes now being used by him for the safekeeping of the securities referred to herein. ('23 c. 155 § 1)

5335. Inconsistent acts repealed—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('23 c. 155 § 2)

CHAPTER 29

PUBLIC HEALTH

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1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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unable to make articulate sounds to be educated in the public schools between the ages of six and twenty years, inclusive, living within the boundaries of his or her school district and who do not attend school. And the county superintendent of schools, or the Board of Education of the cities of St. Paul, Minneapolis and Duluth, shall certify forthwith the names of all such deaf children, with address of parent, age and sex, to the superintendent of the Minnesota School for the deaf at the city of Faribault.

It shall be the duty of the county attorney to at once prosecute any case of parent or others unlawfully responsible, directly or indirectly, for the failure to place a deaf child or youth in a school for the deaf, when such case shall have been reported to him. So far as the same are applicable all the provisions of this section shall be construed to include children who are too blind or defective of sight to be materially benefited by the methods of instructions in vogue in the public schools, for the purpose of securing their attendance at the state school for the blind. (R. L. '05, §1937A; '07, c. 407, §1; '09, c. 396, §1; G. S. '13, §4150; '17, c. 346, §2; Mar. 27, 1931, c. 92.)

4616. Duties of state board of control.

See §3199-60 herein.

4617. Payments by State Board of Control.—The State Board of Control is hereby authorized to defray the necessary expenses of the aforesaid work from the appropriation for the current expenses of said board, provided, that in any county of this state now or hereafter having a population of over one hundred fifty thousand (150,000) inhabitants and an assessed valuation of over Two hundred million ($200,000,000) Dollars, including money and credits, the county board of said county is hereby authorized to defray part or all of the necessary expenses of maintaining said work within said county from the general revenue fund of said county, not exceeding the total sum of Three thousand six hundred ($3,600) dollars, in any one calendar year, and in carrying on said work may appoint and employ an assistant to the regular field agent for the blind in said county, who shall work under the direction of said agent in said county. The portion of the salary of said field agent and of any assistant to be paid by said county, shall be fixed by the county board at its first meeting after the taking effect of this act and thereafter at its first meeting in January in each year, and such salary of said field agent and said assistant, shall be paid in the same manner as the salary of other county officers and employees are paid. All necessary expenses of said agent and assistant in carrying on said work in said county, not paid by the State Board of Control, shall be paid by said county board as other claims against said county are paid. That any and all payments heretofore made under said law by such county are hereby legalized. ('13, c. 488, §3; G. S. '13, §4153; '17, c. 185, §1; '17, c. 346, §5; '21, c. 24, §1; '23, c. 336, §2; Mar. 2, 1933, c. 45, §1; Apr. 29, 1935, c. 307.)

See §3199-60 herein.

State board of control does not have legal authority to send a deaf and blind child to a private institution and pay therefor, though there is only one such pupil in the Minnesota school for the deaf. Op. Atty. Gen. (482a), Apr. 11, 1937.

4617-1. [Repealed.]

Repealed Apr. 21, 1937, c. 324, §27, post, §3199-89, effective as provided in §3199-87.

The operative effect of this section is suspended during the continuance of payments of federal aid under the Social Security Act [Mason's U. S. Code Anno., title 42, c. 7]. See §3199-62 herein.

CHAPTER 27

State Public School

4618. Location—Purpose.

State board of control abolished and functions and powers transferred to director of public institutions by Act Apr. 22, 1939, c. 431, Art. 6, §§3, 4, ante §§3199-103, 3199-104.

4619. Commitments of school by juvenile courts.

A feeble-minded, dependent child which had been committed to state board of control for specialized care under §§8689-1 to 8689-5, and thereafter adjudged to be feeble-minded and ordered committed to custody of state board of control but not admitted to a state institution is not a charge of the state. County of Stearns v. F., 203 M11, 279NW707. See Dun. Dig. 4249.

Where indigent children are committed to state public school at Owatonna but are placed on waiting list, parents and, if they cannot pay, village of their legal settlement are liable for support of children. Op. Atty. Gen., June 14, 1932.

4620. State Board of Control to assume guardianship.

State board of control abolished and functions and powers transferred to director of public institutions by Act Apr. 22, 1939, c. 431, Art. 6, §§3, 4, ante §§3199-103, 3199-104.

Commitment by one county of child having legal settlement in another county binds the committing county for the future care of such child, as an indigent person after its return by the school. Op. Atty. Gen., July 21, 1930.

Minor child retains settlement of mother at time of commitment to state board of control. Op. Atty. Gen. (339d), Sept. 9, 1935.

A child returned from state public school to be committed to state guardianship as feeble-minded is a charge upon county from which he was first committed. Op. Atty. Gen. (840a-6), July 17, 1936.

Upon discharge from guardianship of state board of control on attaining 18 years of age, pauper is resident of county from which committed, and not county where she resided at time of discharge, though such person may gain a settlement in his own right upon sufficient residence. Op. Atty. Gen. (339o-2), Jan. 12, 1937.

Child upon discharge by board of control becomes charge on account of commitment, even though county has township poor system of relief. Op. Atty. Gen. (840a-6), July 15, 1937.

County of commitment is responsible for return of child. Op. Atty. Gen. (840a-6), June 2, 1938.

Settlement of a minor under guardianship of board of control follows that of parents with whom he is or has last resided. Op. Atty. Gen. (339o-2), Aug. 4, 1938.

County from which juvenile court commits a child to state public school, subject to guardianship of state board of control, is chargeable with its future care and maintenance as an indigent person in event of its discharge therefrom, even if returned to county of its settlement, but the petition may be filed in juvenile court of county of settlement and it might have inherent power to issue a commission to juvenile court of county where child is fund to take evidence to be returned to court for commitment. Op. Atty. Gen. (840a-6), June 6, 1939.

4622. Discharge of child.

Discharge from state public school through error and mistake may be revoked where child is still in school. Op. Atty. Gen. (840a-4), Jan. 12, 1937.

CHAPTER 28

Railroads, Warehouses and Grain

RAILROAD AND WAREHOUSE COMMISSION

4628. Election, etc.

Control of public utilities in Minnesota. 16MinnLaw Rev457.

History of public utility regulation in Minnesota. 16 MinnLawRev471.

4629. Vacancies.

"Next general election" means one occurring after there is sufficient time after vacancy to give notice required by law that vacant office is to be filled at election. State v. A., 202M50, 277NW357. See Dun. Dig. 7988(27).

4634. Secretary—Employees.

Moneys credited to "grain inspection fund" are moneys belonging to state which legislature may appropriate any way it sees fit. Op. Atty. Gen., May 16, 1933.

4638. Proceedings before commission—How commenced.

Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4, notes under §4700.

Murphy Motor Freight Lines v. W., 191M49, 253NW1; note under §4650.

The position of Superintendent of Waterworks in the city of Eveleth is within this act, such officer not being the head of a department. 179M99, 228NW447.

Commission was without jurisdiction where it acted upon an informal letter from telephone company. Dayton Rural Telephone Co. v. N., 188M547, 248NW218.

4639. Notice to respondent.

Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4, notes under §4700.

Failure to comply with the provisions of this section rendered proceeding nugatory. Op. Atty. Gen. (371b-13), May 12, 1936.

4640. Answer.

Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4, notes under §4700.

4641. Hearings before railroad and warehouse commission.

Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4, notes under §4700.

State v. Tri-State Telephone & Telegraph Co., 204M 516, 284NW294; note under §5291.

4644. Complaint that rate is unreasonable—Duty of commission.

Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4, notes under §4700.

Murphy Motor Freight Lines v. W., 191M49, 253NW1; note under §4650.

"Fair return" is computed with reference to the "fair value" of property used or shortly to be used in rendering that service, the rates for which are in controversy. *When used for other purposes also, the property must be* apportioned according to its employment in each. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW 294. See Dun. Dig. 8078e.

4646. Investigation without complaint—New rates—Notice.

All essential facts on which the order of commission is based must be found, but that body is not obligated to display weight given by it to any part of evidence or to disclose mental operations by which it reached its result. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078e.

4650. Procedure for appeals to district court from orders of Railroad and Warehouse Commission.

Chi. M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430; notes under §4651.

Where order of Railroad Commission did not affect bus service in Hennepin County appeal to the district court of that county was without jurisdiction. 179M90, 228NW 444.

On appeal from order granting electric railway leave to abandon line, it was error to refuse villages affected opportunity to be heard. Minneapolis & St. Paul Sub. R. Co. v. V., 186M573, 244NW61. See Dun. Dig. 8082.

To become a complainant in a proceeding before the Railroad and Warehouse Commission under Motor Vehicle Transportation Act so as to have an appeal from commission's order go to district court of county of person's residence, a verified complaint, with parties designated as prescribed by §§4638 and 4644, must be filed with commission. Murphy Motor Freight Lines v. W., 191M49, 253NW1. See Dun. Dig. 8082.

Where commission on its own motion instituted proceeding, appeal from order made was properly taken to district court of one of counties wherein appellant was ordered to cease his transportation operations. Id.

In rate proceedings railroad commission must make findings of fact sufficiently specific to enable the court to determine whether it has complied with all statutory requirements and whether all substantial rights of utility have been observed. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078e.

4651. Proceedings on appeal—Orders not appealed from.

172M601, 215NW188.

An order of the railroad commission for the separation of grades at highway crossings is prima facie valid, the burden of proof being upon appellant, and the question being a judicial one for determination of whether the order is lawful and reasonable, the suit is of a civil nature and is removable to the federal court by the railroad company though such company initiated the proceedings before the commission, but the city took an appeal and thus assumed the position of a plaintiff in the controversy. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1589, 8082, 8389.

Findings of fact of Railroad Commission are prima facie correct on appeal. 177M136, 225NW94.

On the trial of an appeal from an order of the railroad and warehouse commission to district court, findings of commission are prima facie evidence of facts and its order prima facie reasonable. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 8082.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Western Buse Telephone Co. v. N., 188M524, 248NW220.

On appeal from order of railroad and warehouse commission, burden is on appellant to show that finding of commission is not supported by evidence. Hallett Const. Co. v. F., 191M335, 254NW435. See Dun. Dig. 8082a.

Burden of proof is upon railroad to show that order of railroad commission granting certificate of necessity and convenience to a truck operator was unreasonable. Chicago & N. W. Ry. Co. v. V., 197M580, 268NW2. See Dun. Dig. 8078d.

Respecting issues other than confiscation, reviewing court in rate case may overthrow the order of the commission only when that board has so abused its discretion as to render its action arbitrary. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8082.

There is no requirement for service of notice of appeal itself upon adverse parties. Op. Atty. Gen., Jan. 16, 1934.

4657. Costs and attorney's fees.

Attorney's fees were properly allowed. 177M136, 225 NW94.

Court could not allow attorney's fees to be taxed against railroad appealing from order of railroad and warehouse commission granting certificate of convenience to operator of a trust. Chicago & N. W. Ry. Co. v. V., 197M580, 268NW2. See Dun. Dig. 8082.

Reasonable amount for rate case expenses are allowable where utility prevails or rates fixed by commission are retroactive, but such expenses need not be allowed if rates charged are found to be greater than are fair and reasonable. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078a.

4659. Appeals to Supreme Court.

172M601, 215NW188.

Where district court has reversed a rate-fix-order of railroad and warehouse commission, an appeal by state and applicant does not stay entry of judgment unless so directed either by this court or district court. State v. Dist. Court., 189M487, 250NW7. See Dun. Dig. 8082a.

The powers of the reviewing court are purely judicial and lack legislative attributes. Its function is to protect constitutional rights, not to sit as a board of revision with appellate legislative authority to substitute its own judgment for that of the railroad commission. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW 294. See Dun. Dig. 8082a.

Where legislature itself fixes rates, acting within field of legislative discretion, its determinations are conclusive; and where legislature establishes rate fixing body to act within this same field, it may endow such body with power to make findings of fact which are conclusive, provided requirements of due process are met by according a fair hearing and acting upon evidence and not arbitrarily. Judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings. Id. See Dun. Dig. 8082a.

4662. Dangerous crossings.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and the approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

4663. Report and order—Flagmen, etc.

176M501, 223NW915.

Cost of changes of grade of streets and width of roadways and corresponding changes of viaducts or bridges over railroad tracks, occasioned by growth of city, may be divided between the city and the railway. 178M193, 226NW470.

City could not require railroad without compensation to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

Commission has authority to entertain petitions before officials in charge of proposed highway establish it. Op. Atty. Gen., Feb. 23, 1933.

If track scales are used by a common carrier for purpose of weighing carload freight, billing for cost of testing by commission should be to common carriers using the scales and not owner of warehouse or elevator. Op. Atty. Gen. (371b-2), July 5, 1934.

4667. Charter powers not abridged.

This section is qualified and limited by Mason's Stat. 1927, §4743, subd. 12. Op. Atty. Gen., Apr. 16, 1929.

4673. Track scales—Powers of commission.

Master track scale at Minnesota Transfer may not be insured. Op. Atty. Gen. (252k), Feb. 21, 1935.

Commission has no jurisdiction over the matter of stencilling of weights on freight cars. Op. Atty. Gen. (371b-8), June 12, 1935.

4679. Duty of commission.

Coal must be weighed at distributing points unless used or consumed by shipper. Op. Atty. Gen. (371b), Aug. 30, 1934.

4683. Stock scales in stock yards—Powers of Commission.

Railroad is under no obligation to make its stockpens and stock scales available to competing truckers. Op. Atty. Gen. (365a-9), Jan. 27, 1936.

4685. Appointment of weighers—Bond.

Weighing at private stockyards is not authorized. Op. Atty. Gen., Jan. 31, 1934.

This act is amended in several respects by Laws 1935, c. 216 (§5285-11, et seq.). Op. Atty. Gen. (371b-10), Aug. 29, 1936.

Bond does not protect weigher against his negligent acts. Op. Atty. Gen. (371b-10), Dec. 17, 1936.

4687. Fees.

Expense of testing scales at Union stockyards may not be charged against the stockyards company. Op. Atty. Gen. (371b-10), Nov. 20, 1935.

4700. Powers and duties of commission—Notice and hearing—Schedule of rates—Revising rates.

Commission has power to fix divisions of joint rates between carriers. Backus-Brooks Co. v. Northern Pac. Ry. Co. (CCA8), 21F(2d)4. Cert. den., 275US562, 48SCR120.

Rights of minority stockholder of carrier. Id.

Judicial division of rates must follow determination on question by commission. Id.

4702. Terms of connection with manufactories, etc.

State board of control may contract for railroad spur at St. Cloud Reformatory, subject to approval by commission of administration and finance. Op. Atty. Gen. (88a-10), Nov. 5, 1935.

4704. Accidents and wrecks to be reported to commission.—It shall be the duty of every railroad company operating a line of railroad in this state to report all accidents, wrecks or casualties occurring in this state to the railroad and warehouse commission. This is intended to include all accidents, wrecks or casualties occurring in the operation of trains or engines on said line or lines of railway within this state, and all other accidents or casualties of whatever nature as may be required under rules adopted by the commission. Any reports to the commission herein required shall be for public inspection. All accidents or wrecks occurring in the operation of trains or engines involving loss of life or personal injury, shall be immediately reported to the commission by telegraph or telephone message, and the company shall forthwith send a written report in detail giving full particulars available in such form as the commission may require. All other accidents, including accidents resulting in personal injury or death, other than train accidents, shall be reported to the commission on the first day of each month, covering the preceding month. Provided that neither the reports required under this section nor any part thereof, shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said reports. (Apr. 14, 1937, c. 211, §1.)

A legislative committee is entitled to inspect reports of accidents, wrecks or casualties. Op. Atty. Gen., Feb. 16, 1933.

4709. Violations of law—Penalty.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

4714. Penalty for non-compliance.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. 32F(2d)819.

4718-1. Telephone, etc. wires crossing or paralleling railroad.

Power company, held not liable for injury to employe who climbed to the top of a roadbuilding machine and came in contact with a power wire. 178M604, 228NW332.

RAILROADS AND COMMON CARRIERS

4732. Construction of switches.

Enforcement of section is not vested exclusively in railroad and warehouse commission. Op. Atty. Gen. (371b-8), June 24, 1937.

4733. Signs at crossings.

Statutory signals for trains passing over highway crossings are exclusively for benefit of travelers on highway so as to warn them of approaching trains, and where a train is actually occupying crossing when driver upon highway arrives, train is itself an effective and adequate warning. Olson v. C., 193M533, 259NW70. See Dun. Dig. 8175.

A jury may find negligence on part of a railroad in failing to warn approaching travelers of a train on a crossing which is not clearly visible to approaching travelers. Licha v. N., 201M427, 276NW813. See Dun. Dig. 8174, 8193.

A railroad may be required to take precautions in management and operation of road with respect to public safety in addition to those required by statute or order of railroad and warehouse commission. Licha v. N., 201 M427, 276NW813. See Dun. Dig. 8174.

Withdrawal of a customary warning of presence of a train at a crossing may justify a finding of negligence. Munkel v. C., 202M264, 278NW41. See Dun. Dig. 8174.

A railroad company may be found guilty of negligence toward a passenger in an automobile, for permitting an engine to stand on a passing track in darkness on a foggy, misty night, with headlight extinguished, emitting steam and smoke which, combining with fog, mist, and darkness was not distinguishable from general atmospheric conditions there prevailing, and which obscured view of a train standing across highway in such a manner that driver of automobile could not see standing train until too late to prevent a collision. Id.

A wife riding as a passenger of her husband in his automobile is not guilty of contributory negligence as a matter of law for failing to see a train standing across highway, obscured by railroad's negligence, nor is husband's negligence to be imputed to her because of marital relation. Munkel v. C., 202M264, 278NW41. See Dun. Dig. 8194.

Rails alone are warning of existence of railroad crossings, and are imperatively so when flanked by a statutory stop sign. Luce v. G., 203M470, 281NW812. See Dun. Dig. 8190.

An ordinance prohibiting unnecessary ringing of bells and blowing of whistles on locomotives within corporate limits of a city is reasonable and valid. Larson v. L., 204 M80, 282NW669. See Dun. Dig. 6756.

Under a city ordinance providing that a railroad shall not ring bell or blow a whistle except against immediate threatened danger, a railroad is not negligent because of failure alone to blow a whistle or ring a bell, but it is a question of fact whether, in exercise of due care, it is duty of railroad to give such warning against such danger. Id. See Dun. Dig. 8175.

Where a freight train of 86 cars is passing over a highway crossing in night time and an automobile, traveling at from 35 to 45 miles per hour, runs into nineteenth car from the end, failure to sound statutory bell and whistle signals cannot be considered a proximate cause of collision. Sullivan v. B., 286NW350. See Dun. Dig. 8175.

4734. Width of crossings and grades.

Truck driver held guilty of contributory negligence in driving on crossing in front of train. 171M355, 214N W661.

It is only where peculiar and unusual conditions render a crossing extra hazardous that a railroad can be charged with negligence in failing to protect it by gates or other safeguards, unless the duty to provide such protection has been imposed by legislative authority. 174M404, 219NW554.

Car near crossing as negligent obstruction of view of main track. 174M404, 219NW554.

Evidence as to whether or not whistle was blown. 174 M404, 219NW554.

Engineer has right to assume that vehicle near crossing will be out of way in time to avoid collision and is not required to slow down or stop train until it appears that collision is imminent unless he does so. 176 M214, 223NW95.

Automobilist was guilty of negligence in not ascertaining approach of freight train. 178M322, 227NW45.

Whether railroad was negligent as to pedestrian struck by caboose at crossing, held for jury. Aver v. C., 187M 169, 244NW681. See Dun. Dig. 8203.

It is not negligence in itself for a railroad company to allow a train of cars to stand on a highway crossing or to move thereon. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8182a.

At crossing, railroad must take such precaution as prudent management with respect to public safety requires, regardless of statutes. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8174.

Automobile driver struck by train at crossing was guilty of contributory negligence as matter of law where train must have been visible from point where traveler should have looked. Farden v. G., 189M17, 248NW284. See Dun. Dig. 8193(74).

A person approaching a railroad crossing is in duty bound to make full use of his senses in order to avoid danger, railroad track itself being a warning of danger. Fischer v. C., 193M73, 258NW4. See Dun. Dig. 8188.

In action involving injury to motorist struck by backing switch engine when crossing a number of tracks, negligence and contributory negligence held for jury. Id. See Dun. Dig. 8203.

A railroad company cannot be charged with negligence for failure to protect its train temporarily stopped, in nighttime, on a grade crossing over a city street, from being run into by automobiles, city maintaining powerful electric lights on either side of two grade crossings, lights being about 160 feet apart, crossings about 104 feet apart, with an overhead bridge between. Ausen v. M., 193M316, 258NW511. See Dun. Dig. 8174.

Whether railroad was negligent as to an autoist in permitting ponderous machinery to remain on its right of way near a grade crossing in such a position as to obstruct view of automobile drivers, held for jury, though person leaving machinery on right of way had absolutely no connection with railroad company. Oppedahl v. C., 193M471, 259NW15. See Dun. Dig. 8174.

Evidence held not to warrant submission to jury of negligence of motorman in failing to discover and avoiding striking a small child which had strayed onto defendant's railroad track. Arnao v. M., 193M498, 259NW 12. See Dun. Dig. 8203.

Whether failure of company to fence and protect its tracks with cattle guards caused child's injuries was made a jury question by evidence, and court erred in directing a verdict for company. Id.

Evidence held to sustain finding of negligence in failing to sound whistle or bell at crossing, in traveling at high rate of speed, and negligently placing boxcars upon a spur track in such a manner that view was obstructed. Polchow v. C., 199M1, 270NW673. See Dun. Dig. 8175, 8180.

Question of speed is one peculiarly for the jury. Id.

Instructions held to state substantially duty of one approaching a railway crossing in an automobile. Id. See Dun. Dig. 8187.

Plaintiff held not guilty of contributory negligence as matter of law in failing to get out of his automobile to look and listen for approaching trains. Id. See Dun. Dig. 8188.

Negative testimony is competent and of probative value and weight to be given thereto is for jury, considering all circumstances surrounding witnesses at time of accident. Id. See Dun. Dig. 8202.

Whether, in view of obstructions to vision existing at time of accident, guest passenger in automobile was contributorily negligent in failing to discover and to warn driver of approach of train, held, for jury. Doll v. S., 201M319, 276NW281. See Dun. Dig. 8193.

Testimony by persons who listened for them that statutory signals were not given by train, held, sufficient to make question of negligence one for jury despite positive testimony by others that whistle was blown and bell rung. Id.

Railroad trains at grade crossings have the right of way. Hoyum v. D., 203M35, 279NW729. See Dun. Dig. 8174.

Even in case of dense fog where statutory signals are complied with trains are not required to reduce speed at open unobstructed rural highway crossings. Id. See Dun. Dig. 8180.

Running a train 40 miles an hour over a much-traveled but open rural highway crossing, when engineer known that a wigwag signal operates and all statutory warnings are given and drivers of vehicles approaching from fireman's side of train have an unobstructed daylight view of train for more than half a mile when such vehicles are within 300 feet of railroad track, is not actionable negligence, even though engineer knew that highway was slippery and that view ahead of fireman was obstructed by steam and smoke from engine. Id. See Dun. Dig. 8187.

It is common knowledge that nothing imposes upon a motorist the duty of extra care more than icy or slippery roads. Luce v. G., 203M470, 281NW812. See Dun. Dig. 4167b.

Motorist struck by train at crossing in broad daylight was guilty of contributory negligence as a matter of law. Massmann v. G., 204M170, 282NW815. See Dun. Dig. 8193.

Evidence held too speculative to support finding that loose plank at crossing prevented motorist from clearing crossing ahead of train. Id. See Dun. Dig. 8197.

Responsibility rests with railroad, and not highway department, to keep crossings free of snow. Op. Atty. Gen. (36a-5), Feb. 14, 1936.

4735. Crossings—Change of grade.

It is duty of railroad to construct and maintain roadbeds and approaches where track crosses trunk highway on grade. Engstrom v. D., 190M208, 251NW134. See Dun. Dig. 8119.

Whether railroad's failure to properly maintain roadbed at crossing and proper approaches proximately caused plaintiff to lose control of truck, held for jury. Id. See Dun. Dig. 8197.

Whether truck driver assumed risk of injury in driving over crossing not properly maintained by railroad, losing control of truck, held for jury. Id. See Dun. Dig. 8193.

Whether truck driver losing control of automobile by reason of failure of railroad to properly maintain crossing was guilty of contributory negligence, held for jury. Id. See Dun. Dig. 8193.

It is duty of railroad company to maintain and fix up that part of town road which crosses railroad right of way. Op. Atty. Gen., May 5, 1933.

4736. Where more than one track.

Engstrom v. D., 190M208, 251NW134; note under §4735.

4741. Railroad crossings to be protected.

176M501, 223NW915.

4742. Hearing.

176M501, 223NW915.

4743. Inconsistent acts repealed.

176M501, 223NW915.

Subdivision 12 qualifies and limits §4667, Mason's Stat. 1927. Op. Atty. Gen., Apr. 16, 1929.

4743-1. Crossings of railroads, streets and public highways, etc.

Legislature conferred upon railroad and warehouse commission exclusive jurisdiction over all questions relating to matter of railroad crossings. Olson v. C., 193 M533, 259NW70. See Dun. Dig. 8174.

Laws 1925, c. 336 (Mason's Minn. Stat. 1927, §§4743-1 to 4743-17), is not a code of regulations for running of railway trains and does not authorize commission to make such a code, and is to be so construed as not to abolish general duty to exercise care in addition to that required by statute or order of commission if prudent management and operation of road requires such precautions for public safety. Licha v. N., 201M427, 276NW 813. See Dun. Dig. 8174.

4743-2. Same—Uniform warning signs—Types of.

Statutory signals for trains passing over highway crossings are exclusively for benefit of travelers on highway so as to warn them of approaching trains, and where a train is actually occupying crossing when driver upon highway arrives, train is itself an effective and adequate warning. Olson v. C., 193M533, 259NW70. See Dun. Dig. 8175.

A triangular type of sign painted white with black lettering reading "Railroad Crossing" was sufficient warning as a matter of law on a bright clear day, especially where there was a snow fence and telegraph poles plainly visible. Massmann v. G., 204M170, 282NW 815. See Dun. Dig. 8177.

4743-3. Same—Railroads to erect signs.

Argument that railroad violated statute in placing its stop signs between main and industry tracks was inapplicable to accident occurring on main track. Luce v. G., 203M470, 281NW812. See Dun. Dig. 8177.

4743-4. Same—Additional warning signs—Railroads to provide.

No duty rested upon railroad owning tracks upon grade crossings to install or maintain any other sign or device to warn drivers of motor vehicles on street of presence of trains upon crossings than signs and devices present at time of accident. Ausen v. M., 193M316, 258 NW511. See Dun. Dig. 8174.

A railroad is bound to take such precautions as public safety requires, though such precautions may be in addition to requirements prescribed by statute or railroad and warehouse commission. Munkel v. C., 202M264, 278 NW41. See Dun. Dig. 8174.

Unless there are about crossing or in its immediate environment special circumstances creating an extraordinary hazard, due care does not require of railroad company installation of warning signals in addition to those required by commission under statutory authority. Sullivan v. B., 286NW350. See Dun. Dig. 8174.

4743-7. Same—Drivers of vehicles to stop, etc.

Automobilist running into train at crossing was guilty of contributory negligence. Cosculski v. M., 182M461, 234NW693. See Dun. Dig. 8187.

Deceased driver who could have seen approaching train after getting within 60 feet of main line was guilty of contributory negligence as a matter of law in failing to stop. Luce v. G., 203M470, 281NW812. See Dun. Dig. 8190.

4743-8. [Repealed.]

Repealed Apr. 26, 1937, c. 464, §144, post, §2720-294.

4743-9. Same—Watchmen—Railroads to provide.

174M404, 219NW554; note under §4734.

4743-11. Same—Crossing gates.

174M404, 219NW554; note under §4734.

4743-12. Uniformity of devices for protection at grade crossings.

This section does not take away powers of city by charter to require warning signs at crossings. Op. Atty. Gen., Apr. 16, 1929.

4743-13. Same—Hearings by Commission.

176M501, 223NW915.

City could not require railroad, without compensation, to open up street across its right of way. Op. Atty. Gen., Oct. 31, 1930.

4743-14. Same—Overhead or underground.

Proceedings before commission under this section are not judicial, and the commission is not an indispensable party to a proceeding attacking the validity of a separation order, and the state is in no sense a real party in interest, in view of §§4650, 4651 giving the city the right of appeal. Chicago, M. St. P. & P. R. Co., (DC-Minn), 50F(2d)430. See Dun. Dig. 1589, 8119, 8121, 8121a.

Whether an order requiring separation of grades is lawful and reasonable is a judicial question, and the order may be vacated if beyond the powers of the commission, or if arbitrary or unsupported by the evidence. Id.

The Railroad and Warehouse Commission may require the construction of an overhead or underground crossing and divide the cost between the railroad company and the highway department. Where a highway is carried over railroad tracks by a bridge, the railroad company may be required to construct the bridge and approaches, but not a part of the highway outside both bridge and approaches. 176M501, 223NW915.

A railroad company which constructs an overhead bridge in accordance with statute, with a center pier which is approved by highway commissioner, does not have duty of caring for a reflector placed upon said pier to warn a traveler on highway. Murphy v. G., 189M 109, 248NW715. See Dun. Dig. 8120, 8121.

Jurisdiction of railroad and warehouse commission over railroad crossings extends to reconstruction of an old bridge over a highway. State v. Mpls. St. P. & S. S. M. Ry. Co., 190M162, 251NW275. See Dun. Dig. 8078, n. 18.

4743-17. Same—Penalties.

In view of proviso, acts out of which violation arises are to be considered just as before and independently of resulting transgression of statute. Luce v. G., 203M470, 281NW812. See Dun. Dig. 8190.

4744. Fences and cattle guards.

1. In general.

Railroad company held not liable for death of person caused by falling over retaining wall outside of right of way, on theory of failure to erect fences. Bremmer v. Hendrickson, (CCA8), 31F(2d)893.

3. Implied exceptions—Streets—Depot grounds.

A street car company is not excused from providing and maintaining fences and cattle guards at a point where a station is maintained unless necessary business of road or public convenience makes it necessary that place be left open. Arnao v. M., 199M34, 270NW910. See Dun. Dig. 9013.

4. Cattle guards.

Whether failure of company to fence and protect its tracks with cattle guards caused child's injuries was made a jury question by evidence, and court erred in directing a verdict for company. Arnao v. M., 193M498, 259NW12. See Dun. Dig. 8203.

4750. Ditches and culverts.

Finding that capacity of ditch was adequate and did not cause water to flow onto plaintiff's land, sustained. Nordlum v. G., 177M360, 225NW145.

Railway cannot be compelled to pay costs of underpass necessitated solely by change in natural channel of river in connection with WPA project. Op. Atty. Gen. (370b). Oct. 14, 1937.

4753. Clearance between structure and cars, etc.—That the provisions of this act shall apply to any person, corporation or anyone owning, operating or maintaining any structure or obstruction adjacent to any railway tracks and to any corporation or receiver thereof, or to any person or persons while engaged as common carriers in the transportation by railroad of passengers or property within this state to which the regulative powers of this state extend, except railways operated by the electric trolley system. (As amended Apr. 17, 1937, c. 238, §1.)

4754. Unlawful structure.—That on and after the passage of this act, it shall be unlawful for any common carrier, or any other person, to erect or reconstruct and thereafter maintain on any standard gauge road on its line or on any standard gauge sidetrack used in connection therewith, for use in any traffic mentioned in Section one of this act, any warehouse, coal chute, stock pen, pole, mail crane, standpipe, hog drencher, or any permanent or fixed structure or obstruction, or in excavating allow any embankment of earth or natural rock to remain upon its line of railroad, or on any sidetrack used in connection therewith at a distance less than eight feet measured from the center line of the track, which said structure or obstruction adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaduct or other obstruction passing over or above its tracks as aforesaid be erected or reconstructed at a less height than twenty-one (21) feet, measured from the top of the track rail.

Provided, however, that any existing structure may be maintained and repaired only when the cost of such repairs in any 12 month period does not exceed 25% of the original cost of the structure. If the cost of the repairs to be made in any 12 month period exceeds 25% of the original cost of the structure then, in that event, such repairs shall not be made unless the same are authorized by the Railroad and Warehouse Commission after a hearing. No such structure shall be further repaired or maintained when there has been expended a sum equal to 50% of the original cost of the structure in repairs or maintenance. In construing this Act, a platform shall be regarded as a separate structure.

Provided, further, that this act shall not be construed to apply to yards and terminals of depot companies or railway companies used only for passenger service. But, nevertheless, in the event of personal injury sustained by any employe of any such company in this proviso mentioned, by reason of non-compliance with the provisions of this act, such employe, or in case of his death, his personal representative, shall have all the rights, privileges and immunities enumerated in Section 9 hereof. (As amended Apr. 17, 1937, c. 238, §2.)

Piles and pieces of scrap iron left for short periods of time within eight feet of center line of a railroad track do not constitute a permanent or fixed structure or obstruction. State v. Minneapolis, St. P. & S. S. M. Ry. Co., 286NW303. See Dun. Dig. 8129c.

4755. Exceptions.—That the Railroad and Warehouse Commission may upon application made, after a thorough investigation in any particular case, permit any common carrier or any person or corporation to which this act applies to erect any overhead or side obstruction at a less distance from the track than herein provided for, and to reconstruct and maintain the same when in the judgment of said commission a compliance with the clearance prescribed herein would be unreasonable or unnecessary or the erection of such overhead or side obstruction or the reconstruction and maintenance of the same at a less distance from the track than herein provided would not create a condition unduly hazardous to the employes of such common carrier or any person or corporation. (As amended Apr. 17, 1937, c. 238, §3.)

4758. Obstructing space between tracks, etc.—That on and after the passage of this act it shall be unlawful for any such common carrier or any person or corporation to which this act applies to permit the space between or beside such of its tracks as are ordinarily used by yardmen and other employes in the discharge of their duties, and within eight feet of the center line of any such track, to become or remain obstructed by any foreign obstacle that will interfere with the work of said employes or subject said employes to unnecessary hazard. Such space between or beside said tracks as aforesaid, and between the rails of said tracks must be kept in such condition as to permit said employes to pass over or between said tracks or to use the same day or night and under all weather conditions without unnecessary hazard; provided, however, that wherever any railroad company has already begun work on depressing a portion of its tracks, within the corporate limits of any municipality, whether under contract with such municipality or otherwise, this act shall not apply to any depression of the tracks of such company lying wholly within the corporate limits of such municipality. Provided further, that none of the provisions of this act shall apply to any part of any work or enterprise heretofore begun or under construction, whether under contract between any rail-

road company and any municipality or otherwise. (As amended Apr. 13, 1939, c. 222, §1.)

A pile of hardened snow, sloping from depot platform toward rail, with a tendency to cause an employee who fell thereon to be thrown toward wheels of moving cars, may be held by a jury to constitute negligence. McDermott v. M., 204M215, 283NW116. See Dun. Dig. 5873.

4759. Penalties for violation—Duties of attorney general and commission.—That any common carrier, corporation or person subject to the provisions of this act violating any of the provisions thereof, shall be liable to a penalty of not more than five hundred ($500.00) for each violation; and if any common carrier, person or corporation shall thereafter fail to correct any violation of this act when ordered to correct the same by the Railroad and Warehouse Commission and has failed to do so within the time provided in the order of the commission, and no appeal has been taken from said order, then the failure of such common carrier, person or corporation to correct the condition causing a violation of this act as in the order of the commission provided shall constitute a new and separate offense distinct and separate from the original violation of this act, such penalty to be recovered in a suit to be brought in the name of the State of Minnesota by the attorney general or under his direction in any court having jurisdiction thereof in the locality where such violation shall have been committed, and it shall be the duty of the attorney general under the direction of the State Railroad and Warehouse Commission to bring such suit upon duly verified information being lodged with him by any person of such violation being committed, and it shall also be the duty of said State Railroad and Warehouse Commission to lodge with the attorney general information of any such violation as may come to its knowledge. (As amended Apr. 17, 1937, c. 238, §4; Apr. 13, 1939, c. 222, §2.)

4760. Duties of inspectors of bureau of labor, etc.—That on and after the passage of this act, where any structure is at a less distance from the track than herein provided the Commission shall provide for warning signs to be placed thereon of such design and type as the Commission shall deem proper unless the Commission shall determine such a sign is unnecessary. It shall be the duty of the railroad inspectors of the bureau of labor, industries and commerce to report to the Railroad and Warehouse Commission and to the attorney general any violation of the provisions of this act of which they may obtain knowledge. (As amended Apr. 17, 1937, c. 238, §5.)

4766. Charges to be reasonable.

Public utility's duty to serve without discrimination. 13MinnLawRev104.

4801. Common-law liability not to be limited.

There could be no recovery for loss of chicks in absence of proof of condition of chicks when delivered to carrier or proof of actual negligence. 177M494, 225NW432.

A carrier is bound to exercise highest degree of care toward its passengers. Mardorf v. D., 199M325, 271NW588. See Dun. Dig. 1276.

4802. Receipts and bills of lading—Liability of initial carrier.

Carrier is responsible for all damages to goods in transit, unless occasioned by certain excepted causes mentioned in 128M514, 151NW419. 171M205, 214NW17.

The rule that a carrier failing to reject improperly crated or loaded freight assumes to carry the freight at its peril, applies to carload shipments. 171M205, 214NW17.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 117M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4807. Free passes, transportation or reduced rates prohibited—exceptions.—It shall be unlawful for any person, association, co-partnership, or corporation or any representative thereof, to offer, give or in any manner furnish to any person, either for himself or another, any free pass or frank, or any special privilege or reduction in rate withheld from any other person for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication except to persons included within the classes hereinafter designated and limited, and it shall also be unlawful for any person or persons not included within the classes hereinafter excepted or limited to solicit or receive, either for himself or another, for any person, association co-partnership or corporation, or use in any manner or for any purpose any free pass or frank or special privilege withheld from any person for the traveling accommodation or transportation of any person or property or the transmission of any message or communication; provided, however, that nothing contained in this act shall be construed to prohibit, or to make unlawful the issuing or giving of any such free ticket, free pass or free transportation to any person or persons within the classes hereinafter excepted or limited or the acceptance or use of the same by persons within such classes, that is to say, officers, bona fide agents, surgeons, physicians, attorneys and employees of such railroad or motor-bus or other companies, or persons affected by this act and dependent members of their families, the duly elected representatives of railroad labor or motor-bus labor organizations, children under 12 years of age, ministers of religion, secretaries of Young Men's Associations, persons exclusively engaged in charitable and eleemosynary work, indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals or by public charity, and necessary agents employed in such transportation, inmates of national homes or state homes for disabled volunteer soldiers, inmates of soldier's and sailor's homes, including those entering and returning from such homes and boards of managers of such homes, postoffice inspectors, custom inspectors and immigration inspectors; witnesses of said railroad companies or motor-bus companies attending any legal investigation in which said company is interested, officials and linemen of telegraph and telephone companies; ex-employees retired from service on account of age or because of disability sustained while in the service of said railroad company or motor-bus company and dependent members of their families or the widows or dependent children of employees killed or dying while in the service of such company; necessary caretakers of livestock, poultry, vegetable and fruit; including transportation to and from the point of delivery; employees on sleeping and express cars; railway or motor-bus mail service employees; newsboys on trains or motor-busses; baggage agents and persons injured in wrecks and physicians and nurses attending them; providing that one trip pass for a discharged employee and his family may be issued for use within 30 days of such discharge.

Provided further, that the provisions of this act shall not be construed to prohibit and make unlawful the interchange of passes, express and other franks for the officers, bona fide agents, surgeons, physicians, attorneys and employees and the dependent members of their families of any person or company affected by this act from doing any of the things prohibited hereby free, with the object of providing relief in cases of general epidemic, pestilence or calamitous visitation.

Provided further, that the provisions of this act shall not be construed to prohibit or make unlawful the interchange of passenger transportation and message service between such railroad companies, motor-bus companies and telegraph companies and provided further that the provisions of this act shall not be construed to prohibit or make unlawful the interchange between railroad, motor-bus, express, telegraph and telephone companies of the transportation of persons and property, and the transmission of messages.

Provided further, that no free transportation shall be issued or given to any person when such person is a member of, employed by, or in any way connected with any political committee, or a candidate for, or incumbent of any office or position under the constitution and laws of this state, except as herein provided, and except that any railroad or motor-bus company may issue free passes to its employees, while occupying office or position, other than judicial, under a municipality, county or public school district, or while acting under appointment as a Notary Public in this State, and except that any railway or motor-bus company may issue free passes to any member of the legislature who is and has been an employee of such company for a continuous period of five years prior to his election to such office; provided, however, that such free transportation shall not be used by such member of the legislature during the period of any legislative session nor for any travel for which mileage is collected from the state. ('07, c. 449, §1; G. S. '13, §4335; '13, c. 92, §1; '17, c. 53; '23, c. 121, §1; '27, c. 86, §1; Apr. 11, 1929, c. 162, §1; Apr. 1, 1935, c. 79.)

County attorney cannot accept railroad passes though retained by railroad company, an attorney not being an "employee." Op. Atty. Gen. (368d-2), Nov. 26, 1934.

Wholesale liquor licenses are to be issued by the liquor control commissioner and not by municipal governing body. Op. Atty. Gen. (218g-1), Dec. 2, 1935.

4808. Free transportation for Commission.

Free transportation includes assistant in attorney general's office assigned to commission. Op. Atty. Gen., Jan. 8, 1934.

4819. City councils to have power to grant franchises.

Injuries to passengers; see 9164, note 14.

Public convenience and necessity for the extension of a street car line, held not shown, and an order of the city council for such extension, held arbitrary and unreasonable. 179M548, 229NW883.

Street railroad company has burden of proving invalidity of unreasonableness of ordinance requiring extension of car line. 180M329, 230NW809.

An opinion expressed by a physician, sent by defendant to examine the plaintiff before settlement was made, as to the length of time required for recovery, was not sufficient ground for setting aside the release. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374(42), (44).

Some statements made by the claim agent, to the effect that defendant would take care of plaintiff, and that he would make it good for plaintiff, held not sufficient ground for setting aside the release under the circumstances shown. Fornaro v. M., 182M262, 234NW 300. See Dun. Dig. 8374.

City requiring extension of street car line and constructing a bridge over a creek and thereby in effect changing grade of street, street railway contributing to cost of bridge, did not appropriate fund for a private purpose or extend city's credit for other than a public purpose, though it excluded vehicular traffic other than street cars. Bruer v. C., 201M40, 275NW368. See Dun. Dig. 9008.

Where a city erected a bridge which had the effect of changing grade of central part of a street which abutted plaintiff's property and devoted bridge exclusively to street car traffic, street railway company was not liable to plaintiff merely because it contributed to cost of bridge or because city excluded other traffic. Id.

4821. Rates must be fair—Transfers.

An agreement between retailers and St. Paul City Railway to haul passengers into the loop free of charge on a certain day, the retailers guarantying that the receipts from transportation would equal other days, would be invalid. Op. Atty. Gen., Sept. 14, 1931.

Railroad and Warehouse Commission had power to authorize an agreement between the St. Paul City Railway and the St. Paul Association of Commerce whereby the former could permit passengers to ride down town on a certain day without payment of fares, which fares were to be subsequently paid in full by the St. Paul Association of Commerce. Op. Atty. Gen., Sept. 19, 1931.

4823. Street railways to make application to fix rates.

A street railway may not be required to acquiesce in a trial period of reduced fares that might result in confiscation of its properties in order to determine if there would be confiscation. State v. St. Paul City Ry. Co., 196 M456, 265NW434. See Dun. Dig. 9010.

Evidence held to sustain finding that sale of two street car tokens for fifteen cents, instead of ten cents for one token and forty-five cents for six tokens, would materially diminish revenue of company. Id.

Commission has right to proceed at any time upon its own initiative to make investigation of street car rates, but there must be a full hearing. Op. Atty. Gen., Sept. 1, 1933.

4825. Appeals.

Fact that order fixing a rate was only temporary does not affect right to appeal. State v. St. Paul City Ry., 196 M456, 265NW434. See Dun. Dig. 9010.

4835. Unlawful charges.

New advanced freight rates held properly established, and old rates annulled. Crookston Milling Co. v. G., 185M563, 242NW287. See Dun. Dig. 1205c.

A forwarding agent was a private and not a common carrier, and so free to contract for its compensation unhampered by existing railroad tariffs, but when it accepted property for shipment by rail subject to such "classifications and tariff," it contracted for no additional compensation and was bound to perform its services for compensation so fixed. Northwest Tablet Co. v. U., 189M582, 250NW456. See Dun. Dig. 1204.

4837. Long and short haul.

Zones under the distance tariff may vary in different cases to suit the exigencies of the particular movement of particular goods. Rate-fixing rests to a great extent in the sound discretion of the railroad and warehouse commission. Hallett Const. Co. v. F., 190M335, 254NW 435. See Dun. Dig. 1205c.

Order of railroad and warehouse commission considered and found to comply with the Cashman Distance Tariff Act and with so-called long and short-haul statute. Id.

4838. Railroad commission authorized given authority to adjust railroad rates, etc.

Purpose of Cashman Act was to prevent unjust discrimination and competitor is not discriminated against where freight rate to which it objects is higher than its own. Hallett Const. Co. v. F., 191M335, 254NW435. See Dun. Dig. 1205c.

Order of railroad and warehouse commission considered and found to comply with the Cashman Distance Tariff Act and with so-called long and short haul statute. Id.

4841. Application of act—Terms defined.

Industrial railroads are not within the jurisdiction of commission. Op. Atty. Gen. (371b-8), Aug. 3, 1934.

4842. Powers of commission irrespective of this act.—Nothing in this act contained shall be construed as limiting or abridging the powers now vested by law in the board of Railroad and Warehouse Commissioners of the State of Minnesota, and nothing in this act shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions thereof are in addition to such remedies. The commission on petition of a railroad may in its discretion for good cause shown authorize a rate or rates for railway transportation inconsistent with the requirements of this act. (As amended Apr. 10, 1939, c. 191.)

4843. Railroad commission to fix rates for switching drayage and feeding of stock.—The Board of Railroad and Warehouse Commission of this state is hereby empowered and directed to make for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads and said power to make schedule shall include the classification of such rates, and it shall be the duty of said commission to make such classification, and said schedule so made by said commission shall, in all suits brought against any such railroad corporation wherein is in any way involved the charges of any such railroad corporation for the transportation of any freight or cars or unjust discrimination in relation thereto be deemed and taken in all the courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates of charges. The commission may fix different schedules of class or commodity rates for railroads of the same class. The maximum rates shall not apply to switching or drayage rates. The commission may define switching and drayage service to apply to the movement of traffic within and between points, and fix reasonable maximum rates for the same, which shall be independent of any rates that may be made for line haul transportation, and in the making of said rates the commission shall not be governed entirely by the distance principle established by this

Act. Provided, however, that any order of the commission fixing rates or charges for carrying livestock to St. Paul or between St. Paul and South St. Paul shall provide that the railroad that transports such livestock to St. Paul shall absorb such switching charges from St. Paul to South St. Paul out of its line haul rates or charges for the transportation of such livestock to St. Paul, or the common rate point which includes St. Paul. The commission may fix rates for feeding cattle which shall apply to out movement from terminal markets.. The commission may unite two or more stations or commercial centers into a common rate point, and may designate the classes of freight which shall take common rates, and fix the mileage that shall govern between the common rate point and any or all other points in the state. The distances so fixed shall not apply as a measure of the rate for the movement of the same class of freight for similar distances between other points. (G. S. '13, §4353; '13, c. 90, §6; '15, c. 367, §1; Apr. 13, 1933, c. 233.)

4864. Time for unloading—Penalty.

This section was intended to apply to buyers engaged in both interstate and intrastate traffic and is void in its entirety. Chicago, M. St. P. & P. Ry. Co. v. I., 193M71, 257NW811. See Dun. Dig. 4896a.

4865. Bill of lading—Evidence—Penalty.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 177M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4872. Minimum weight of carload lots of live stock.—Every such company shall furnish at proper points designated by it, suitable cars for the transportation of live stock of all kinds, and shall transport the same at a rate not to exceed the highest rate and minimum weight charged by such company for any kind of stock in such car, except that the cattle rate and minimum weight will apply when by the use of same a lower charge results, and the cattle rate will apply when the actual weight exceeds the cattle minimum. The minimum weight of a single-deck carload of mixed livestock containing cattle weighing each in excess of 400 pounds for all purposes of calculating freight charges shall be 19,000 pounds, in cars 36 feet 7 inches in length and under, and 21,000 pounds in cars 40 feet 7 inches in length, and over 36 feet 7 inches in length, and 23,000 pounds for all cars over 40 feet 7 inches in length. Stock of different kinds shall be carried in the same car, at the option of the shipper, and the Railroad and Warehouse Commission is hereby authorized to provide for the partitioning of cars on such terms and conditions as it deems proper. Any such company failing to comply with any provision of this section shall forfeit to the party aggreived not less than $100.00, nor more than $500.00. (R. L. '05, §2025; G. S. '13, §4379; '15, c. 254; '19, c. 301, §1; '27, c. 76; Apr. 20, 1931, c. 215, §1.)

Rates charged by railroads for carload shipments of mixed live stock, considered, interpreted, and applied. Bennett Commission Co. v. N., 195M7, 261NW593. See Dun. Dig. 1205c.

Carrier may make any charge for shipping a mixed carload of livestock which does not exceed highest charge that would be made for shipping any kind of stock contained in car on a straight carload basis, and carrier did not violate statute by charging on basis of cattle rate and minimum weight. Bennett Commission Co. v. N., 199M179, 271NW468. See Dun. Dig. 1205h.

4872-1. Effective July 1, 1931.—This Act shall take effect and be in force from and after July 1, 1931. (Act Apr. 20, 1931, c. 215, §2.)

4878. Damage to livestock—Notice of claim.

There could be no recovery for loss of chicks in absence of proof of condition of chicks when delivered to carrier or proof of actual negligence. 177M494, 225 NW432.

In action for damages to shipment, shipping receipt and consignee's receipt with notations, were admissible. 177M494, 225NW432.

A letter from agent at point of destination, showing loss of property, is competent. 177M494, 225NW432.

4879. Caboose cars.

Cabooses are not required to have steel underframes. Op. Atty. Gen., Mar. 9, 1934.

4886. Depots and waiting rooms.

A passenger is not guilty of contributory negligence as a matter of law by reason of the fact that she was familiar with the path over which she walked in the darkness after alighting from a train. Bixby v. M., 204 M316, 283NW493. See Dun. Dig. 1214.

Whether a common carrier has discharged its duty to a passenger to properly light at night approaches to its depot is a mixed question of law and fact, ultimate decision of which is for jury. Id. See Dun. Dig. 1214.

4887. Certain depots to be kept open.

This statute does not violate the Fourteenth Amendment to the Federal Constitution. 177M136, 225NW94.

Findings of fact of Railroad Commission are prima facie correct on appeal. 177M136, 225NW94.

When a service is established at a station either by voluntary action of railroad or by order of Railroad and Warehouse Commission, such service may not be abandoned except by order of commission after hearing. Minnesota Transfer Ry. Co. v. R., 200M422, 274NW408. See Dun. Dig. 8124.

Two freight houses operated by Minnesota Transfer Railway for receipt and delivery of less than carload freight held stations within meaning of section, and may not be closed without permission of commission. Id.

4914. Automatic couplers on freight cars.

If violation of Federal Safety Appliance Act is a material factor in causing an injury, recovery may be had although employee may not have been engaged in an operation in which safety appliances were specifically designed to furnish him protection. Ross v. D., 203M321, 281NW76. See Dun. Dig. 5898.

Federal Safety Appliance Act, requiring couplers which couple automatically by impact applies to empty ore cars being switched by a railway company which is a common carrier engaged in interstate commerce, though at the time the cars were not carrying interstate traffic. Id.

Railway company's duty to furnish a proper coupler is absolute and a single failure is some evidence of a failure to perform that duty, though not conclusive on that issue. Id.

Doctrine of res ipsa loquitur is properly applicable to a case involving a violation of the Federal Safety Appliance Act. Id. See Dun. Dig. 7044.

4915. Grab irons.

Application of federal safety Appliance Act to persons not employees. 23MinnLawRev103.

4916. Train brake system.

Casual connection between negligence and accident may be established by circumstantial evidence. 173M587, 218NW125.

Plaintiff's evidence that a hand brake operated in a certain way inconsistent with its being in "efficient" condition created an issue of fact as against defendant's evidence that brake was later found in efficient condition. Duryea v. C., 194M431, 260NW528. See Dun. Dig. 6025a.

Applicable solely to railroad engaged solely in intrastate commerce. Op. Atty. Gen., Apr. 23, 1929.

4919. Automatic couplers on freight cars.

For cases under Federal Safety Acts, see Mason's U. S. Code, Title 45, §1.

4920. Assumption of risk—Contributory negligence.

For cases under Federal Safety Appliance Acts, see Mason's U. S. Code, Title 45, §1.

4921. Powers of commission.

Applicable solely to railroad engaged solely in intrastate commerce. Op. Atty. Gen., Apr. 23, 1929.

4926. Abandonment of road.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. Hill City Ry. Co v. Y., (USDC-Minn), 32F(2d)819.

The fact that an order of the interstate commerce commission authorizing the abandonment of a line by a railroad may run counter to a state statute, a municipal ordinance, or a charter provision, is no impediment to the commission's exclusive jurisdiction to regulate interstate commerce. Village of Mantorville v. C. (USDC-Minn), 8FSupp791. See Dun. Dig. 8087.

A railroad cannot be compelled to keep in operation at a permanent net loss. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 1647, 8088c.

Finding to effect that abandonment of Wildwood-White Bear line will not result in substantial injury to public, is sustained by evidence. Minneapolis & St. Paul Sub. R. Co. v. V., 186M563, 244NW57. See Dun. Dig. 8088c.

Discontinuance of service by public utilities. 13Minn LawRev181, 325.

4926-1. Railroad shops or terminals may not be abandoned except, etc.—No company operating any

line of railway in the State of Minnesota shall abandon any shop or terminal located within this state or move any shop or change the location of any terminal except as provided in this act. Any company violating any provision of this act shall forfeit to the state not less than $200 nor more than $1000 for each day such violation continues. (Act Mar. 18, 1931, c. 64, §1.)

4926-2. Definitions.—The word "terminal" here used is defined to be any city or village in which 12 or more men employed in railroad train and engine service have established the legal residence.

The word "shop" is defined as a place in which 12 or more men are employed by a railroad as mechanics in the repairing of railroad equipment and is located in a city or village in which such men have established a legal residence. (Act Mar. 18, 1931, c. 64, §2.)

4926-3. Application to commission.—Any such company desiring to abandon any shop or terminal, or move any shop or change the location of any terminal in this state shall first make application to the Railroad and Warehouse Commission in writing. Before passing upon such application the Railroad and Warehouse Commission shall order a public hearing and fix a time and place thereof and require such notice thereof to be given as it deems reasonable. (Act Mar. 18, 1931, c. 64, §3.)

4926-4. Hearing—order.—In the hearing on the abandonment or removal of a shop or terminal if it shall be made to appear to such Commission that the abandonment of any shop or terminal or the change of any shop or terminal will result in efficiency in railroad operation and will not substantially injure the public or be detrimental to the public welfare, such petition may be granted, otherwise the same shall be denied. (Act Mar. 18, 1931, c. 64, §4.)

4930. Procedure for abandonment.

This section does not confer power on the Railroad and Warehouse Commission to interfere with the abandonment of a railroad on the ground that it is being operated at a loss. Hill City Ry. Co. v. Y., (USDC-Minn), 32F(2d)819.

Though a railroad company has constitutional right to abandon its road for reason it can be operated only at a loss, legislature has not given railroad and warehouse commission power to authorize an abandonment on that ground. Minneapolis & St. Paul Sub. R. Co. v. V., 186 M263, 244NW57. See Dun. Dig. 8078(23).

On appeal from order granting electric railway leave to abandon line, it was error to refuse villages affected opportunity to be heard. Minneapolis & St. Paul Sub. R. Co. v. V., 186M263, 244NW61. See Dun. Dig. 8082.

4932. Fire caused by engine—Insurable interest.

Liability of railway company for fire set by operations of its locomotives is absolute and not dependent on negligence. 177M261, 225NW111.

Burden rested on plaintiff to prove that fire was occasioned by sparks from a locomotive. 177M261, 225NW111.

The good condition of the locomotive and its having proper spark-arresting netting may be shown on the question whether the fire was caused thereby. 177M261, 225NW111.

$800 for burning barn and other property, held not excessive. 177M261, 225NW111.

This section was cited to the point that burden of proof was upon fire insurer to show that insured took part in incendiarism. Barich v. P., 191M628, 255NW80. See Dun. Dig. 4779.

4933. Liability of corporations for injury or death to employes.

For employes engaged in interstate commerce, see Mason's U. S. Code, Title 45.

1. In general.

Whether there was negligence of a fellow servant, and whether his negligence was the cause of the injury to a railroad mechanic, held for the jury. 172M284, 214NW890.

Instruction as to negligence in not warning an employe not charged with negligence, held properly refused. 172M284, 214NW890.

$12,500 damages held not excessive for injuries to neck and jaws. 172M284, 214NW890.

Under the Federal Boiler Inspection Act as amended, (Mason's U. S. C. A., Title 45, §23), the Interstate Commerce Commission is given exclusive jurisdiction to specify and prescribe the sort of equipment to be used on locomotives and to make rules and regulations by which fitness for service shall be determined. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b, 6022r.

Motorcar and trailer operated on railroad track and piloted by railroad employe for telephone company was railroad operation, and railroad was liable for injury arising from negligence of employe of telephone company. Wegman v. G., 189M325, 249NW422. See Dun. Dig. 5957.

3. Interstate commerce.

Railroad employe was engaged in interstate commerce while lining up a pipe used in transporting sand from a drying room to a storage tank for use upon locomotives engaged in such commerce. 173M169, 216NW940.

Empty car with defective coupler in process of repair, by inspector and intended to be sent to another state, "O. K. for grain," was engaged in interstate commerce, though the railroad had the power to divert it from interstate commerce and did divert it after injury to the inspector. 178M261, 226NW934.

5. Simple tools.

Master is not bound to inspect simple tools and instrumentalities. Natalino v. S., 190M118, 251NW9. Aff'd 190M124, 251NW669. Cert. den., 292US631, 54SCR642. See Dun. Dig. 5888(60).

Heavy hammer, known as a spike maul, specially designed and used in work on railway tracks, does not come within simple tool exception to general rule. Id. See Dun. Dig. 5888(67).

Simple tool rule does not apply where defect is caused by faulty construction or reconditioning, is not apparent or discoverable by ordinary inspection, and is not caused by ordinary use of tool. Id. See Dun. Dig. 5888.

6. Negligence.

In action against railroad for death of brakeman, evidence held to sustain plaintiff's theory that decedent was knocked off top of train because of defendant's failure to communicate to him warning of train dispatcher that warning telltales were down and that bridge would not clear man sitting or standing on top of train. Chicago, St. P M. & O. R. Co. v. K., (CCA8), 102F(2d)352.

One of absolute duties of master is to exercise ordinary and reasonable care to furnish servant with reasonably safe and sufficient tools, and this duty is continuing and requires ordinary care and diligence in keeping tools and instrumentalities reasonably safe by inspection and repairs. Natalino v. S., 190M118, 251NW9. Aff'd 251NW669. Cert. den., 292US631, 54SR642. See Dun. Dig. 5884, 5888.

A railroad company is liable to an employee for an injury caused him by negligence of his coemployee. Stritzke v. C., 190M323, 251NW532. See Dun. Dig. 6022r, 6022u.

Even though crossing was governed by automatic signals, engineer first bringing his train within contact area may not blindly follow proceed signal, if he discovers another train in such situation that he realizes a collision must occur unless he stops short of crossing. His first duty is to protect his train. O'Connor v. C., 190M277, 251 NW674.

Defendant is liable if its negligence, although not sole cause of injury or death, contributed thereto proximately, as a substantial factor of causation, and plaintiff is under no necessity of negativing other possible contributing causes. McDermott v. M., 204M215, 283NW 116. See Dun. Dig. 5867.

A pile of hardened snow, sloping from depot platform toward rail, with a tendency to cause an employee who fell thereon to be thrown toward wheels of moving cars, may be held by a jury to constitute negligence. Id. See Dun. Dig. 5873.

Violation of statute or ordinance as negligence or evidence of negligence. 19MinnLawRev666.

8. Release of damages.

Statements by claim agent to effect defendant would take care of plaintiff, held not sufficient ground for setting aside release, under circumstances shown. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374.

An opinion expressed by a physician, sent by defendant to examine plaintiff before settlement, as to length of time required for recovery, was not sufficient ground for setting aside release. Fornaro v. M., 182M262, 234NW300. See Dun. Dig. 8374(42), (44).

Defendant, having made a representation as to contents of a release to induce plaintiff to sign it, cannot assert that he was negligent in relying on representation. Marino v. N., 199M369, 272NW267. See Dun. Dig. 3822, 8374.

If, in obtaining signature of an illiterate employee to a release, employer undertakes to explain it to him, employer must so do fully, and so that employee understands it. Id. See Dun. Dig. 3823, 3825, 8374.

After oral agreement as to terms of settlement, presentation of a written release for signature is a representation that it is in effect same as oral agreement. Id. See Dun. Dig. 3832, 8374.

Letter from a railroad claim department to a claim agent containing self-serving declarations held inadmissible. Id. See Dun. Dig. 3286, 3287a.

9. Evidence.

In action under Federal Employers' Liability Act for death of signal maintainer who was killed by a locomotive overtaking him as he was traveling after dark on a gasoline speeder, evidence held insufficient to support

finding that there was a violation of Boiler Inspection Act with respect to proper maintenance of headlight, and that negligence of deceased was not sole cause of his death. Rambo v. C., 298US99, 56SCR693, rev'g 195M331, 263NW112. Reh. den., 298US692, 56SCR945. See Dun. Dig. 6022h.

Causal connection between negligence and accident may be established by circumstantial evidence. 173M587, 218NW125.

The evidence was insufficient to show that the engineer was negligent in operating his engine or in failing to stop, and no liability of defendants for the accident resulting in the death of plaintiff's intestate is shown. Meisenhelder v. B., 182M615, 233NW849. See Dun. Dig. 6025a.

Cause of death of section-hand while riding on a motor car held in the realm of conjecture. Phillips v. C., 182M 307, 234NW307. See Dun. Dig. 7047.

Evidence held not to support a finding of negligence on the part of plaintiff's fellow servant who was unloading and piling ties with plaintiff on defendant's right of way. Nadeau v. M., 182M111, 233NW808. See Dun. Dig. 5945(72).

In action for death of fireman in collision between two trains at crossing, rules of one railroad were properly admitted where they required no higher duty than law imposes. O'Connor v. C., 190M277, 251NW674.

Testimony that custom had existed on railroad some nine years previously was too remote in point of time to establish existence of such custom at time plaintiff was injured. Ross v. D., 203M321, 281NW76. See Dun. Dig. 6025.

Problem of sufficiency of evidence to show proximate cause is same whether case arises under federal or state liability act. McDermott v. M., 204M215, 283NW116. See Dun. Dig. 5867.

Where employee fell from edge of a platform or side of a freight car onto inclined slope of pile of hardened snow and his dead body was found thereon, with head crushed, there was a reasonable inference that obstruction projected him toward wheels and so contributed to his death. Id. See Dun. Dig. 5867.

In action under Federal Employers' Liability Act there must be substantial evidence of employer's or his servants' negligence. Noesen v. M., 204M233, 283NW246. See Dun. Dig. 6022n.

In action by personal representative under Federal Employers' Liability Act to recover damages for death of employee, and also for conscious pain and suffering prior to death, an adult son of employee who was in no way dependent upon him was competent to testify as to a conversation with deceased as to cause of action for wrongful death, but was incompetent to testify as to cause of action for pain and suffering. Id. See Dun. Dig. 10316.

10. Instructions.

A charge stating a fact in alternative leaves it to jury to ascertain fact. Marino v. N., 199M369, 272NW267. See Dun. Dig. 9781.

11. Questions for jury.

Whether railroad lamp lighter and messenger was killed through negligence of defendant in using unlighted train, held for jury. Genova v. S., 189M555, 250NW 190.

Whether heavy railroad spike maul was negligently tempered, held for jury, in action for injury to eye from chip. Natalino v. S., 190M118, 251NW9. Aff'd 190M124, 251NW669. Cert. den. 292US631, 54SCR642. See Dun. Dig. 5913.

In action for death of fireman in collision between trains at crossing governed by automatic signal systems, negligence of both railroads, held for jury. O'Connor v. C., 190M277, 251NW674.

Whether coemployee of freight trucker was negligent in handling iron pipe being loaded into freight car, held for jury. Stritzke v. C., 190M323, 251NW532. See Dun. Dig. 6022r, 6022u.

In action under Federal Employers' Liability Act negligence of operator of crane unloading frogs from gondola car, held for jury. Noesen v. M., 204M233, 283NW246. See Dun. Dig. 6022i.

12. Damages.

Damages for wrongful death under Federal Employers' Liability Act are limited to probable amount of pecuniary aid each dependent would have received from employee had he continued in life. Noesen v. M., 204M233, 283NW 246. See Dun. Dig. 2617a.

12½. Distribution of damages.

176M130, 222NW643.

13. Federal Employer's Liability Act.

For cases under Federal Employer's Liability Act, see Mason's U. S. Code, Title 45, §51.

179M67, 228NW546.

Finding that plaintiff who applied to railroad in 1921 and entered service and continued at work until 1928 had acquired the status of an employee under the Federal Employer's Liability Act held sustained by evidence. Borum v. M., 184M126, 238NW4. See Dun. Dig. 6022(d).

Misrepresentation of age by railroad employee seven years before injury was no bar to recovery for injuries received under Federal Employer's Liability Act. Borum v. M., 184M126, 238NW4. See Dun. Dig. 6022(d).

In action for death of railroad fireman, finding that engineer was negligent in failing to stop after derailment held sustained by evidence. Lindberg v. G., 185M331, 241 NW49. See Dun. Dig. 6022i.

Cause of action under Federal Employer's Liability Act is transatory and probate court of this state has jurisdiction to appoint special administrator to bring suit here, even though next of kin reside in another state and injury and death of employee occurred there. Peterson v. C., 187M288, 244NW823. See Dun. Dig. 2351b.

Federal Employers' Liability Act and state statutes are substantially same in respect to essentials of cause of action and defenses and measure of damages. Wegman v. G., 189M325, 249NW422. See Dun. Dig. 6022b.

Whether section foreman was guilty of negligence in driving gasoline motor car over a bolted frog in slot of which had been placed a rail anchor iron by a trespasser, a section hand being killed, held for jury. Thom v. N., 190M622, 252NW660. See Dun. Dig. 6022i.

Negligence of defendant having been established, act of trespasser in placing obstruction upon track, held not a defense. *Id. See Dun. Dig. 6022o.*

Operator of a track car and foreman of a mowing crew was not guilty of primary negligence in failing to observe approaching automobile from the right at a crossing, where other employees better situated to watch that side had been instructed to keep lookout to right but could be guilty of no more negligence than that which would diminish damages. Westover v. C., 197M194, 266 NW741. See Dun. Dig. 6022k.

Operator of track car and foreman of mowing crew did not as matter of law assume risk of injury in collision with automobile at crossing. Id. See Dun. Dig. 6022l.

When is a workman engaged in interstate commerce? 12MinnLawRev493.

14. Federal Safety Appliance Act.

A car coupler in which there are no mechanical defects and which operate properly both before and after an accident cannot be found to be defective merely because a brakeman, while riding on the moving car in a switching operation, failed to lift the coupler pin by pressing on the pin lifter with his foot. Meisenhelder v. B., 182M615, 233NW849. See Dun. Dig. 6022e.

A decision and order of the Interstate Commerce Commission is construed as standardizing a side cab curtain known as the Wisconsin curtain or type. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b.

When such approved curtain is used, negligence cannot be predicated upon the failure to have a tie-back appliance, such not being required by the Commission. Mahutga v. M., 182M362, 234NW474. See Dun. Dig. 6022b.

Physical facts held to demonstrate falsity of opinions and conclusions of expert witnesses in action involving violation of Federal Boiler Inspection Act, and court properly directed verdict for defendant. Larsen v. N., 185M313, 241NW312. See Dun. Dig. 3334.

Railroad held not negligent through act of switchman in opening switch under directions given by foreman who was fatally injured. Keegan v. C., 189M179, 243NW 60. See Dun. Dig. 6022i.

Defenses of assumption of risk and contributory negligence are not available against a violation of Federal Safety Appliance Act. Ross v. D., 203M321, 281NW76. See Dun. Dig. 5979.

4934. Liability of common carriers.

3. Evidence.

Liability of railroad for injury to section foreman while operating motor car. Robertson v. C., 177M303, 225NW 160.

Evidence, held to support verdict for plaintiff for negligence of fellow employees in dropping heavy objects on him from top of car on which all such employees were working. 181M97, 231NW710.

4. Damages.

$17,300, held not excessive for permanent injury to car repairer 49 years old and earning $105 per month. 181M 97, 231NW710.

4935. Contributory negligence not to bar a recovery.

For employees engaged in interstate commerce, see Mason's U. S. Code, Title 45.

181M97, 231NW710.

State railway employer's liability act adopts comparative negligence doctrine. Stritzke v. C., 190M323, 251NW 532. See Dun. Dig. 6022s.

If negligence of an employee is sole proximate cause of his injury, he cannot recover. Id. See Dun. Dig. 6022k.

Whether section hand, killed while riding on gasoline motor car, was negligent in failing to obey a rule imposing upon him duty of watching for trains and obstructions upon track, held for jury. Thom v. N., 190M 622, 252NW660. See Dun. Dig. 6022k.

Contributory negligence is not a complete defense and if plaintiff's decedent was negligent, it was for jury to determine in what proportion such negligence contributed to accident. Id.

4936. Employee not to be held to have assumed risk of employment.—That in any action brought against any employer under or by virtue of any of the provisions of this act to recover for injuries to or the death of any of its employees, such employee shall not be held to have assumed the risk of his

employment. ('15, c. 187, §4; Mar. 26, 1935, c. 69, §1.)

3. Risks assumed.

For cases under Federal Employers' Liability Act, see Mason's Code, Title 45, §1.

Car repairers and others doing similar work in the yards must protect themselves by use of blue flag or lookout, and no active duty of looking for them is cast on a switching crew. 178M261, 226NW934.

Section hand assumed risk of injury from attempt to board moving motorcar from the front after he had cranked it, his act resulting in catching his foot in flywheel. 181M20, 231NW404.

Plaintiff, an experienced acetylene torch operator engaged in cutting discarded car sills into sections preparatory to junking material, held to have assumed the risk of injury by parting of one of sills due to a crack therein. Leonard v. N., 195M484, 263NW436. See Dun. Dig. 6022l.

Injury incurred in obedience to direct order after protest. 23MinnLawRev234.

4. Risks not assumed.

A railway employee does not assume the risk of injury from a fellow-servant's negligence. 172M284, 214NW890.

5. Questions for jury.

Assumption of risk by railroad mechanic of negligence of a fellow servant, held for the jury. 172M284, 214NW 890.

Assumption of risk by car repairer working on ground of injury from throwing of heavy object from top of car by fellow employees, held for jury. 181M97, 231NW710.

Whether lamp lighter and messenger for railroad assumed risk of injury from unlighted train, held for jury. Genova v. S., 189M555, 189M559, 250NW190. Cert. den. 292US630, 54SCR642. See Dun. Dig. 5998.

Whether sectionman assumed risk of injury to eye by chip from spike maul, held for jury. Natalino v. S., 190 M118, 251NW9. See Dun. Dig. 5913.

Whether one loading iron pipe on freight car assumed risk of unexpected movement by coemployee, held for jury. Stritkze v. C., 190M323, 251NW532.

Section hand could not be charged as matter of law with assumption of risk of foreman's negligence in driving gasoline motor car over bolted frog in slot of which had been placed rail anchor iron by a trespasser. Thom v. N., 190M622, 252NW660. See Dun. Dig. 5998, 6022l.

4937. Contrary contracts declared void.

Where a telephone company's motorcar and trailer were being operated over a railroad company's tracks, in charge of a conductor-pilot furnished by latter, pilot could not be denied his status and rights under either the federal or state employers' liability acts by contract between railroad company and telephone company. Wegman v. G., 189M325, 249NW422. See Dun. Dig. 6022d.

Contract of injured employee of interstate railroad to sue only in state where injury was received was valid in absence of concealment or fraud. Detwiler v. L., 198M 185, 269NW367. See Dun. Dig. 10105.

4939. Right of action given to surviving widow, children, next of kin and personal representative.

Action for wrongful death under Federal Employers' Liability Act must be brought by personal representatives, and none of beneficiaries may maintain an action. Noesen v. M., 204M233, 283NW246. See Dun. Dig. 2602b.

Recovery for conscious pain and suffering under Federal Employers' Liability Act is not measured by dependency of widow or child upon employee for support. Id. See Dun. Dig. 2617a.

4958. * * *

DECISIONS RELATING TO RAILROAD EMPLOYEES IN GENERAL

A railroad which has not complied with its rules as to hearings before discharging an employee and has considered an oral grievance cannot complain of failure to present grievance in writing. George v. C., 183M610, 237 NW876.

UNIFORM BILLS OF LADING ACT

Set out as §§4958½ to 5015, 1927 Statutes, vol. 1.

The Uniform Bills of Lading Act has been adopted by: Alabama, Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, Wisconsin.

MOTOR VEHICLE TRANSPORTATION FOR HIRE

5015-1. Meaning of terms used.

172M601, 215NW188.

This statute is valid. 174M248, 219NW167.

Carrier by motor cannot claim exemption from statute because he was carrying mail upon a federal highway at time of enactment of this statute. 174M331, 219NW167.

Cooperative association formed to engage in transportation of goods and products of its members is subject to control and regulation of the warehouse commission. North Shore Fish & Freight Co. v. N., 195M336, 263NW98. See Dun. Dig. 8078c.

Co-operative association transporting property for members must obtain permits and are subject to regulation under the motor carrier laws. Op. Atty. Gen. (93b-34), Apr. 23, 1936.

5015-2. Definitions.

This statute is valid. 174M248, 219NW167.

Taxi drivers operating between several municipalities, not contiguous, must obtain certificate of convenience and necessity. Op. Atty. Gen. (633i), Dec. 14, 1936.

School buses do not come under laws governing public carriers notwithstanding routes are not approved by board of education. Op. Atty. Gen. (161b-15), Oct. 10, 1938.

5015-3. Operation by auto transportation companies only as provided.

Act does not apply where wholesalers deliver merchandise sold to retailers with trucks owned by wholesalers for transportation less than those fixed by commission. Op. Atty. Gen., July 27, 1933.

5015-4. Powers and authority of Commission as to rates, fares, etc.

Liability of bus company for injury to passenger. 180 M84, 230NW264.

The commission's power is limited to the granting or denial of a certificate of convenience and necessity, and it has no authority to issue an order to cease and desist; the remedy, in case of violation of its order, being a prosecution for the penalty, or injunction. Madden Bros. v. Railroad & Warehouse Com., (USDC-Minn), 43F(2d) 236. See Dun. Dig. 8078c, 8079.

This section does not oust a city or village of jurisdiction to enjoin maintenance of a depot if the same constitutes a nuisance. Village of Wadena v. F., 194M146, 260NW221. See Dun. Dig. 6752.

On appeal by railroads from order of district court denying their motion to vacate findings and orders affirming order of railroad and warehouse commission granting certificate of public necessity and convenience to operators of trucks, insufficiency of findings of commission and trial court is not available where appellant did not request more specific finding or to find upon any certain issues. Chicago & N. W. Ry. Co. v. V., 197M580, 268NW2. See Dun. Dig. 384, 397b.

Consignors may obtain protection additional to that provided only by paying cost thereof themselves. Op. Atty. Gen., Mar. 21, 1933.

Commission has no authority to regulate bus depot companies. Op. Atty. Gen., June 23, 1933.

Railroad and warehouse commission has no jurisdiction over an independent contractor who undertakes to handle products of a company in a certain territory. Op. Atty. Gen., Mar. 14, 1934.

Certificate of convenience issued to auto transportation company by railroad and warehouse commission does not exclude company from ordinance provisions of city or village requiring company to obtain a license for privilege of operating within municipality. Op. Atty. Gen. (371b-1), Apr. 15, 1935.

Although there has been a violation justifying a suspension, or revocation of certificate, commission may impose, in alternative, lesser remedy of a penalty. Op. Atty. Gen. (371b-1), June 17, 1935.

Permittee under this act must obtain commission's consent to lease equipment. Op. Atty. Gen. (371b-6), Nov. 6, 1935.

Commission has jurisdiction over truck terminals. Op. Atty. Gen. (371b-4), Mar. 3, 1936.

A contract carrier does not possess right to enter into a leasing contract of its equipment without the consent of the commission, but when proper application is made and there has been a full compliance with all statutory provisions and general orders of commission, commission has no alternative but to issue a permit. Op. Atty. Gen. (632a-24), Apr. 23, 1936.

Interstate auto transportation companies may be compelled to file annual report, and section is constitutional as so construed. Op. Atty. Gen. (633a-16), Jan. 12, 1938.

5015-6. Hearings on petitions for certificates.

Supreme court will not interfere with the practice or procedure of the commission unless contrary to statutory direction. Chicago & N. W. Ry. Co. v. V., 197M580, 268NW2. See Dun. Dig. 8082a.

Town board was authorized to employ an attorney to appear with and for the board before the Railroad and Warehouse Commission upon a hearing on a petition for a certificate permitting a certain applicant to operate a bus line through the town. Op. Atty. Gen., Feb. 6, 1932.

5015-8. Certificates—When granted.

An order of the railroad and warehouse commission on an application for a certificate is administrative and not res judicata. Madden Bros. v. Railroad & Warehouse Com., (USDC-Minn), 43F(2d)236. See Dun. Dig. 8078e.

The only ultimate fact necessary to be found by commission or court is that public convenience and necessity requires service proposed by petition, and railroad cannot complain of granting of certificates in absence of show-

ing by it that its legal or constitutional rights have been infringed. Chicago & N. W. Cy. Co. v. V., 197M580, 268NW2. See Dun. Dig. 8078c.

"Necessity" is not used in its lexicographical sense of indispensably requisite. Id.

5015-9. Transfer, etc., of certificates.

A person operating an auto transportation company and holding a certificate of public convenience, upon forming a corporation, can transfer his certificate only upon authorization by Railroad Commission and payment of the fee provided. Op. Atty. Gen., May 6, 1931.

5015-10. Companies already operating.

This statute is valid. 174M248, 219NW167.

5015-11. Bonds of transportation companies—Indemnity insurance.

Consignors may obtain additional protection only by paying cost thereof themselves. Op. Atty. Gen., Mar. 21, 1933.

Commission may accept certified copies of bonds or insurance policy. Op. Atty. Gen., June 5, 1933.

Commission may enter into agreement with indemnity corporation whereby it is permitted to file one specimen copy of insurance policy to cover various permit operators. Op. Atty. Gen., Oct. 3, 1933.

Commission has authority to accept bond covering injuries and damages to persons or property in lieu of regular insurance policies. Op. Atty. Gen. (371b-1), Oct. 7, 1936.

5015-12. Laws applicable.

The provision that actions or proceedings against automobile transportation companies may be tried in any county through which such company operates applies only to original actions or proceedings in the district court and not to appeal from orders of the Railroad Commission. 179M90, 228NW444.

To become a complainant in a proceeding before the railroad and warehouse commission under Motor Vehicle Transportation Act so as to have an appeal from commission's order go to district court of county of person's residence, a verified complaint, with parties designated as prescribed by §§4638 and 4644, must be filed with commission. Murphy Motor Freight Lines v. W., 191M 49, 253NW1. See Dun. Dig. 8082.

Where commission on its own motion instituted proceeding, appeal from order made was properly taken to district court of one of counties wherein appellant was ordered to cease his transportation operations. Id.

5015-13. Penalties.

The railroad and warehouse commission may enforce the penalties of this act without first issuing an order to cease and desist. Madden Bros. v. Railroad & Warehouse Com., (USDC-Minn), 43F(2d)236. See Dun. Dig. 8078c, 8079.

Although there has been a violation justifying a suspension or revocation of certificate, commission may impose, in alternative, lesser remedy of a penalty. Op. Atty. Gen. (371b-1), June 17, 1935.

Any penalties or fines collected should be paid into general revenue fund of the state. Id.

5015-14. Interstate commerce excepted.

This statute is valid. 174M248, 219NW167.

5015-15. Filing fees.

A person operating an auto transportation company and holding a certificate of public convenience, upon forming a corporation can transfer his certificate only upon authorization by Railroad Commission and payment of the fee provided. Op. Atty. Gen., May 6, 1931.

Increased fees resulting from amendment by Laws 1937, c. 411, are not effective for January 1, 1937. Op. Atty. Gen. (351a-8), June 3, 1937.

5015-18. Not to affect charter limitations.—No provision in this act shall authorize the use by any transportation company of any public highway in any city of the first class, whether organized under Section 36, Article 4, of the Constitution of the State of Minnesota, or otherwise, in violation of any charter provision or ordinance of such city in effect January 1, 1925, unless and except as such charter provisions or ordinance may be repealed after said date; nor shall this act be construed as in any manner taking from or curtailing the right of any city or village to regulate and control the routing, parking, speed or the safety of operation of a motor vehicle operated by any transportation company under the terms of this act, or the general police power of any such city or village over its highways; nor shall this act be construed as abrogating any provision of the charter of any such city now organized and operating under said Section 36 or Article 4, requiring certain conditions to be complied with before such transportation company can use the highways of such city, and such rights and powers herein stated are hereby expressly reserved and granted to such city. ('25, c. 185, §18; Apr. 11, 1929, c. 154, §1.)

At common law there is a public right to operate a motorbus on public streets for transportation of passengers for hire. City of St. Paul v. T., 187M212, 246NW 33. See Dun. Dig. 4168, 6618. But see notes under §7433.

City of St. Paul has power to require motorbus companies to obtain license or franchise to use streets. City of St. Paul v. T., 189M612, 250NW572. See Dun. Dig. 6794.

Commission may accept certified copies of bonds or insurance policy. Op. Atty. Gen., June 5, 1933.

5015-20. Definitions.—Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases shall, for the purposes of this Act, be given the meaning here stated.

(a) The word "Commission" means the Railroad and Warehouse Commission of the State of Minnesota.

(b) The term "person" means and includes an individual, firm, copartnership, company, association or joint stock association and their lessees, trustees and receivers.

(c) The term "public highway" when used in this Act shall mean every public street, alley, road or highway or thoroughfare of any kind used by the public.

(d) The term "permit" means the license and/or franchise issued under this Act.

(e) The words "for hire" mean for remuneration or compensation of any kind, paid or promised, either directly or indirectly for the transportation of property on the highways. The words shall not be construed to apply to any occasional accommodation service by a person or corporation not in the transportation business, even though the same may be paid for.

(f) The term "common carrier" means any person who holds himself out to the public as willing to undertake for hire to transport from place to place over the public highways of this state the property of others who may choose to employ him, but who does not operate between fixed termini or over a regular route and is not subject to Laws 1925, Chapter 185.

(g) The term "contract carrier" means any person engaged in the business of transporting property for hire over the public highways of this state, other than as a common carrier.

The terms "common carrier" and "contract carrier" shall not apply to any person engaged in the business of operating motor vehicles in the transportation of property exclusively within the zone circumscribed by a line running parallel to the corporate limits of any city or village or contiguous cities and/or villages and 35 miles distant therefrom when such person resides within said zone. The terms "common carrier" and "contract carrier" shall not apply to a person engaged in agricultural pursuits who owns and uses a truck either for the purpose of transporting the products of his farm or occasionally transporting the property of others for hire, nor shall the terms "common carrier" and "contract carrier" apply to any person while engaged exclusively in the transportation of fresh vegetables from farms to canneries or viner stations, or from viner stations to canneries, or from canneries to canneries during the harvesting, canning or packing season, nor shall the terms "common carrier" and "contract carrier" apply to a manufacturer, producer, dealer or distributor who, in the pursuit of his business, owns and uses a truck, or trucks, either for the purpose of transporting his own products or occasionally transporting the property of others for hire. (Apr. 8, 1933, c. 170, §1; Apr. 24, 1937, c. 411, §1; Apr. 22, 1939, c. 433.)

Act Apr. 24, 1937, cited, amends only subdivision (g).
Act Apr. 22, 1939, cited, amends only subdivision (g).

Act has for its object and purpose regulation of public and contract carriers. North Shore Fish & Freight Co. v. N., 195M336, 263NW98. See Dun. Dig. 8078c.

Cooperative association formed to engage in transportation of goods and products of its members is subject to control and regulation of the warehouse commission. Id.

Evidence sustains findings that transportation of freight by truck between the Twin Cities in this state and Superior, Wis., was transportation in interstate commerce, and that selection of route and operations carried on were not a subterfuge or means of evading regulation by state. Murphy Motor Freight Lines v. W., 197M473, 267NW495. See Dun. Dig. 4158.

A trucker contracting to haul produce of a large cooperative association is subject to this act and must charge minimum rates, but a cooperative association may purchase and pay expenses of operation of truck without coming within act. Op. Atty. Gen., June 23, 1933.

Act does not apply where wholesalers make deliveries of merchandise sold to retailers with trucks owned by wholesalers charging a lower rate therefor than that fixed by commission. Op. Atty. Gen., July 27, 1933.

Sale of trucks by baking company to its employees under contract limiting purchase and sale of goods to those of baking company held colorable only and trucks were under jurisdiction of commission. Op. Atty. Gen., Oct. 19, 1933.

"Zone truckers" may not engage in interstate commerce even if state line is within zone. Op. Atty. Gen., Nov. 6, 1933.

A traveling salesman using his own truck and making deliveries on a commission basis, including both selling and delivery, is a contract carrier, and must have a permit. Op. Atty. Gen. (632a-24), May 21, 1935.

Co-operative association transporting property for members must obtain permits and are subject to regulation under the motor carrier laws. Op. Atty. Gen. (93b-34), Apr. 23, 1936.

(b).

Act does not apply to farmer hauling own produce. Op. Atty. Gen. (632a-24), July 6, 1934.

(e).

Facts in each instance determine whether joint ownership is either within or without act. Op. Atty. Gen., Mar. 9, 1934.

(g).

Thirty-five-mile zone includes corporate limits of cities and contiguous cities if part thereof is within thirty-five-mile zone. Op. Atty. Gen., Jan. 29, 1934.

Contract carriers are within provisions of act but certain co-operative associations do not come within act. Op. Atty. Gen., Feb. 20, 1934.

Thirty-five mile zone is determined by extending lines parallel to corporate limits of municipality and 35 miles distant therefrom until they intersect, resulting in an area identical in outline to municipality. Op. Atty. Gen. (633a-13), Dec. 17, 1938.

5015-21. Railroad and Warehouse Commission to regulate and supervise trucks and buses.—(a). The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every contract carrier engaged in intrastate commerce in this state to the extent provided in this act; to grant permits to such carrier upon the filing of an application therefor and the compliance with all lawful requirements; to require the keeping of such records and accounts and the filing of such reports as it may deem necessary to administer this Act; and before issuing a permit to any such carrier, it shall fix the minimum rates and charges for the transportation of property by such carrier, which rates shall not be less than the reasonable cost of the service rendered for such transportation, including a reasonable return on the money invested in the business and an adequate sum for maintenance and depreciation of the property used.

(b) The Commission is further vested with the power and authority and it is made its duty to supervise and regulate every contract carrier for the purpose of promoting safety on the highways and their conservation; to make rules and regulations respecting the lights and brakes used on the vehicles operated by such carriers and requiring the use of any and all safety devices that tend to make more safe the operation of such vehicles on the highways; to regulate the nature and character of the equipment to be used under a permit, the amount and character of tonnage which may be hauled thereunder on any motor vehicle and the method of loading or packing the freight transported, but the Commission shall not authorize the use of any equipment of greater dimensions or the transportation of tonnage of greater weight than is permitted by any existing law or any law which may be hereafter enacted; provided, however, that all such regulations shall be first approved by the Commissioner of Highways before the same shall become effective. To make such rules and regulations and require such reports under oath as may be necessary to the enforcement of this Act. (Act Apr. 8, 1933, c. 170, §2.)

Legislature may impose on motor vehicles engaged in interstate commerce a reasonable charge as a fair contribution to cost of constructing and maintaining public highways over which such commerce is carried on within state and may impose a reasonable license fee to defray cost incident to inspection and enforcement of police regulations for such traffic. Murphy Motor Freight Lines v. W., 197M473, 267NW495. See Dun. Dig. 4158.

Rates promulgated by railroad and warehouse commission supersede any and all contractual rates in existence prior thereto. Op. Atty. Gen., Nov. 27, 1933.

Railroad and warehouse commission has no jurisdiction over an independent contractor who undertakes to handle products of a company in a certain territory. Op. Atty. Gen., Mar. 14, 1934.

Permittee under this act must obtain commission's consent to lease equipment. Op. Atty. Gen. (371b-6), Nov. 6, 1935.

A contract carrier does not possess right to enter into a leasing contract of its equipment without the consent of the commission, but when proper application is made and there has been a full compliance with all statutory provisions and general orders of commission, commission had no alternative but to issue a permit. Op. Atty. Gen. (632a-24), Apr. 23, 1936.

5015-22. Must have permits to operate.—No person shall operate as a contract carrier in intrastate commerce without a permit from the Commission so to do in accordance with the provisions of this Act. (Act Apr. 8, 1933, c. 170, §3.)

5015-23. Petitions to be filed with Commission.—Any person desiring a permit to operate hereunder as a contract carrier shall file a petition therefor with the Commission. Such petition shall set forth the name and address of the applicant; the names and address of its officers, if any; full information concerning the financial condition and physical properties of the applicant; the kind of property which it is proposed to transport; substantially the territory in which it is proposed to operate; a description of each vehicle which the applicant intends to use, including the size, weight, and cubical contents; and such other information necessary to the enforcement of this Act as the Commission may, by order, require. Upon compliance with this Act a permit shall be issued by the Commission. No permit shall be issued to any common carrier by rail, whereby said common carrier will be permitted to operate trucks for hire within this state, nor shall any common carrier by rail be permitted to own, lease, operate, control, or have any interest whatsoever in any common carrier by truck either by stock ownership or otherwise, directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner; provided, however, that nothing in this Act shall prevent the railroad and warehouse commission from issuing a permit to a common carrier by rail, whereby such carrier will be given authority to operate trucks wholly within the limits of any municipality or municipalities served by the said railroad and which service shall only be a service supplementary to the rail service now established by such carrier. (Act Apr. 8, 1933, c. 170, §4.)

5015-24. Fees of applicants.—That applicant at the time of filing the petition for said permit shall pay into the treasury of the State of Minnesota a fee in the sum of $7.50 where but one vehicle is to be operated. When more than one vehicle is to be operated under the permit, an additional fee of $7.50 shall be paid for each of such vehicles in excess of one. Truck-tractors used by applicant exclusively in combination with semi-trailers shall not be counted as vehicles in the computation of fees under this section, provided applicant obtains permits for such semi-trailers. Distinguishing plates shall be prescribed

and furnished by the Commission and shall be at all times displayed on each vehicle and the place of residence of the owner of the vehicle shall be stenciled in a conspicuous place on said vehicle. No permit granted under this Act shall be effective after the first day of January of the year following the year of its issue. Renewals shall be issued upon application made in accordance with this Act and upon the payment of the fees prescribed for the original application; provided that in the event a permit has been suspended or revoked the Commission may order a hearing upon an application for a renewal thereof or upon an application for a permit to be issued to the holder of such suspended or revoked permit and may grant or deny such renewal or permit. On or before January 1, 1938, and of each year thereafter every carrier holding a permit under this Act and every Auto Transportation Company subject to Chapter 185, Laws of 1925, shall pay a fee of $7.50 and an additional fee of $7.50 for each vehicle operated in excess of one. (Apr. 8, 1933, c. 170, §5; Apr. 24, 1937, c. 411, §2.)

Railroad and warehouse commission cannot refund filing fee because applicant determined to discontinue trucking service before permit could be issued. Op. Atty. Gen., Dec. 4, 1933.

Tractor and semi-trailer should be treated as two separate units and a fee of $7.50 should be assessed. Op. Atty. Gen. (371h-1), Dec. 4, 1936.

Increased fees resulting from amendment by Laws 1937, c. 411, are not effective for January 1, 1937. Op. Atty. Gen. (351a-8), June 3, 1937.

5015-25. Bonds of applicants.—Before such permit shall be issued such contract carrier shall secure and file, and keep the same at all times in full effect, with the Commission public liability and indemity insurance satisfactory to the Commission in such amount and in such form as the Commission shall prescribe covering injuries and damage to persons or property occurring on the highways other than the employes of such contract carrier or the property being transported by such carrier. Such insurance shall be subject to cancellation for non-payment of premiums or withdrawals from service of a vehicle or vehicles covered thereby upon 15 days' written notice to the insured and to the Commission. Such insurance and/or bond may from time to time be reduced or increased by the Commission. The Commission may, if desired by the applicant, accept in lieu of said bond and/or insurance such other form of security as may be satisfactory to the Commission. (Act Apr. 8, 1933, c. 170, §6.)

5015-26. Permits not transferable.—No permit issued under the provisions of this Act shall be assigned or transferred. The Commission may, for a good cause upon not less than 10 days' notice to the holder therof suspend or revoke such permit for any violation of any provision of this Act, or any law of this state or any order or regulation of the Commission. (Act Apr. 8, 1933, c. 170, §7.)

5015-27. Compensation for carriers to be fixed by Commission.—No contract carrier shall charge, demand, collect, or receive, nor shall a shipper pay, a less compensation for the transportation of property, or for any service in connection therewith, than the minimum rates and charges fixed by the Commission; nor shall any contract carrier refund or remit in any manner or by any device, directly or indirectly, any portion of the rates and charges required to be collected by the Commission's permit or order, nor extend to any shipper or person any privileges or facilities in the transportation of property except such as are specified in the Commission's permit or order. (Act Apr. 8, 1933, c. 170, §8.)

Public policy permits recovery by a contract carrier by motor vehicle of rates prescribed by commission, notwithstanding agreement for a lower rate, and it is immaterial that carrier has not complied with rules of commission requiring filing of reports and use of bills of lading. Johnston v. L., 202M132, 277NW414. See Dun. Dig. 1319a.

A contract carrier does not possess right to enter into a leasing contract of its equipment without consent of the commission. Op. Atty. Gen., Nov. 27, 1933.

Operator within thirty-five mile zone is not permitted to lease equipment. Op. Atty. Gen. (371b-6), Aug. 19, 1935.

A contract carrier does not possess right to enter into a leasing contract of its equipment without the consent of the commission, but when proper application is made and there has been a full compliance with all statutory provisions and general orders of commission, commission has no alternative but to issue a permit. Op. Atty. Gen. (632a-24), Apr. 23, 1936.

5015-28. Not to transport own property—exceptions.—No contract carrier as defined in this Act shall transport any property which it may own in whole or in part, except such property as may be necessary for the use of the owner of the truck or of his family and not for resale; provided, that such property may be transported for resale when transported directly to the place of business of the owner of the truck, or if such owner is a farmer to the farm of the owner. (Act Apr. 8, 1933, c. 170, §9.)

Permit operator may not transport goods directly to home of customer. Op. Atty. Gen. (633e), Apr. 20, 1934.

5015-29. Powers of Commission.—The Commission shall have the same power and authority with respect to the regulation and control of common carriers as are set forth in Section 2 with respect to contract carriers. (Act. Apr. 8, 1933, c. 170, §10.)

5015-30. Permits for common carriers.—No person shall operate as a common carrier in intrastate commerce without a permit from the Commission so to do in accordance with provisions of this Act. The provisions of Sections 4, 5, 6, 7, 8, and 9 hereof shall govern the issuance, renewal, assignment and cancellation of permits to common carriers and the operations thereunder. (Act Apr. 8, 1933, c. 170, §11.)

5015-31. Powers of Commission.—(a) The Commission is hereby vested with power and authority to grant permits to contract carriers and common carriers engaged exclusively in transporting property in interstate commerce or between any point in the State of Minnesota and the Dominion of Canada, upon the filing of applications therefor and the compliance with all lawful requirements.

(b) The Commission is further vested with all the power and authority to supervise and regulate such interstate and foreign carriers as is vested in the Commission by Section 2 (b) to supervise and regulate intrastate contract carriers. (Act Apr. 8, 1933, c. 170, §12.)

5015-32. Permits must be secured.—No person shall operate as a contract carrier or common carrier exclusively engaged in transporting property in interstate commerce, or property between any point in the State of Minnesota and the Dominion of Canada, without a permit from the Commission so to do, in accordance with the provisions of this Act. Any person desiring a permit to operate as such contract carrier or common carrier shall file a petition therefor with the Commission, which petition shall set forth the names and addresses of its officers, if any, full information concerning the financial condition and physical properties of the applicant; the nature of the transportation in which the applicant wishes to engage; the kind of property which it is proposed to transport; substantially the territory in which it is proposed to operate; a description of each vehicle which the applicant intends to use, including its size, weight and cubical contents; and such other information necessary to the enforcement of this Act as the Commission may, by order, require.

At the time of filing petition the applicant shall pay into the treasury of this state a fee in the sum of $7.50 for the issuance of such permit where but one vehicle is to be operated. Where more than one vehicle is to be operated under the permit, an ad-

ditional fee of $7.50 shall be paid for each of such vehicles, in excess of one. Distinguishing plates shall be prescribed and furnished by the Commission and shall be at all times displayed on each motor vehicle authorized by the Commission to operate under this Act.

Before a permit shall be issued such applicant shall also secure and file with the Commission public liability and indemnity insurance satisfactory to the Commission and in such amount as it shall prescribe, covering injuries and damage to persons and/or property occurring on the highway other than to employes of such carrier or the property being transported thereby. Such insurance shall be subject to cancellation for non-payment of premiums or withdrawals from service of a vehicle or vehicles covered thereby upon 15 days' written notice to the insured and to the Commission. Such insurance and/or bond may, from time to time be reduced or increased by the Commission. The Commission may, if so desired by the applicant, accept in lieu of said bond and/or insurance such other form of security as may be satisfactory to the Commission.

Upon compliance with the provisions of this section, the Commission shall forthwith issue said permit.

No permit granted under this Act shall be effective after the first day of January of the year following the year of its issuance. Renewals shall be issued upon payment of the fees hereinbefore provided.

No permit issued under the provisions of this Act shall be assigned, or transferred. The Commission may for a good cause upon not less than 10 days' notice to the holder thereof suspend or revoke such permit for any violation of any provision of this Act or any law of this state or any order or regulation of the Commission. (Act Apr. 8, 1933, c. 170, §13; Apr. 24, 1937, c. 411, §3.)

5015-33. Powers of Commission to refuse permits.—The Commission shall have power to refuse to issue a permit as a common carrier or contract carrier as defined herein to an Auto Transportation Company subject to Laws 1925, Chapter 185 [§§5015-1 to 5015-19], and shall have power to refuse to issue a permit to such common carrier and contract carrier if such common or contract carrier is owned in whole or in part directly or indirectly, by stock ownership or otherwise, by an Auto transportation Company subject to Laws 1925, Chapter 185. Where such financial interest is found to exist, the Commission after hearing may, in its discretion, cancel any permit issued under this Act. (Act Apr. 8, 1933, c. 170, §14.)

5015-34. Trucks must be cleaned before carrying food stuffs.—No contract carrier or common carrier engaged in either intrastate or interstate commerce holding a permit under this Act, and no auto transportation company holding a certificate under Laws 1925, Chapter 185 [§§5015-1 to 5015-19], shall transport for hire food for human consumption nor any article or package containing any property intended for or that could be used in any household in any motor vehicle in which live stock has been transported unless such motor vehicle has been thoroughly cleaned. (Act Apr. 8, 1933, c. 170, §15.)

5015-35. Commission to fix hours of service.—It shall be the duty of the Commission and it is hereby so empowered to establish, regulate and fix the hours of service of truck drivers employed by carriers subject to this Act and Auto Transportation Companies subject to Laws 1925, Chapter 185 [§§5015-1 to 5015-19]; and to that end may require from all of such carrier such reports and information as it may deem necessary to the enforcement of its orders respecting the same; provided, however, that the Railroad and Warehouse Commission shall fix the hours of service on a basis so that no truck driver shall operate a truck for more than twelve hours continuously. (Act Apr. 8, 1933, c. 170, §16.)

5015-36. Violations—complaints—hearings.—Where any terms of this Act or any order of the Commission adopted hereunder, or any provisions of Laws 1925, Chapter 185, or any order issued thereunder, have been violated, the Commission upon complaint being filed, or on its own motion, may issue and serve upon such person or corporation a complaint stating its charges in that respect, and containing a notice of hearing upon a day and at a place therein fixed at least 20 days after the service of said complaint and notice. The person or corporation so complained of shall have the right to appear at the time and place so fixed and show cause why an order shall not be entered by the Commission requiring such person or corporation to cease and desist from the violation of this Act or any order of the Commission and/or the provisions of Laws 1925, Chapter 185, or any order of the Commission thereunder. If upon such hearing the Commission shall be of the opinion that any of the provisions of this Act or of said Laws 1925, Chapter 185, or any order of the Commission, have been so violated, it shall so find and shall issue and cause to be served upon such person or corporation an order requiring such person or corporation to cease and desist from such violation. (Act Apr. 8, 1933, c. 170, §17.)

Prior to July 1, 1933, Railroad and Warehouse Commission had no power or authority to issue "cease and desist" order. Murphy Motor Freight Lines v. W., 197M 473, 267NW495. See Dun. Dig. 4158.

5015-37. Oath and bond of inspectors.—That inspectors of the Commission, for the purpose of enforcing this Act but for no other purpose, shall have all the powers conferred by law upon peace officers, and it shall be the duty of the State Commissioner of Highways upon written request of the Commission to require the State Highway Patrol to assist in the enforcement of this Act. Every inspector of the Commission, before entering upon his duties, shall take and subscribe the oath of office and furnish a bond to the state in the sum of $2000.00 conditioned as provided by Section 905, Mason's Minnesota Statutes 1927, to be approved by and filed in the office of the Secretary of State. (Apr. 8, 1933, c. 170, §18; Apr. 24, 1937, c. 411, §4.)

Sec. 5 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

Inspectors have no right to make arrests for violation of act. Op. Atty. Gen., June 22, 1933.

Patrolmen are authorized to extend their operations to all highways irrespective of Laws 1931, c. 44. Id.

5015-38. Appeals.—In all cases in which the Commission has power and authority under this Act, proceedings may be instituted, complaints made and filed with it, processes issued, hearings held, opinions and orders and decisions made and filed and appeals taken by any aggrieved party from any order so made to the district court and to the supreme court or to either of this state. In case of any such appeal the issues involved therein shall be tried de novo. Any party to a proceeding may take said appeal to the district court of the county in which the complainants or a majority of them reside or in case none of them reside in the state or in a proceeding commenced by the Commission on its own motion without complaint to the district court of one of the counties in which the order of the Commission requires a service to be performed or an act to be done or not to be done by the carrier. Upon service of said notice of appeal said Commission by its secretary shall forthwith file with the clerk of said district court to which appeal is taken a certified copy of the order appealed from. In case appeals are taken to the district court of more than one county they shall be consolidated and tried in the district court of the county to which the first appeal was taken. The person serving such notice of appeal shall within five days after the service thereof file the same with proof of service with the

clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions. No further pleadings than those filed before the Commission shall be necessary. If such appeal is not taken within said time such order shall become final. (Act Apr. 8, 1933, c. 170, §19.)

5015-39. May not transport persons.—It shall be unlawful for any person holding a permit hereunder to transport any person in said truck for hire. (Act Apr. 8, 1933, c. 170, §20.)

5015-40. Violation a misdemeanor.—Any person who violates or who procures, aids or abets in the violation of any provision of this Act, or of any order of the Commission issued hereunder or the provisions of Laws 1925, Chapter 185, or any order of the Commission issued thereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding $100.00, or imprisonment for 90 days. Every distinct violation shall be a separate offense, and in the case of a continuing violation each day shall be deemed a separate offense. Upon written request of the Commission, it shall be the duty of the Attorney General and/or any County Attorney within his jurisdiction to prosecute any person alleged to have committed such an offense. (Act Apr. 8, 1933, c. 170, §21.)

Proceedings to enforce law, discussed. Op. Atty. Gen., Sept. 9, 1933.

State prison selling products f. o. b. Stillwater must ascertain whether trucker employed by purchaser has a permit, etc. Op. Atty. Gen., Sept. 25, 1933.

All peace officers may enforce section. Op. Atty. Gen., Oct. 3, 1933.

Fines provided for in this act are to be paid into treasury of county and not to city therein in absence of agreement by charter or otherwise. Op. Atty. Gen., Dec. 18, 1933.

Neither the railroad commission nor the attorney general will assist in collection of proper charges covering flour movement on basis of rates prescribed by commission. Op. Atty. Gen., Dec. 29, 1933.

County is liable for witness fees to employee of secretary of state subpoenaed to appear in Municipal Court in connection with prosecution under Laws 1933, c. 170. Op. Atty. Gen. (196r-3), Mar. 12, 1936.

5015-41. Provisions separable.—If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, such section shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Act. Apr. 8, 1933, c. 170, §22.)

5015-42. Monies to be paid into state treasury.—All moneys received under the provisions of this Act shall be paid into the treasury of the State of Minnesota and may be used by the Railroad and Warehouse Commission for the employment of inspectors for the purpose of inspecting the mechanical equipment of all trucks subject to this Act and for the general enforcement of this Act. Any money that may be left in such fund at the end of any calendar year from permit fees for such calendar year shall be placed to the credit of the Highway Fund of this state and become a part thereof.

The Commission is empowered to expend such money as may be necessary for the administration and enforcement of this Act including the employment of all necessary clerks, inspectors and other employes, and for such purpose shall not expend any money in excess of the collections made under this act. (Act Apr. 8, 1933, c. 170, §23; Apr. 21, 1933, c. 397, §1.)

Fines collected under §5015-40 are to be paid to county treasurer and not credited to railroad and warehouse commission fund. Op. Atty. Gen. (306h-6), Dec. 15, 1936.

5015-42a. Effective July 1, 1933.—This Act shall take effect and be in force from and after July 1, 1933. (Act Apr. 21, 1933, c. 397, §2.)

5015-43. Business declared to be of public interest.—The business of operating a motor vehicle for the transportation of property by a contract carrier or a common carrier as in this Act defined upon the highways of this state is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic and the fact that under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulations should be employed to the end that the highways may be rendered safer for the use of the general public and that the discrimination in rates charged may be eliminated. (Act Apr. 8, 1933, c. 170, §24.)

5015-44. Effective July 1, 1933.—This Act shall take effect and be in force on and after July 1, 1933. (Act Apr. 8, 1933, c. 170, §25.)

5015-45. Duties of railroad and warehouse commission in operation of commercial motor vehicles.—It is hereby declared to be the purpose and policy of the legislature to confer upon the Railroad and Warehouse Commission, the power and authority to make it its duty to supervise and regulate the transportation of property by commercial motor vehicles upon or over the public highways of this state in all matters whether specifically mentioned herein or not, so as to:

1. Relieve the existing and all undue burdens on the highways arising by reason of the use thereof by commercial motor vehicles.
2. Protect the safety and welfare of the traveling and shipping public in their use of the highways; and
3. Carefully preserve, foster and regulate transportation and permit the co-ordination and re-routing of transportation facilities. (Apr. 26, 1937, c. 431, §1.)

General Order No. 25, providing that no motor carrier shall transport inflammable liquids by tank motor vehicle in intrastate or interstate commerce on any of the highways of the state, exceeds authority granted by this act. Op. Atty. Gen. (633e), April 27, 1939.

5015-46. To apply to interstate vehicles.—Interstate commercial motor vehicles used in the transportation of property shall be subject to all of the provisions of this act to the extent that the same is an exercise of the police powers of the state so as to prevent congestion on the highways which shall affect the safety of persons or property upon the public highways. None of the provisions of this act shall be deemed to deprive the State Highway Commissioner or any city or village of any jurisdiction they now have or which may hereafter be conferred upon them over the public highways of this state, nor prevent said Highway Commissioner or any city or village from suspending at any time the right to operate commercial motor vehicles over any public highway when necessary for the proper preservation or policing of the same. (Apr. 26, 1937, c. 431, §2.)

5015-47. Definitions.—The term "person" as used in this act means and includes any individual, firm, co-partnership, company, association or joint stock association and their lessees, trustees and receivers. The word "Commission" means the Railroad and Warehouse Commission of the state of Minnesota. The term "commercial motor vehicle" for the purpose of this act shall mean any commercial truck, tractor, truck tractor, semi-trailer or trailer operated upon the public highway. The term "public highway" means and includes all highways, roads, streets and alleys in the state of Minnesota. (Apr. 26, 1937, c. 431, §3.)

5015-48. Certain vehicles not to operate near cities.—It shall be unlawful without specific permission as hereinafter provided for, for any person to operate a

commercial truck, tractor, truck-tractor, trailer or semi-trailer on the highways of this state within 35 miles, measured by the most direct highway route, from any city of the first class between the hours of 9 a. m. and 12 midnight on Sundays and legal holidays, from Decoration Day, May 30, to the second Sunday in September, both inclusive, of each year; provided, however, that there shall be excepted and exempted from the provisions of this act the following:

1. Class T motor vehicles as defined by Chapter 344, Session Laws of 1933.
2. Commercial motor vehicles of a manufacturer's rated capacity of 1 ton or less.
3. Motor vehicles when used for the transportation of livestock on Sundays and holidays, whether operating with or without loads.
4. Motor vehicles when used for the transportation of newspapers, non-intoxicating beverages, ice cream and ice cream flavors and cones and all dairy products, poultry and poultry products and which shall include containers therefor, ice and fresh bakery goods, and other perishable products, whether operating with or without loads; emergency vehicles of public utilities used incidental to making repairs to its plan or equipment; vehicles used exclusively in highway construction; and vehicles used exclusively as service or repair cars going to or from place rendering aid and assistance to the disabled motor vehicles.
5. Motor vehicles operating wholly within the corporate limits of cities and villages or between incorporated cities or villages whose boundaries are coincidental. (Apr. 26, 1937, c. 431, §4.)

5015-49. Safety measure.—These restrictions herein provided are necessary to prevent traffic congestion, affecting the safety of the public and the interest of the public in the highway during the tourist season. (Apr. 26, 1937, c. 431, §5.)

5015-50. Application for permission to operate in certain months.—That any person operating a commercial motor vehicle may apply to the Commission in writing, setting forth good and sufficient reason why his operations over any of the highways of the state during the period specified above or any part thereof should be permitted and the Commission, upon filing of a petition, shall fix a time and place for hearing thereon, which shall not be less than fifteen (15) days after such filing. The Commission shall cause notice of such hearing to be mailed at least ten (10) days before the hearing to the governing bodies of such cities or villages which such applicant desires to pass through, the Minnesota Public Safety Committee and to such other parties as the Commission may deem advisable, and any party in interest may introduce evidence at such hearing. The Commission shall have power as public safety may require, to issue or refuse to issue permission to operate a commercial motor vehicle over the public highways or any part thereof during the period specified above, and that this act shall be subject to any exception or exemption which the Commission may make for good cause in such cases. (Apr. 26, 1937, c. 431, §6.)

5015-51. Must submit to inspection.—Any inspector of the Commission or any police officer is authorized to require the driver of a commercial motor vehicle to stop at any time to submit to an inspection. Any driver of a commercial motor vehicle who fails or refuses to stop and submit to such an inspection when directed to do so by an inspector of the Commission or a police officer shall be guilty of a misdemeanor. (Apr. 26, 1937, c. 431, §7.)

Patrolmen should not break seal of a sealed cargo, but may request operator to demonstrate that contents are under exempted clauses and hold vehicle from further movement on failure to demonstrate. Op. Atty. Gen. (632a-24), Aug. 19, 1938.

5015-52. Violations—penalties.—Any person, firm co-partnership, association or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed $100.00 or imprisonment not to exceed thirty (30) days. Every distinct violation shall be a separate offense. It shall be the duty of any County Attorney within his jurisdiction to prosecute any person alleged to have committed such an offense. The inspectors of the Commission for the purpose of enforcing this act shall have all the powers conferred by law upon police officers, to serve warrants and other processes in this state, and it shall be the duty of the State Commissioner of Highways upon written request of the Commission to require the State Highway Patrol to assist in the enforcement of this act. (Apr. 26, 1937, c. 431, §8.)

5015-53. Provisions severable.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such section shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, clause, sentence and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Apr. 26, 1937, c. 431, §9.)

5015-54. Inconsistent acts repealed.—All acts and parts of acts inconsistent hereto are hereby repealed. (Apr. 26, 1937, c. 431, §10.)

Sec. 11 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

STORAGE AND SHIPMENT OF GRAIN TERMINAL WAREHOUSES

5016. Public terminal warehouses—Definition.

Railroad and warehouse commission may in its discretion designate or refuse to designate an elevator as a public terminal warehouse. Op. Atty. Gen., Feb. 3, 1933.

5018. Must be licensed by Railroad and Warehouse Commission.

Where charter of elevator company expired by limitation of law and the company was reincorporated under a different name, the Railroad and Warehouse Commission after such reincorporation having granted a license to the old company could amend the same and insert the correct name of the licensee, but a bond must be filed containing the correct name. Op. Atty. Gen., Dec. 3, 1931.

The protection of a holder of a warehouse receipt. 15 MinnLawRev292.

5019. Duties of warehousemen—Form of warehouse receipts.—Form of warehouse receipt—Every such warehouseman shall receive for storage and shipment so far as the capacity of his warehouse will permit, all grain in suitable condition for storage, tendered him in the usual course of business, without discrimination of any kind. All grain shall be inspected on receipt and stored with other grain of the same grade except as herein otherwise provided. At the time of the receipt of said grain, the warehouseman shall issue and deliver to the owner or conginee a warehouse receipt in the following form:

STUB RECORD

Countersigned by ..... Secretary

Warehouse Receipt No. .....
..... Elevator Co.
.....Minn. ..... 19.....
The .....Elevator Company has received in store in its elevator known as .....situated at ..... Minnesota, for storage from ..... owner, ...bushels of ..... which has been duly inspected by a duly authorized inspector of grain appointed by the State Railroad and Warehouse Commission of Minnesota, or licensed by the Secretary of Agriculture of the United States, and has been graded by said inspector as No. ..... and is that grade. Said grain, or an equal amount of grain of the same kind and grade is deliverable upon the return of this receipt properly indorsed by the owner above named and the payment of all lawful charges; in case of grain stored separately in a special bin, at the request of the owner or consignee,

the identity of such grain will be preserved while in store and said grain will be delivered as such separate lot or parcel, in accordance with the law, upon surrender of the receipt. Loss by fire, heating or the elements is at the owner's risk.

The .....Elevator Company conducts said elevator as a public terminal warehouse and receives and stores therein grain of others for hire.

.....bushels ..... grade .....

By .....

Receipt No.....19....					Initial	Car No.	Bushels
Received in store from.....							
Bush.....lbs.....grade.....							
	Car No.	Bushels	Car No.	Bushels			

The receipts shall be consecutively numbered and delivered to the owner immediately upon receipt of each lot or parcel of grain, giving the true and correct grade and weight thereof. The manner of receipt of such grain shall be stated in the receipt, and with the number and distinctive mark of each car, and the name of each barge or other vessel. The failure to issue such receipt as directed or the issuance of any warehouse receipt differing in form or language from that prescribed shall be a misdemeanor;

Provided that such warehouse receipt at the request of the owner or consignee, may provide for delivery of the grain represented thereby to the depositor, or any other specified person, and may have printed or stamped thereon the words "non-negotiable." (As amended Apr. 17, 1939, c. 285, §1.)

Public terminal warehouse may not lease part of its space for sole use of lessee. Op. Atty. Gen. (645b-14), Oct. 14, 1935.

A lease of storage space may be made where there is no diminution of public storage facilities and they are simply transferred from control of one public terminal house to another. Op. Atty. Gen. (645b-14), Nov. 26, 1935.

Warehouse may not change statutory receipt by adding certificate of ownership, though federal government is interested. Op. Atty. Gen. (645b-23), Aug. 19, 1937.

5020. Grain to be re-delivered on surrender of warehouse receipt.

Holder of warehouse receipt is liable for storage notwithstanding impossibility of delivering, but only up to time of demand for delivery and presentation of warehouse receipt. Op. Atty. Gen. (645m-23), Apr. 3, 1936.

5022. Grain to be stored in separate bins when requested.—At the request of the owner or consignee, such warehouseman shall store any grain of the same owner or consignee in separate bins, which grain shall then bear the name of the owner or consignee. The warehouseman shall issue to the owner or consignee distinguishing whether owner or consignee, a warehouse receipt or receipts for all or any part of such grain. Every such receipt shall give the name of the owner or consignee and state the amount, kind and grade of grain for which the receipt is issued, and that the grain of such owner or consignee is stored separately from the grain of any other owner or consignee. The warehouseman shall, on presentation and surrender of the warehouse receipt bearing the proper endorsement of the person to whom it was issued, deliver to the person surrendering the receipt such amounts of the same grain as may be demanded and of the same grade as called for by receipt. The warehouseman, at the request of the owner or consignee, shall clean, dry, mix or otherwise improve the condition or value of such grain, and it shall be delivered separately from the grain of any other owner or consignee upon the order of the owner or consignee, in accordance with the terms of the warehouse receipt issued therefor and endorsed by such owner or consignee;

Provided, that such special bin receipt, at the request of the owner or consignee, may have printed or stamped thereon the words "non-negotiable" and the delivery of the identical grain described therein shall be a sufficient delivery and satisfaction of such receipt. (As amended Apr. 17, 1939, c. 285, §2.)

Sec. 3 of Act Apr. 17, 1939, cited, provides that the act shall take effect from its passage.

5023. Inspection at terminal warehouse.—All grains received at a terminal warehouse shall be inspected and graded by a state or federal inspector at the time of its receipt, provided such grain has not previously been inspected out of a warehouse at another terminal in Minnesota. The rights of reinspection and appeal are hereby expressly preserved to all interested parties. All grain shall be inspected in like manner upon delivery from such warehouse. The charges for such inspections shall be paid by the warehouseman and added to the storage, and the chief inspector may recover such charges from the warehouseman. ('23, c. 201, §8; Apr. 12, 1929, c. 175, §1.)

Sec. 2 of Act Apr. 12, 1929, provides that the act shall take effect from and after May 1, 1929.

5031. Boards of grain inspection.

Secretary of Agriculture may make use of state agencies so far as they are available and so far as they comply with federal requirements, but beyond enforcing compliance with those requirements, he has no control over organization or operation of such state agencies, and though he may revoke federal licenses of state inspectors, he has no power to appoint or discharge such inspectors or to control in any way their acts within the scope of their state positions. Op. Atty. Gen. (640a), July 29, 1939.

Grain inspection and weighing functions of railroad and warehouse commission are subject to supervision and control of commissioner of administration, especially with reference to expenditure of funds and appointment of personnel. Id.

5035. Minnesota grades—Establishment by board of grain appeals, etc.

Minnesota board of grain appeals should establish "Minnesota Grades" not conforming to federal standards, with which it disagrees, on all grain in intrastate commerce, and this applies to any grain coming to a place of rest or final destination in the state after interstate movement has ceased. Op. Atty. Gen. (215a-1), June 1, 1934.

5039. Deputy inspectors.

Deputy grain inspector may be removed either by commission or chief grain inspector. Op. Atty. Gen. (371a-5), Apr. 3, 1936.

5041. Duty of inspectors.—Such inspectors shall inspect and grade all grain received at or shipped from any terminal warehouse in carload or boatload lots, and give a certificate of the inspection to the person entitled thereto. Provided such inspectors shall not be required to grade any grain which has previously been inspected by a state inspector at another terminal in Minnesota. All rights and privileges covering reinspection and appeal in such cases are hereby preserved to all interested parties. Their decisions shall be conclusive as to the grade and dockage of such grain, and the certificate shall be evidence thereof, unless changed upon reinspection or appeal. (R. L. '05, §2068; G. S. '13, §4458; '17 c. 280, §1; Apr. 12, 1929, c. 174, §1.)

Act Apr. 12, 1929, c. 174, §2, provides that the act shall take effect from and after May 1, 1929.

5047. Fees for inspection and weighing.

Fees and fines collected are money and property belonging to state which legislature may appropriate in any manner it may determine. Op. Atty. Gen., May 16, 1933.

Master track scale at Minnesota Transfer may not be insured. Op. Atty. Gen. (252k), Feb. 21, 1935.

5048. Qualifications of inspectors and weighmasters.
Opinion of Aug. 1, 1933, is adhered to with respect to form of grain purchase contract. Op. Atty. Gen., Nov. 13, 1933.

5057. Inspectors to examine cars.
Since railroad car door falling on grain inspector was not under exclusive control of defendants, doctrine of res ipsa loquitur does not apply. State v. Sprague, 201M 415, 276NW744. See Dun. Dig. 7044, 8157b.

LOCAL WAREHOUSES

5059. Public warehouses.—All elevators, flour, cereal and feed mills, malt-houses and warehouses in which grain is received, stored or handled, situate at any location other than Minneapolis, St. Paul and Duluth, shall be public warehouses known as public local grain warehouses and shall be under the supervision and subject to the inspection of the "Railroad and Warehouse Commission" hereinafter referred to as the commission.

All elevators, flour, cereal and feed mills, malt-houses or warehouses located in either of said cities receiving grain direct from producers in less than minimum carload lots shall be required to conform to all laws relating to public local grain warehouses. (As amended Apr. 19, 1937, c. 296, §1.)

Grain shipped from a local warehouse within state and consigned to a terminal within state is intrastate commerce. Op. Atty. Gen., July 27, 1933.

Grain shipped from a local warehouse consigned to a local terminal outside state, even though stored in an intermediate warehouse waiting reshipment, is within interstate commerce. Id.

Grain shipped into state from without state is in interstate commerce until it comes to rest within state. Id.

Grain shipped from without state consigned to another state is in interstate commerce even though temporarily stored within state waiting reshipment. Id.

5060. Warehouses must be licensed.—All public local grain warehouses shall be licensed annually by the commission. No license shall be issued until applicant has complied with Section 13, Chapter 114, Laws 1923, relating to storage of grain. Application for license must be filed with the commission and the license issued before transacting warehouse business.

Commencing with the first day of September 1937, every license shall expire at midnight on the thirtieth day of June, the fee shall be five dollars for each license issued and a license shall be required for each such warehouse operated. The fees collected under this section shall be paid into the state treasury and credited to the state grain inspection fund.

Such license shall be revocable by the commission for cause upon notice and hearing.

All licenses, grade rules and all rules regulating public local grain warehouses shall upon receipt thereof by the warehouseman, be posted in a protected place in the driveway to his warehouse.

Any person, firm or corporation desiring to purchase grain from producers for the purpose of resale shall procure a license therefor from the Railroad and Warehouse Commission before transacting such business and shall be subject to the same laws, rules and regulations as may govern public local grain warehousemen in so far as they may apply. The license fee for each buyer shall be five dollars. Nothing in this act shall apply to anyone purchasing seed grain for his own use, or to any person who occasionally engages in the purchase and sale of grain but who is not regularly engaged in such business.

Any public local grain warehouseman or such purchaser of grain operating without first obtaining a license shall forfeit to the State for each day's operation fifty ($50.00) dollars, and such operation may be enjoined upon complaint of the commission. (As amended Apr. 19, 1937, c. 296, §2.)

Grain storage bond and grain storage license is not compulsory where warehouseman engages only in cash grain purchases. Op. Atty. Gen. (371b-14), May 15, 1937.

Track and truck buyers paying cash or check, not maintaining facilities for storing grain, cannot be required to file a bond. Id.

Commission has authority to designate track buyers and truck buyers as such, and issue licenses under those titles. Id.

A truck buyer may operate more than one truck under one license, and a track buyer may ship grain in cars on tracks at various points or stations under one license. Id.

This section cannot be construed so as to render a truck driver who buys grain from producers for resale subject to bushel tax. Op. Atty. Gen. (215c-10), June 29, 1939.

5062. Licenses may be revoked.—Any person, firm or corporation operating a public local grain warehouse who shall fail to keep the same open for the transaction of the business for which license has been issued, without first having received written permission from the commission to close, shall be guilty of a misdemeanor, and the license issued may be revoked by the commission and no reissue of license will be made to such warehouseman, or anyone associated or connected with him or them for a period not exceeding two years.

In case of loss by fire or other cause of any licensed public local grain warehouse, it shall be the duty of the licensee thereof to immediately notify the commission in writing of such loss.

Upon the sale or lease of a public local grain warehouse, a transfer of the license for such warehouse shall be necessary and such transfer of license may be had free of charge by applying to the Railroad and Warehouse Commission for the same, provided, however, that the party or parties selling or leasing shall first file with the Railroad and Warehouse Commission a report of the business done from the preceding first day of June, up to the time of such sale or lease, and shall satisfy the commission that proper provision has been made for the purchase, redelivery, or continuation of storage of such grain as may be outstanding on storage receipts. (As amended Apr. 19, 1937, c. 296, §3.)

Commission when revoking license and issuing a new one to a different person for the purpose of reopening an old elevator has no jurisdiction to determine ownership. Op. Atty. Gen. (371b-2), June 29, 1935.

5062-1. State inspection and weighing—The commission, upon proper application for state inspection or weighing of grain by any person interested at any other point than St. Paul, Minneapolis or Duluth, may furnish such service, if it is deemed expedient: Provided, such person first agrees to pay all costs of the service. Rules governing state inspection and weighing at other terminals shall apply at such points. (2086) [4480].

Editorial note.—This section appears to have been erroneously omitted from the 1923 Statutes. It is not inconsistent with Laws 1923, c. 114.

This section was not repealed or superseded by Laws 1923, c. 114. Op. Atty. Gen. (215c-1), June 22, 1935.

5063. Grain to be received for storage—Receipts for—Penalties.

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(b). This grain is received, insured and stored to June 30th, following, unless it is shelled corn, when the date shall be March 31st following delivery, and terms expressed in the body of this receipt shall constitute due notice to the holder thereof of the expiration of the storage period. Excepting therefrom "an agreement for the renewal of such storage," the charges for receiving, insuring, handling and storing for the first fifteen days, or part thereof, shall be free. Storage after the first fifteen days shall be charged and hereby is fixed in the sum of one-thirtieth of a cent per bushel per day for the balance of the storage period, which shall be collected by the warehouseman upon presentation of the storage receipt for the sale or delivery of the grain represented by such receipt, or the termination of the storage period. It shall be and hereby is made unlawful for any person, firm, association or corporation to charge or collect a greater or lesser amount than the one herein fixed. If grain is cleaned at owner's request, the charge shall be two cents per bushel. This grain has been received and stored with grain of the same lawful grade. Upon the return of this receipt and payment or tender of a delivery charge per bushel of four cents for flax,

three cents for wheat and rye and two cents for all other grains, and all other stated lawful charges accrued up to the time of said return of this receipt, the above amount, kind and grade of grain will be delivered within the time prescribed by law to the person above named or his order either from this warehouse, or if the owner so desires, in quantities not less than a carload in a public bonded warehouse at any terminal point upon the same line of railway within this state where state or federal inspection and weighing is in force, the grade and weight thereof to be determined by state or federal inspection and weighing as provided by law, and such grain to be subject to the usual freight, inspection, weighing and switching charges. (As amended Apr. 19, 1937, c. 296, §4.)

* * * * * *

Licensed warehouses handling grain in drought areas for the State Emergency Relief Administration must charge the rate herein prescribed, but such warehouses may enter into any kind of a contract in connection with the leasing of space. Op. Atty. Gen. (215c-8), Nov. 2, 1934.

Receipt prescribed by statute cannot be modified or changed by a subsequent verbal agreement, but holder may authorize warehouseman to ship and sell grain without surrendering receipt, and purchaser obtains title. Op. Atty. Gen. (215c-8), Feb. 9, 1935.

Storage liability starts as of date grain is received and not on succeeding date. Op. Atty. Gen. (215c-9), Mar. 3, 1937.

5065. Grain delivered on surrender of receipt.

Public grain warehouse receipts are assignable as security and assignee is protected by grain warehouse bond. Op. Atty. Gen., Mar. 15, 1933.

5070. Reports to be filed.—Every such warehouseman shall on or before the tenth day of June of each year render such commission, on blanks or forms prepared by it, an itemized and verified report of all business transacted by him as a public local grain warehouseman during the year beginning June 1st of the preceding year and ending May thirty-first of the current year.

Such report shall state the gross bushels of all grain of various kinds in his warehouse at the beginning of the year, the net bushels and dockage of all grain received, the net bushels and dockage of all grain shipped or delivered from such warehouse and the gross bushels of all grain remaining in the warehouse at the end of the year, and such report shall particularly specify an account for any overage or shortage in any kind of grain accruing during the year; provided, that flour, cereal and feed mills and malthouses, doing a manufacturing business only, shall be only required to render a report showing gross bushels of all grain on hand at the beginning of the year, net bushels and dockage of grain received, and gross bushels milled, as well as gross bushels on hand at the end of the year.

All public local grain warehousemen engaged in the handling or sale of any other commodity than grain shall keep an entirely separate account of their grain business and under no circumstances shall their grain account and other accounts be mixed.

The commission may also require special reports from such warehouseman at such times as the commission may deem expedient.

No license shall be reissued to any public local grain warehouseman who fails to make the annual report as required herein.

The commission may cause every such warehouse and the business thereof and the mode of conducting the same to be inspected by one or more of its members or by its authorized agent whenever deemed proper, and the property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection. The expense incurred by the commission in carrying out the provisions of this section shall be paid out of the state grain inspection fund. (As amended Apr. 19, 1937, c. 296, §5.)

5071. Warehousemen to be licensed.—All public local grain warehousemen, before receiving any grain in any public local grain warehouse, shall first apply to and secure from the Railroad and Warehouse Commission a grain storage license for such warehouse. A license fee of five dollars shall be paid to said commission for each license issued and shall be deposited in the state treasury and credited to the grain inspection fund. Commencing with the first day of September 1937, all such licenses shall expire at midnight on the thirtieth day of June, following their issuance. Before any such license is issued to any warehouseman such warehouseman shall file with the commission a bond in such sum as the commission may prescribe, which sum shall not be less than fifteen hundred dollars. Such bonds shall be filed annually and cover the period of the license. Such bonds shall run to the State of Minnesota and be for the benefit of all persons storing grain in such warehouse. They shall be conditioned upon the faithful performance by the public local grain warehouseman of all of the provisions of law relating to the storage of grain by such warehouseman and the rules and regulations of the said commission relative thereto. The commission is authorized to require such increases in the amount of such bonds from time to time as it may deem necessary for the protection of the storage receipt holders. The surety on such bonds must be a surety company holding a certificate of the insurance commissioner authorizing it to execute the same; provided, that the commission may accept a bond executed by personal sureties, in lieu of a surety company, whenever such bond has attached to it the justification provided for in Section 8232, General Statutes of 1913, and an affidavit of the president of a bank in the county in which such local warehouse is situated, who is not interested in such warehouse, stating that such justification is true and correct.

Only one bond need be given for any line of elevators, mills, or warehouses owned, controlled or operated by one individual, firm or corporation.

Every such bond shall specify the location of each public local grain warehouse intended to be covered thereby and shall at all times be in a sufficient sum to protect the holders of outstanding storage receipts.

Any warehouseman who shall violate the provisions of this section shall forfeit to the state for each violation the sum of fifty dollars and such violation shall be cause for revocation of license. (As amended Apr. 19, 1937, c. 296, §6.)

Authority of principal to deliver bond, after signed by surety and forwarded to and signed by principal, implied whenever it is fairly and legally inferable from the circumstances that such was the intention of the parties, but the appointment of a receiver in the meantime for principal, because of insolvency, terminates such implied authority. 171M455, 214NW507.

Bond filed by principal after appointment of receiver did not become effective against the surety. 171M455, 214NW507.

Demand is not necessary in action for conversion of stored grain against surety after property of warehouseman is in hands of receiver. 171M455, 214NW507.

Public grain warehouse receipts are assignable as security and assignee is protected by grain warehouse bond. Op. Atty. Gen., Mar. 15, 1933.

Indemnity company could not complain that it would be rendered liable for a "triplicate liability" by insertion in bond of phrase "and/or innocent purchasers and/or consignees thereof." Op. Atty. Gen. (645b-2), Aug. 20, 1934.

Where commission requires insertion of additional clause in bond, it may require an entire new bond and object to insertion by a rider. Id.

Where grain is received by warehouse during month of August and contract of storage expired July 31, and license expires August 31, when new license and new bonds are obtained, each bond given relates to actual omission from time bond is given until 31st day of August, and surety is liable for any dereliction of legal duty during such time with whatever legal consequences flow therefrom. Op. Atty. Gen. (645b-2), July 12, 1935.

Word "receiving" does not include purchase of grain. Op. Atty. Gen. (371b-14), May 15, 1937.

5072. Termination of licenses.—All storage contracts on grain in store at public local grain warehouses shall terminate on June 30th of each year, except storage contracts on shelled corn, which shall

terminate on March 31st of each year. Storage on any or all such grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the storage receipt together with a demand for delivery of such grain, or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, as prescribed in this act, the warehouseman shall, upon the expiration of the storage contract, sell such stored grain at the local market price on the close of business on that day, deduct from the proceeds thereof all legal accrued charges, and pay the balance of such proceeds to the owner upon surrender of the storage receipt. (As amended Apr. 19, 1937, c. 296, §7.)

Renewed storage contract terminating on July 31, 1937, should be made to terminate on June 30, 1938, under amendment by Laws 1937, c. 296. Op. Atty. Gen. (371b-14), May 15, 1937.

STORAGE OF GRAIN UPON FARMS

§§5077-1 to 5077-14 [Repealed.]

Repealed. Laws 1935. c. 65, §29.

Annotations under. 5077-7.

Register of deeds working on fee basis may be required by legislature to cancel warehouse certificates without extra charge. Op. Atty. Gen., Mar. 29, 1934.

Annotations under. 5077-12.

Railroad and warehouse commission may not cancel receipts and permit owner of grain to break seal where he has lost his warehouse certificate and is seeking a loan from the federal government. Op. Atty. Gen. (215c-9), June 2, 1934.

5077-15. Purpose of Act.—The purpose of this act shall be to provide the owner of grain in this State with means of warehousing same on the farm under proper restrictions and safeguards, as a basis for credit and to aid in the orderly marketing thereof. (Act Mar. 25, 1935, c. 65, §1.)

5077-16. Construction of terms.—As used in this act, unless the context clearly evidences a contrary intention, the following terms shall be construed respectively:

a. The railroad and warehouse commission of the state of Minnesota.

b. Any local supervisory board of individual producers appointed by the commission under the provisions of this act.

c. Any person whose duty it shall be under the provisions of this act to inspect, measure and seal any granary, crib, bin or other receptacle for the storage of grain.

d. Any certificate or receipts evidencing the storage of grain under the provisions of this act and any rules or regulations promulgated thereunder shall be considered to be used herein in the same connection as the word "receipt" is used in the Uniform Warehouse Receipts Act.

e. Any person or persons (whether individuals, corporations, partners or co-partners) who shall have title to and possession of any grain stored under the provisions of this act, and shall be construed to have been used herein in the same connection as the word "warehouseman" is used in the Uniform Warehouse Receipts Act. (Act Mar. 25, 1935, c. 65, §2.)

5077-17. Duties of commission.—The commission is hereby authorized and it is hereby declared to be its duty to carry out the provisions of this act, and to this end it is hereby authorized to:

a. Make and promulgate such rules and regulations not inconsistent herewith as shall be necessary or desirable effectually to carry out the provisions hereof.

b. Make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins or other receptacles as may be necessary to protect the grain stored therein under the provisions of this Act.

c. Prepare and have printed under the same conditions as other state printing the necessary blanks, forms and other printed matter and make such charges to persons desiring such printed matter as shall meet the cost of production thereof. (Act Mar. 25, 1935, c. 65, §3.)

5077-18. May appoint supervisory boards.—The commission is authorized to appoint such local supervisory boards for any county or counties which it may deem necessary for the purpose of supervising generally and under the direction of the commission, grain in storage, the issuance of certificates against such grain and carrying out of the purposes and enforcing the provisions of this act.

Such boards shall consist of not less than three nor more than seven members, each of whom shall be a producer of grain in the state of Minnesota and a resident thereof. Each member, upon appointment, shall qualify by taking oath similar to that required of public officials and shall continue in office until his successor is appointed by the Commission, which shall also have authority to fill any vacancies arising by reason of the resignation, death or removal by it of any such member or members.

Each such board shall select such officers, keep such records and perform such duties as the commission may prescribe. (Act Mar. 25, 1935, c. 65, §4.)

5077-19. Privileges open to all.—The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place grain in storage and have certificate or certificates issued against such grain under the provisions of this act shall make application therefor to the commission in the manner and upon the forms provided by it for that purpose. (Act Mar. 25, 1935, c. 65, §5.)

5077-20. May appoint local sealer.—The commission, may, upon the recommendation of any board appointed by it hereunder, or upon the request in writing of ten or more producers of grain appoint a local sealer or sealers for any county or counties or part thereof, and every such sealer so appointed shall have the same authority with respect to the provisions of this act and the rules and regulations promulgated thereunder and the enforcement thereof as any officer of the peace. (Act Mar. 25, 1935, c. 65, §6.)

5077-21. Bond of sealer.—Each sealer shall furnish bond for the faithful performance of his duties in such amount as shall be determined by the commission, but in no event shall such bond be in an amount less than $1,000.00. The bonds and sureties thereon shall, in every case, be subject to approval of the commission and be deposited with it, and in case it is not a personal bond the premium thereon shall be paid by the commission out of the funds collected under this act. He shall also qualify by taking oath similar to that required by public officials. (Act Mar. 25, 1935, c. 65, §7.)

5077-22. Duties of sealer.—It shall be the duty of the sealer under the direction of the Commission, to:

a. Supervise the storage of grain;

b. Ascertain the amount stored by each owner who shall desire to avail himself of the privileges of this act;

c. Determine so far as possible upon the basis prescribed in the rules and regulations issued hereunder the exact grade and quantity thereof.

d. Ascertain, prior to the issuance of any certificate, that the bin, crib, granary or other receptacle in which the grain is stored is satisfactory for the storage of such grain and that such receptacle conforms to the regulations applicable thereto promulgated by the commission.

He shall before delivering certificate to the owner ascertain that there are no other certificates outstanding upon the grain and shall seal the granary, crib, bin or other receptacle in which the grain is stored in the manner hereinafter provided, and thereafter to make periodic inspections of the granaries, cribs, bins or other receptacles so sealed at such times and in such manner as the commission may determine but in no event less frequently than 90-day intervals, rendering to the commission with reference to each such subsequent inspection, and to the owner when requested, report or affidavit in such form as may be required in regard to the amount and condition of the grain under seal and the condition of the structure within which it is stored. (Act Mar. 25, 1935, c. 65, §8.)

5077-23. Sealer may inspect grain.—The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or in the granary, crib, bin or other receptacle in which it shall have been stored and the acceptance of a certificate by any owner shall be deemed consent thereafter for the sealer or any person duly authorized thereunto by the commission to enter and inspect the sealed grain and the receptacle wherein stored. (Act Mar. 25, 1935, c. 65, §9.)

5077-24. Seals.—Seals employed hereunder shall be furnished by the commission and shall contain the following language:

"Sealed by authority
State of Minnesota
Railroad and Warehouse Commission
Any person tampering with this seal or removing any grain herein shall be subject to a fine and imprisonment as provided by law
Consecutive no. ....."

(Act Mar. 25, 1935, c. 65, §10.)

5077-25. Certificates.—Certificates shall be upon forms to be prepared and furnished by the commission and every certificate must embody within its written or printed terms:

a. The date and consecutive number thereof;

b. A particular description of the granary, crib, bin or other receptacle in which the grain is stored and of the premises on which it is located;

c. Description of the grain as may be required by the regulations issued hereunder;

d. Name of the owner or owners, whether ownership is sole, joint, or in trust, and in case of tenants, the date of the expiration of the lease;

e. Statement that no other certificates are outstanding on the grain represented thereby;

f. Statement whether grain will be delivered to bearer, to a specified person or to a specified person or his order, and at what place it will be delivered.

g. Facsimile signature of each of the members of the commission and counter signature of the sealer.

h. Statement of any loans or other indebtedness which in any manner constitutes a lien, whether statutory or contractural, including both mortgage and landlord's lien upon the grain.

i. Form of waivers of liens.

(Act Mar. 25, 1935, c. 65, §11.)

5077-26. Owner to exercise reasonable care.—No term or condition shall be inserted in any certificate, whether negotiable or otherwise which shall in any manner purport to relieve the owner from exercising that degree of care in the safe keeping of the grain in storage which a reasonably prudent man would exercise with regard to similar property of his own. (Act Mar. 25, 1935, c. 65, §12.)

5077-27. May issue more than one certificate.—The sealer may issue to the owner one or more certificates as herein provided, but each such certificate shall cover a separate granary, crib or bin. (Act Mar. 25, 1935, c. 65, §13.)

5077-28. Certificates to be in quadruplicate.—All certificates issued hereunder shall be issued in quadruplicate, three copies marked "Duplicate—No Value", the original and one duplicate copy shall be delivered to the owner and the other duplicate copies shall be filed with the Commission, or the local supervisory warehouse board for the county in which the grain is stored if any such board has been established hereunder. (Act Mar. 25, 1935, c. 65, §14.)

5077-29. Owner to deliver duplicate.—When the owner negotiates the original certificate, he shall at the same time deliver to the assignee the duplicate or the receipt of the register of deeds for the same. Such assignee may file the duplicate in the office of the register of deeds of the county in which the grain is located which duplicate shall remain in the custody of the register of deeds, except as hereinafter provided. (Act Mar. 25, 1935, c. 65, §15.)

5077-30. Duplicates may be filed with the Register of Deeds.—When a duplicate is filed in the office of the register of deeds, he shall index the same in the chattel mortgage index or other suitable index book showing date of the certificate, the number thereof, to whom issued, kind, quantity, and location of the grain. He shall collect 35 cents for each certificate indexed. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage. (Act Mar. 25, 1935, c. 65, §16.)

5077-31. Assignments may be filed.—When the owner or holder of a certificate makes written assignment thereof the register of deeds shall on request of the assignee enter a copy of such assignment upon the duplicate in his office and enter upon the index book the date of the assignment, the names of the assignor and the assignee. He shall collect 25 cents for each assignment entered. (Act Mar. 25, 1935, c. 65, §17.)

5077-32. Cancellation of certificates.—The owner may secure the cancellation of a certificate by delivering the original to the commission or the board by which it was issued with the request that it be cancelled. The commission or board shall stamp the original "cancelled" with the date of such cancellation and retain same. Upon notice in writing from the commission or board issuing the certificate that it has been cancelled, the register of deeds shall release the duplicate filed of record without charge. (Act Mar. 25, 1935, c. 65, §18.)

5077-33. Owner to deliver grain.—The owner shall, in the absence of some lawful excuse provided by the act, deliver the grain stored upon demand by the holder of the certificate of the grain, if such demand is accompanied by an offer to surrender the certificate. (Act Mar. 25, 1935, c. 65, §19.)

5077-34. Excuse for refusal.—In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal. (Act Mar. 25, 1935, c. 65, §20.)

5077-35. Expense of supervision.—For the purposes of defraying the expenses of supervision the owner shall pay to the commission or the local supervisory board of the county in which the grain is stored, if any, at the time of sealing an amount determined by the rules and regulations issued hereunder, but in no event to exceed one cent per bushel for grain inspected and sealed by the sealer. Out of the funds thus created, the compensation of the sealer as fixed by the commission shall be paid by it or by the board of the county in which the grain is stored, subject to its approval. (Act Mar. 25, 1935, c. 65, §21.)

5077-36. Fees for sealer.—In the exercise of his power and functions as an officer of the peace in con-

nection with the provisions of this chapter, the sealer be [sic] entitled to the same fees as are provided by law for the performance of similar duties. (Act Mar. 25, 1935, c. 65, §22.)

5077-37. Violations—penalties.—Any person unlawfully removing, breaking or in any manner interfering or tampering with any seal, lock or other fastening placed upon any granary, crib, bin, or other receptacle for grain under the provisions of this chapter, except when such removal shall be rendered imperative to prevent the damage, loss or destruction of grain stored therein, shall be guilty of a crime and shall be punished by a fine of not less than $100.00 or more than $500.00, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. (Act Mar. 25, 1935, c. 65, §23.)

5077-38. Fraudulent certificates.—An owner, the agent or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding $1,000.00, or by both. (Act Mar. 25, 1935, c. 65, §24.)

5077-39. Violations—penalties.—An owner, or any officer, agent or servant of an owner who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and uncancelled, without obtaining the possession of such certificate at or before the time of such delivery, shall except when ordered by the court, as hereinbefore provided, be found guilty of a crime and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding $1,000.00, or by both such imprisonment and fine. (Act Mar. 25, 1935, c. 65, §25.)

5077-40. Violations—penalties.—Any owner who shall, after the issuance and negotiation of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate or otherwise incumber, or attempt to take, sell, mortgage, pledge, or otherwise incumber, the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of a crime and upon conviction thereof, shall be subject to a fine of not less than $100.00 nor more than $1,000.00 or be imprisoned in the county jail for not more than one year, or be punished by both such fine and imprisonment. (Act Mar. 25, 1935, c. 65, §26.)

5077-41. Uniform warehouse receipt laws to apply.—All the provisions of the uniform warehouse receipts law as contained in Laws 1931, Chapter 161 [sic], relative to the negotiation transfer, sale or endorsement of warehouse receipts shall, so far as possible, apply to the negotiation, transfer, sale or endorsement of the certificates provided for herein. (Act Mar. 25, 1935, c. 65, §27.)

"Laws 1931, Chapter 161" cited in the above section should undoubtedly read. "Laws 1913, Chapter 161." The Uniform Warehouse receipts act is set out in the 1927 edition beginning with section 5110.

5077-42. Provisions severable.—If any provision or part of this act [sic] to be held unconstitutional it shall not invalidate or in any way affect any other provision or part thereof. (Act Mar. 25, 1935, c. 65, §28.)

5077-43. Law repealed.—Laws 1931, Chapter 294, is hereby repealed. (Act Mar. 25, 1935, c. 65, §29.)

MISCELLANEOUS PROVISIONS

5084. Supervision by commission over buying, selling, etc.

Whether form of grain purchase contract would violate law, held question of fact. Op. Atty. Gen., Aug. 1, 1933.

Commission is to exercise supervision in a method and manner determined by itself and is not bound to adhere to any former practice. Op. Atty. Gen. (371b-3), Nov. 2, 1934.

Section is not sufficiently broad to vest control of itinerant grain merchant and director. Op. Atty. Gen. (371b-3), Oct. 17, 1935.

Dealings in commodity futures. 18MinnLawRev544.

5088. Grain includes flax seed and soy beans.—The term "grain" wherever used in this subdivision shall be held to include flax seed and soy beans. (As amended Apr. 1, 1939, c. 133.)

WAREHOUSE RECEIPTS

5111. Form of receipts—Essential terms.

Commission has authority to order warehousemen to indorse statutes respecting their liability upon face of receipts issued. Op. Atty. Gen. (371b-14), May 10, 1937.

5114. Definition of negotiable receipt.

Christensen v. S., 190M299, 251NW686; note under §5163.

5123. Lost or destroyed receipts.

Where grain has been stored by owner on his own premises and under seal and warehouse certificates have been issued by state grain inspection department and lost, bond may be given to protect all concerned in connection with application for loan from federal government. Op. Atty. Gen. (215c-9), June 2, 1934.

5163. Delivery of goods without obtaining negotiable receipt.

Where circumstances of a public warehouseman's misappropriation of storage grain are such as to indicate to commission merchant to whom it is shipped that misappropriation is not an isolated transaction but one of a series or in accordance with shipper's general practice or habit, commission merchant is put upon inquiry as to character of grain in subsequent shipments from warehouseman and, if such inquiry, pursued as far as circumstances of situation would lead a man of reasonable business prudence, would have disclosed misappropriation, commission merchant who sells subsequent shipments is liable to owners of grain or their assignee for its value. Christensen v. S., 190M299, 251NW686. See Dun. Dig. 10140.

A warehouseman operating under agreement of elevator for sale of deed and receives distributor's bond executed to secretary of agriculture of United States, acting on behalf of United States, may waive receipt provided for by this section. Op. Atty. Gen. (371b-14), Dec. 22, 1934.

UNIFORM WAREHOUSE RECEIPTS ACT

The Uniform Warehouse Receipts Act has been adopted by Alaska, District of Columbia, Puerto Rico and all the states with the exception of Georgia, New Hampshire and South Carolina.

5172. Supervision by Commission over warehousemen.

Public warehouse statute does not apply to warehouse in village having less than 5,000 inhabitants. J. I. Case Co. v. J., 190M518, 252NW436.

5173. Construction of various terms.

Whether or not a certain person is a warehouseman is a question of fact to be determined by the commission. Op. Atty. Gen. (645b-21), Nov. 2, 1934.

Merchandise brokers maintaining a small warehouse for convenience of customers is a "warehouseman." Op. Atty. Gen. (371b-14), Nov. 27, 1934.

(c).

General bonded warehouses as authorized by Mason's U.S.C.A. Title 26, §393, are not within purview of act. Op. Atty. Gen. (645h-25), May 24, 1935.

A company operating field warehouses on grounds of plant of persons desiring to use their commodities for bank collateral purposes was a "warehouseman" subject to public warehouse statutes of state. Op. Atty. Gen. (654b-21), Feb. 27, 1936.

Opinion of Feb. 27, 1936, adhered to. Op. Atty. Gen. (645b-21), May 1, 1936.

5174. What is required of warehousemen.

Where plaintiff claimed warehouseman's lien as against conditional seller, evidence held not to show that conditional purchaser was lessee of any part of warehouse wherein goods were stored. J. I. Case Co. v. J., 190M518, 252NW436. See Dun. Dig. 10147.

Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

5182. Obligation to issue uniform receipts.

Commission has authority to order warehousemen to indorse statutes respecting their liability upon face of receipts issued. Op. Atty. Gen. (371b-14), May 10, 1937.

5184. Filing schedule of rates.

Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

5188. Commission to fix rates and regulations.
Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

5189. Obligation to obtain license.—Every person desiring to engage in the business of warehouseman before engaging therein shall be licensed annually by and shall be under the supervision and subject to the inspection of the commission. Written application, under oath in such form as shall be prescribed by the commission, shall be made to the commission for license, specifying the city in which it is proposed to carry on the business of warehousing, the location, size, character and equipment of the building or buildings or premises to be used by the said warehouseman, the kind of goods, wares and merchandise intended to be stored therein, the name of the person or corporation operating the same, and of each member of the firm or officer of the corporation, and any other facts necessary to satisfy the commission that the property proposed to be used is suitable for warehouse purposes, and that the warehouseman making the application is qualified to carry on the business of warehousing. Should the commission decide that the building or other property proposed to be used as a warehouse is suitable for the proposed purpose, and that the applicant or applicants are entitled to a license, notice of such decision shall be given the interested parties, and upon the applicant or applicants filing with the commission the necessary bond, as provided for in this act, the commission shall issue the license provided for, upon the payment of the license fee, as in this section provided. A warehouseman to whom a license is issued shall pay for such license a fee of one hundred dollars ($100.00). Such license may be renewed from year to year, but shall never be valid for a period of more than one year, and always upon payment of the full license fee, as provided for in this section for such renewal; provided, that no license shall be issued for any portion of a year for less than the full amount of the license fee, as provided for in this section. Each license obtained under this act shall be publicly displayed in the main office of the place of business of the warehouseman to whom it is issued. Such license shall authorize the warehouseman to carry on the business of warehousing only in the one city named in said application, and in the buildings therein described. But the commission, without requiring an additional bond and license may issue permits from time to time to any warehouseman already duly licensed under the provisions of this act, to operate an additional warehouse or warehouses in the same city for which his original license was issued during the term thereof, upon his filing an application for such permit, and in such form as shall be prescribed by the commission.

Licenses and permits may be revoked by the commission for violation of law, or of any rule or regulation by it prescribed, upon notice and hearing. A license may be refused to any warehouseman whose license has been revoked during the preceding year. (As amended Apr. 8, 1939, c. 159.)

Sec. 2 of Act Apr. 8, 1939, cited, provides that the act shall take effect from its passage.

CHAPTER 28A

Department of Weights and Measures

5270. Department created—Jurisdiction of railroad and warehouse commission.
Op. Atty. Gen. (371b-2), July 5, 1934; note under §5282. Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. Op. Atty. Gen. (495), Dec. 27, 1935.

5276. Duties and powers of department.
175M276, 221NW6.

5277. Inspecting, testing, sealing—Incorrect weights, measures, etc.
Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. Op. Atty. Gen. (495), Dec. 27, 1935.

5282. Abolishing fee for inspection of weights and measures.
But see §5273 as to "weights and measures fund". This section has no application to question as to whether common carriers or warehouse or elevator should be billed for cost of testing track scales used by common carrier for purpose of weighing carload freight. Op. Atty. Gen. (371b-2), July 5, 1934.

INSPECTION OF METERS AND DEVICES FOR MEASURING OF ELECTRICITY, GAS AND WATER

5285-1. Inspection and test by railroad and warehouse commission—Petition for by residents of municipalities—Fees—Sealing and labeling devices.—The railroad and warehouse commission shall have power to inspect and test all meters, mechanical devices and measures of every kind, and tools, appliances and accessories connected therewith, used, employed, kept, sold or offered or exposed for sale within this state for the purpose of measuring the amount, quantity or extent of electricity, gas or water furnished, sold or distributed to the public by any person, association, corporation or municipality except cities of the first class having, or which may hereafter have meter inspection departments. Upon petition of at least 10 consumers of electricity, gas or water within the territorial limits of any municipality and upon the deposit with the clerk of such municipality by each of such consumers of a fee of 25 cents for each such meter, mechanical device and measure installed or used upon the premises of each such petitioning consumer, the governing body of such municipality may request the commission to make an inspection and test of all such meters, mechanical devices and measures upon the premises of such petitioning consumers. Thereupon the commission, within a reasonable time after the receipt by it of such request shall proceed to make an inspection and test of all such meters, mechanical devices and measures upon the premises of all such petitioning consumers and upon the premises of all other consumers within such municipality who, at the time of such inspection and test, shall have deposited with the clerk of such municipality said fee of 25 cents for each such meter, mechanical device and measure upon the premises of such consumers. All such fees collected by the clerk of any such municipality shall be remitted by such municipality to the commission within 30 days of the completion of such inspection and test, and deposited to the credit of the Weights and Measures fund. All such meters, mechanical devices and measures found, upon inspection, to be correct and accurate, shall be sealed with proper devices to be approved by the commission. The commission, or any of its employes, shall condemn, seize and destroy all incorrect and inaccurate meters, mechanical devices and measures which, in the judgment of the commission, cannot be satisfactorily repaired; and such as are incorrect and inaccurate and yet may be repaired, shall be marked as "Condemned for Repair," in the manner to be prescribed by the commission. The owners of such meters, mechanical devices and measures which have been so "Condemned for Repair," shall have the same repaired and corrected within 30 days; and such meters, mechanical devices and measures shall not be disposed of without the consent of the commission. In the general performance of its duty the commission, or any of its employes, may

enter or go into or upon any premises, building, stand or place at all reasonable times. ('27, c. 291, §1 [Eff. July 1, 1927, by §3]; Mar. 27, 1931, c. 98.)

Mandatory jurisdiction of commission to test meters may only be invoked by governing body of municipality. Op. Atty. Gen. (371b), Sept. 24, 1936.

WEIGHING AND GRADING OF SLAUGHTER LIVESTOCK

5285-11. Definitions.—(a) As used herein, the terms "packing plants" and "slaughtering houses" shall mean plants, houses and places of business where livestock purchased or acquired at places within the state of Minnesota are slaughtered.

(b) The term "concentration point" shall mean any stockyards at which livestock is assembled by rail, or by rail and/or other means of transportation, and at which livestock is bought and sold or is assembled for shipment or reshipment to a packing plant or a public stockyards, or graded or weighed for the purpose of establishing a basis for sale or reshipment. A concentration point shall not be considered to be a railroad stockyards owned and operated by a railroad company and used as a railroad shipping facility and which is used by the public only for loading and unloading of livestock shipped by rail. A concentration point shall not be considered to be a stockyard or place where only feeder pigs weighing 50 pounds or less are sold.

(c) The term "buyer" shall mean any person, firm, corporation, or his or its employees, agents and representatives, engaged in buying slaughter livestock direct from producers, their agents or representatives, except persons engaged exclusively in the sale of meats at retail.

(d) The term "packers" shall mean any person engaged in the business of buying livestock for purposes of slaughter or of manufacturing or preparing meats or meat products for sale or shipment within the state of Minnesota. "Packers" shall not include persons engaged exclusively in the sale of meats at retail.

(e) The term livestock commission merchant shall mean any person or firm engaged in selling or buying livestock at a public terminal livestock market. (Act Apr. 20, 1935, c. 216, §1.)

Act includes stockyards defined by the Packers and Stockyards Act, but is inoperative as to stockyards under supervision of Secretary of Agriculture, except that Secretary may appoint a state agency for weighing of livestock. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

Packers at public terminal livestock market are not "buyers" where the purchasers are from commission firms and not directly from producers. Id.

This act amends in several respects Laws 1919, Ex. Sess., c. 40 (§§4685, et seq.). Id.

"Other than veal" as used in Laws 1931, c. 394, §2, (§6240-18½a) means "live calves", and jurisdiction of buyers thereof is under that act rather than this act. Op. Atty. Gen. (832j-8), Dec. 31, 1938.

(c).

A packing company buying slaughter livestock direct from producers, their agents or representatives, and not engaged exclusively in sale of meats at retail, is a "buyer." Op. Atty. Gen. (371b-10), Mar. 17, 1937.

A packing establishment which is a "packer" within definition of federal packers and stockyards act, but which is not subject to federal regulation as a "stockyard," is subject to provisions of this act relating to licensing of buyers. Id.

5285-12. Railroad and warehouse commission to appoint weighers.—The railroad and warehouse commission shall appoint at packing plants, slaughtering houses and concentration points where the average daily number of livestock slaughtered or handled is 250 head or more, such weighers as may be necessary for weighing livestock, provided that no weighers shall be appointed at packing plants or slaughtering houses at which the only livestock slaughtered or handled is purchased or acquired at a public stockyards as defined by Laws 1919, Chapter 461 [§5255]. The commission shall prescribe and follow such reasonable regulations as it deems necessary for determining such daily average. Such weighers shall weigh all livestock coming to said places for sale or slaughter, unless the same has been previously weighed by state weighers, and shall keep a record thereof. Upon request the weighers shall furnish the interested parties a certificate setting forth the number of animals weighed and the actual weight of such animal or animals. Such certificate shall be prima facie evidence of the facts therein certified. The scales at all such places on which livestock is weighed shall be constructed and maintained in accordance with requirements of the state department of weights and measures, and shall be tested up to the maximum draft that may be weighed thereon by the state department of weights and measures at least once every 30 days. (Act Apr. 20, 1935, c. 216, §2.)

Commission is authorized to fix hours during which weighing services will be performed. Op. Atty. Gen. (271b-10), Aug. 29, 1936.

Commission has no power to relax apparent requirement as to weighing and feeding of livestock at concentration points. Id.

Commission has jurisdiction to weigh stock at packing plant slaughtering 250 head or more daily notwithstanding stock has been purchased elsewhere in state. Op. Atty. Gen. (371b-10), Feb. 17, 1937.

5285-13. Commission to fix fees.—The commission shall prescribe the fee necessary to cover the cost of such weighing, to be assessed and collected from the seller in such manner as the commission may prescribe, providing that the fee assessed be the same, and the manner of collection thereof be uniform at all markets, including the public terminal livestock market, in the state of Minnesota at which the average daily number of head of livestock bought and sold is 250 or more. All monies so collected shall be deposited in the state treasury and known as the livestock weighing fund, and shall be paid out only on the order of the commission and the auditor's warrant. (Act Apr. 20, 1935, c. 216, §3.)

Commission is authorized to appoint weighers at points like Austin, Amberton and Albert Lea and assess costs of weighing against interested packing company, if points referred to are packing plants, slaughter houses or concentration points where the average daily run is 250 head or more. Op. Atty. Gen. (371-10), Aug. 29, 1936.

5285-14. Qualifications of weighers.—No weigher shall during his term of service be in any manner interested in the handling, shipping, purchase or sale of livestock, nor in the employment of any person or corporation engaged therein. (Act Apr. 20, 1935, c. 216, §4.)

5285-15. Bonds.—Every such weigher shall give to the state a bond in the sum of $2,000.00, conditioned for the faithful discharge of his duties. (Act Apr. 20, 1935, c. 216, §5.)

5285-16. Certain acts deemed gross misdemeanor.—Any weigher who shall knowingly or carelessly weigh any livestock improperly, or give any false certificate of weight, or accept money or other consideration directly or indirectly for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall, improperly, influence or attempt to influence any such weigher in the performance of his duty by preventing his proper access to the scales used in the weighing of livestock or otherwise, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than $100.00 nor more than $1,000.00, or by imprisonment in the county jail for not less than 30 days, nor more than one year, or by both such fine and imprisonment. (Act Apr. 20, 1935, c. 216, §6.)

5285-17. Commission to prescribe rules and regulations.—(a) The railroad and warehouse commission shall prescribe rules and regulations relating to the weighing, fill, dockage, grades and inspection of livestock, and it shall be the duty of every owner or operator of any packing plant, slaughtering house and concentration point to comply with such rules and regulations, and the commission shall employ not more than nine inspectors at a salary not to exceed

$3,000.00 each per annum to supervise and inspect the weighing, grading, fill and dockage of livestock at packing plants, slaughtering houses, concentration points and public stockyards, and to insure compliance with such rules and regulations and with the provisions of this act; provided, however, that nothing herein contained shall authorize or empower the commission to employ or designate any person or persons to fill, dock or grade livestock.

(b) Every owner or proprietor of a packing plant, slaughtering house or concentration point and every livestock commission merchant shall keep within the state of Minnesota such accounts, records and memoranda as to fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stock holding or otherwise. The commission is authorized to require annual or more frequent reports from every owner or proprietor of any packing plant, slaughtering house, concentration point or public stockyards subject to the provisions of this act, in such form or forms and relating to such matters and things connected with such business as the commission may prescribe. The commission shall at all times have access to all accounts, records and memoranda, including all documents, papers and correspondence on the date that this act becomes a law or thereafter existing and kept or required to be kept by owners or operators of packing houses, slaughtering houses, concentration points and public stockyards subject to this act. The commission may prescribe the manner and form in which such accounts, records and memoranda shall be kept and the matters and things connected with the business of such person or persons which such accounts, records and memoranda shall disclose. Thereafter any person who fails to keep accounts, records and memoranda in the manner and form prescribed or approved by the commission shall upon conviction be fined not more than $10,000.00, or imprisoned not more than one year, or both.

(c) Any employee or agent of the commission duly authorized in writing by the commission shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper or correspondence relating to the business of any owner or operator of a packing plant, slaughtering house, concentration point or public stockyards, or to which the commission is authorized to have access under the provisions hereof. Any person who upon demand refuses any duly authorized employee or agent of the commission such right of access or copying, or hinders, obstructs or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500.00 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Said penalty shall be recoverable in a civil suit brought in the name of the state of Minnesota and shall be paid into the treasury of the state as miscellaneous receipts.

(d) Upon the application of the attorney general of the state of Minnesota at the request of the commission, the district courts of the state of Minnesota shall have jurisdiction to issue writs of mandamus commanding the owner or operator of any packing plant, slaughtering house or concentration point to comply with the provisions of this section of this act, or any order of the commission made in pursuance thereof. (Act Apr. 20, 1935, c. 216, §7.)

Power granted to commission to make rules and regulations is not delegation of legislative power. Op. Atty. Gen. (82o), Mar. 21, 1935.

(b).

Commission is to prescribe form but packers must provide printing costs for themselves. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285–18. Buyers must be licensed after June 30, 1935.—On and after June 30, 1935, all buyers of livestock as herein defined shall be duly licensed as hereinafter provided. No agent shall act for any such buyer unless the buyer is duly licensed and has designated such agent to act in his behalf and notified the railroad and warehouse commission in his application for license or in writing of such appointment, and requested the commission to issue to such agent an agent's license. The buyer shall be accountable and responsible for the acts of his or its agents.

Each livestock commission merchant, person, firm, corporation, or his or its employees, agents and representatives, before engaging in the business of buying livestock, shall annually on or before June 30th of each year file an application with the railroad and warehouse commission on a form prescribed by it for a license to transact such business. The application shall state the nature of the business as hereinabove set forth, the name or names of the person or persons applying for the license, and if the applicant be a firm, association, partnership or corporation, the full name of each member of such firm, association or partnership, or the names of the officers of the corporation, and the name of the agent or agents of such person, firm, association, partnership or corporation, the postoffice address of the principal place of business of the applicant and such other facts as the commission shall prescribe.

Each applicant shall file with his application a surety bond issued by a responsible surety company in the sum of $2,000.00, in which the commission shall be the obligee but which shall be for the purpose of protecting any person dealing with such applicant, or his or their agent or agents, from loss by reason of acts of fraud, dishonesty, forgery and theft on the part of the principal and/or his or their agents and representatives. The commission shall thereupon issue to such applicant on payment of the sum of five dollars a license entitling the applicant to conduct the business of buying livestock at the place or places named in the application until the 31st day of March next following. A similar license shall be issued to each agent upon the payment of five dollars, and no agent shall engage in the buying of livestock without first securing a license.

The commission may decline to grant or may revoke a license when it is satisfied that (a) the applicant or licensee has violated the laws of this state governing the shipment or transportation of livestock; (b) that the applicant or licensee has been guilty of fraudulent practices in the purchase of livestock or in dealing in livestock; or (c) that the applicant or licensee has violated or failed to comply with the provisions of this act. Before any license shall be revoked the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the commission upon at least ten days' notice to the licensee to determine whether such license shall be revoked or declined, which notice may be served either by registered mail addressed to the address of the licensee as shown in his application or in the manner provided by law for the service of a summons. At the time and place fixed for hearing the commission or any official, employee or agent of the commission authorized by the commission shall receive evidence, administer oaths, examine witnesses and hear the testimony, and shall thereafter file an order either dismissing the proceedings or revoking the license. (Act Apr. 20, 1935, c. 216, §8.)

License fee must be paid into state treasury pursuant to Mason's Stats. 1927, §121. Op. Atty. Gen. (196l), Oct. 4, 1935.

Commission may have licenses expire on June 30 of each year instead of March 31. Op. Atty. Gen. (832j-8), May 18, 1936.

Commission is not required to recognize any bond cancellation notice. Op. Atty. Gen. (371a-2), July 21, 1936.

Livestock buyers' bond expires on June 30 of each year and a new bond must be written annually. Id.

Penal sum of bond is surety's maximum liability. Id.

Packers operating at South St. Paul are not required to secure a license or file a bond. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285–19. Buyers must keep records.—Each buyer shall keep a record in form satisfactory to the railroad and warehouse commission showing the grading of animals purchased, the number and weight of

animals of each grade included in the purchase, the price per hundred pounds paid for the animals of each grade, the number of animals docked, the number of animals in each grade docked, and the amount of dockage of each grade and such other accounts, records and memoranda concerning his buying transactions as may from time to time be required by the commission, and the commission shall at all times have access to such accounts, records and memoranda and may at any time examine livestock purchased by buyer and may take such action as it deems necessary to prevent or discover violations of this act. (Act Apr. 20, 1935, c. 216, §9.)

5285–20. Scales must be tested regularly.—The buyers of slaughter livestock operating at concentration points shall have the scales upon which the animals are weighed, inspected and tested by a scale inspector of the state department of weights and measures at least once every thirty days at their own expense. All such scales shall be tested up to the maximum draft that may be weighed on the scales. (Act Apr. 20, 1935, c. 216, §10.)

Buyers of livestock must bear expense of testing and inspecting railroad stockyard scales at concentration point. Op. Atty. Gen. (495f-2), Oct. 14, 1935.

Expense of testing scales at union stockyards may not be charged against the stockyards company. Op. Atty. Gen. (371b-10), Nov. 20, 1935.

5285–21. Livestock must be fed before weighing.—The seller may require the buyer of his livestock to give the livestock such feed as it will consume during a two-hour period prior to weighing, the feed to be furnished by the buyer at the expense of the seller, and after such feeding the animals shall be given by the buyer free access to water until their thirst is fully quenched. If, however, feeding is omitted, the actual scale weight shall apply as the sole basis for settlement with the shipper. (Act Apr. 20, 1935, c. 216, §11.)

Commission has no power to relax apparent requirement as to weighing and feeding of livestock at concentration points. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285–22. Bonds to be filed with secretary of state.—All bonds required by this act shall be filed with the secretary of state. Suit may be brought thereon by any person injured by the misconduct of the principal. (Act Apr. 20, 1935, c. 216, §12.)

5285–23. Violations to be gross misdemeanor.—Any person who shall violate any of the provisions of this act, and for which violation no penalty is hereinbefore specified, shall be guilty of a gross misdemeanor and shall be punished for each such offense by a fine of not less than $100.00 nor more than $1,000.00, or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment. (Act Apr. 20, 1935, c. 216, §13.)

5285–24. Acts severable.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate any other part or provision in the remainder of the Act; and if any part or provision of this Act shall for any reason be adjudged by any such court constitutionally inapplicable to any case within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other type of case within their terms. (Act Apr. 20, 1935, c. 216, §14.)

CHAPTER 28A-1

Telephone Companies

5287. Construction of "Telephone Company."

A telephone company after expiration of term of its original franchise, which was conditioned upon its furnishing to city free poles, wires, conductors, and conduits for its separate police and fire alarm systems, cannot be compelled by Railroad and Warehouse Commission to furnish such facilities to city; such use of its property not being a public use subject to commission supervision, but a strictly private use, to be covered, if at all, by voluntary contract. City of St. Paul v. T., 193M484, 258 NW822. See Dun. Dig. 9583a.

5289. Rates to be fair and reasonable.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Western Buse Telephone Co. v. N., 188M524, 248NW220.

In determining rates, rural subscribers are not entitled to have considered profits made from advertisement in telephone directories. Id.

Co-operative farm line telephone companies come under jurisdiction of commission as provided in this section. Op. Atty. Gen., Mar. 2, 1933.

5290. Schedule of rates, etc.

Interstate business of telegraph and telephone companies comes under the federal law regulating commerce (Mason's U. S. Code. Title 49, Chap. 1.). 173M424, 217 NW386.

A telephone company after expiration of term of its original franchise, which was conditioned upon its furnishing to city free poles, wires, conductors, and conduits for its separate police and fire alarm systems, cannot be compelled by Railroad and Warehouse Commission to furnish such facilities to city; such use of its property not being a public use subject to commission supervision, but a strictly private use, to be covered, if at all, by voluntary contract. City of St. Paul v. T., 193M484, 258 NW822. See Dun. Dig. 9583a.

5291. Commission to fix reasonable rates.

Act July 24, 1937, Sp. Ses., c. 98, §9, makes an appropriation of $25,000 to constitute a revolving fund with which to conduct investigations of telephone rates. It is omitted as temporary.

Western Buse Telephone Co. v. N., 188M524, 248NW220; note under §5296.

Property included in exchange revenues are revenues derived from property used to render interurban service, the value of which property is included in the rate base, and a share of the revenues derived from toll charges for long-distance calls originating in the area, provided such toll charges are not also assessed to subscribers and provided further that the share is related to the cost of the use of the facilities used and maintained to connect the subscribers' station to the toll switchboard. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078a.

Within limits expenditures by public utilities by way of pension to superannuated employees should be treated as an expense of operation for ratemaking purposes. Id. See Dun. Dig. 8078a.

Action of commission respecting amount that should be allowed for advertising and convassing will generally be sustained unless arbitrary. Id. See Dun. Dig. 8078a.

Reasonable amount for rate case expenses are allowable where utility prevails or rates fixed by commission are retroactive, but such expenses need not be allowed if rates charged are found to be greater than are fair and reasonable. Id. See Dun. Dig. 8078a.

In fixing the "fair value" of the property, it is proper to consider historical cost (the cost of the original plant plus additions, less retirements and accrued depreciation) provided consideration is given to changes in the price level; reproduction cost at the time of the inquiry, less accrued depreciation, provided the reproduction costs of the components can be found with reasonable certainty; the financial history of the company and all other relevant facts. Id. See Dun. Dig. 8078a.

Annual depreciation charges may be determined by computing and weighing the losses from depreciation for each class of property, provided there is some relation between the depreciation reserve fund and the amount of actual depreciation which has accrued. Id. See Dun. Dig. 8078a.

5295. Connections between telephone companies not discontinued.

In determining whether one is guilty of an offense under §5310 in severing the connection between a company's exchange and the rural telephone company, the fact that the connection was made under private arrangements and not pursuant to an order of the Railroad and Warehouse Commission would be immaterial. Op. Atty. Gen., April 7, 1931.

A nonstockholder served by co-operative farm line telephone company has no enforceable right where majority of stockholders disconnect line from exchanges of other companies. Op. Atty. Gen., Mar. 2, 1933.

Township telephone system may sever connection without consent of railroad and warehouse commission. Op. Atty. Gen. (434a-8), Apr. 24, 1936.

5296. Telephone companies required to permit physical connection.

Right to compel physical connection between telephone companies rests entirely in statutory law. Western Buse Telephone Co. v. N., 188M524, 248NW220.

Any rate for switching services between telephone companies is confiscatory if insufficient to constitute reasonable return on value of property used and services required. Id.

A sound method of apportionment of property jointly used in switching services is to base apportionment upon use which includes volume of traffic. Id.

Commission may disregard its own rules, which provide a method of determining cost of service stations' switching, when they are found inadequate or obsolete. Id.

Value of use is not shown by gross earnings. Id.

Neither joint property nor joint traffic expense can be apportioned on the per circuit basis. Id.

Testimony by competent valuation experts who have recently examined property and made estimates is preferable to mere calculations based on averages and assumed probabilities based on official reports. Id.

First step in arriving at value of telephone plant, or any public utility, is to ascertain it reproduction cost new, less depreciation. Id.

Depreciation is that diminution in value of property which takes place in physical thing and is ascertained by physical inspection. Id.

Depreciation which has been overcome by repairs and replacements is not considered. Id.

In fixing rate, company is entitled to any increase in value of property since it was acquired, but must stand loss of any shrinkage in value. Id.

Profits of the past cannot be used to sustain confiscatory rates for future. Id.

Rural companies receiving switching services are not entitled to credit for use of their lines and facilities by local exchange. Id.

Fact that company owning local exchange also owns toll lines occupying positions on its switchboard does not entitle rural subscribers to have toll lines share in expense incurred by exchange back of switchboard so as to, in any way, affect rates to be paid by them. Id.

5297. Free or reduced rates to officers, etc.

A telephone company after expiration of term of its original franchise, which was conditioned upon its furnishing to city free poles, wires, conductors, and conduits for its separate police and fire alarm systems, cannot be compelled by Railroad and Warehouse Commission to furnish such facilities to city; such use of its property not being a public use subject to commission supervision, but a strictly private use, to be covered, if at all, by voluntary contract. City of St. Paul v. T., 193M484, 258 NW822. See Dun. Dig. 9583a.

5298. Commission given power to delegate authority to employes.

Expenses incurred in valuing telephone properties may be paid out of regular appropriation to commission and later assessed against telephone company. Op. Atty. Gen. (98a-15), Dec. 17, 1937.

5299. Commission to grant authority for constructing telephone lines.

Duplication of telephone service is not to be regarded as contrary to the policy of the state, and it is to be permitted if the commission considers that it will promote public convenience by reducing rates so as to make it financially possible for greater number of persons to be served. Op. Atty. Gen. (98a-13), July 12, 1934.

5302. Municipalities given right to operate telephone exchanges.

Village council may sell or lease its telephone exchange without submission to electors. Op. Atty. Gen., Apr. 16, 1929.

5305. Commission given right to change annual depreciation charge.

Annual depreciation charges may be determined by computing and weighing the losses from depreciation for each class of property, provided there is some relation between the depreciation reserve fund and the amount of actual depreciation which has accrued. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078a.

5306. Companies given right to purchase property of other companies with consent of commission.

Section applies to sale of telephone exchange by a village. Op. Atty. Gen., Apr. 16, 1929.

Commission having consented to purchase of one telephone corporation by another had no power to thereafter revoke such order, and could take no official interest in proceedings before interstate commerce commission. Op. Atty. Gen., May 10, 1933.

5308. Mode of procedure for appeals from decisions of commission.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Western Buse Telephone Co. v. N., 188M524, 248NW220.

Rate making is a legislative and not a judicial function. Id.

Findings of trial court held to show that full consideration was given every element affecting the rate base, and valuation allowed by court is reasonably adequate. State v. Tri-State Telephone & Telegraph Co., 204M516, 284NW294. See Dun. Dig. 8078a.

5310. Violation a gross misdemeanor.

In determining whether severing of connections would be a violation of §5295, the fact that the connection between the lines of the companies was made under a private arrangement would be immaterial. Op. Atty. Gen., Apr. 7, 1931.

In a prosecution for severing connections of lines of two companies in violation of §5295, complaint must allege sufficient facts to bring both companies within the definition of the term "telephone company" as set forth in §5287. Op. Atty. Gen., Apr. 7, 1931.

5311-1. Burden of proof to be upon telephone company.—In any investigation, action or proceeding arising under, or growing out of, an action initiated by the Commission upon its own motion, the burden of proof shall be upon the telephone company to establish the reasonableness of the existing rates. (Apr. 24, 1937, c. 426, §1.)

5311-2. Telephone companies to pay expense of revaluation.—(a) Whenever the Commission in a proceeding initiated upon its own motion, shall deem it necessary to ascertain and determine the value of any telephone property subject to its jurisdiction, or to investigate its revenues and expenses for rate making purposes, such telephone company shall be charged with and pay such portion of the compensation and expense of the commission, its officers, legal counsel, agents and employees, including legal counsel and employees temporarily employed, and all reasonable expenses and costs occasioned in sustaining in any court the determination or action of the commission in such investigations, valuations or revaluations, as is reasonably attributable to such investigations, valuations or revaluations, pending or hereafter brought, provided an opportunity to be heard thereon shall first have been granted to such telephone company.

(b) The commission shall ascertain the costs, including the compensation and expenses of the commission, its officers, legal counsel, agents and employees, and shall determine the amount to be paid by the telephone company and shall render a bill therefor by registered mail to the telephone company. Such bills shall be rendered from time to time, but not more often than monthly, during the progress before the commission of such investigation, valuation or revaluation, or upon its conclusion; provided, that a bill for the expenses and costs of any litigation directly involving any determination or order of the commission in such investigations, valuations or revaluations, shall be so rendered by the commission from time to time during the pendency of such litigation or upon final adjudication by any court.

(c) The amount of such bills so rendered by the commission shall be paid by the telephone company into the state treasury within 30 days from the date of rendition. The total amount which may be charged by the commission to any telephone company under authority of this section in 1939 shall not exceed one per cent and in any subsequent calendar year shall not exceed one-half of one per cent of such telephone company's gross operating revenues derived from intra-state telephone operations included within such investigation, valuation or revaluation in the last preceding calendar year. The amount assessed against a telephone company, not paid within 30 days after such rendition, shall draw interest at the rate of six per cent per annum. (Apr. 24, 1937, c. 426, §2; Apr. 20, 1939, c. 333, §1.)

Expenses incurred in valuing telephone properties may be paid out of regular appropriation to commission and later assessed against telephone company. Op. Atty. Gen. (98a-15), Dec. 17, 1937.

5311-2a. Same—Investigation fund—Appropriation.—The sum of $25,000 is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to establish and provide a revolving fund to be known as the "Minnesota Telephone Investigation Fund" for the use of the Railroad and Warehouse Commission and of the Attorney General in investigations, valuations and revaluations under Section one hereof. All sums paid by the telephone companies pursuant to Section one shall be credited to said revolving fund and shall be deposited in a separate bank account or accounts and not commingled with any other state funds or moneys, but any balance in excess of $25,000 in said revolving fund at the end of each fiscal year shall be paid into the state treasury and credited to the general fund. The said sum of $25,000 herein appropriated and all subsequent credits to said revolving fund shall be paid upon the warrant of the state auditor upon application of the commission or of the Attorney General to an aggregate amount of not more than one-half of such sums to each of them, which proportion shall be constantly maintained in all credits and withdrawals from said revolving fund. (Act Apr. 20, 1939, c. 333, §2.)

5311-2b. Same—Provisions severable.—If any part, or parts, of the foregoing sections or subdivisions of this act, or the application thereof to any person or circumstances be held invalid, no other section, subdivision, clause, sentence, or provisions of this act shall be affected thereby. (Act Apr. 20, 1939, c. 333, §3.)

5311-2c. Same—Application of act.—The provisions of this act shall apply only to telephone companies operating within cities of the first and second classes. (Act Apr. 20, 1939, c. 333, §5.)

5311-3. Companies to report to commission. [Repealed.]

Repealed Apr. 20, 1939, c. 333, §4.

The repealed section consisted of Act Apr. 24, 1937, c. 426, §3.

5311-4. Expenditures not approved by commission not to be included. [Repealed.]

Repealed Apr. 20, 1939, c. 333, §4.

The repealed section consisted of Act Apr. 24, 1937, c. 426, §4.

5311-5. To what companies act shall apply.—The provisions of this Act shall apply only to telephone exchanges rendering service in cities of the first and second class and to toll properties of telephone companies operating toll lines in more than four counties of the state. (Apr. 24, 1937, c. 426, §5.)

5311-6. Provisions severable.—If any part, or parts, of the foregoing sections or subdivisions of this Act, or the application thereof to any persons or circumstances be held invalid, no other section, subdivision, clause, sentence, or provision of this Act shall be affected thereby. (Apr. 24, 1937, c. 426, §6.)

Sec. 7 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

5312. Town boards may construct telephone systems for fire protection.

Where an organized township constructs and maintains a town telephone system, under §§5312 to 5316 and furnishes ordinary telephone service thereby to private residents of township, town is engaged in operating a public utility and is liable for negligence of its officers and agents in so doing. Storti v. T., 194M628, 261NW463. See Dun. Dig. 9658.

Fact that township owned telephone system is also operated in part for governmental purposes, for protection from forest and prairie fires, promoting public welfare, public health, and public safety, and facilitating work of public improvements, does not exempt town from liability for negligence in operating a public utility. Id.

A township telephone company organized under State Fire Protection law has no authority to buy an interest in an adjoining exchange without a vote of the township voters. Op. Atty. Gen., Aug. 6, 1931.

On dissolution of township, it is discretionary with county board to maintain or refuse to take over township telephone lines. Op. Atty. Gen. (98c-3), July 28, 1934.

Town may appropriate money to co-operative telephone company if necessary for fire prevention. Op. Atty. Gen. (916b), Feb. 21, 1936.

County board cannot aid an unorganized township in construction and maintenance of a telephone line within its limits. Op. Atty. Gen. (125a-55), April 3, 1939.

5313. Town telephone lines outside corporate limits.

Township may connect its telephone system with telephone exchange located 20 miles outside township without any order of railroad and warehouse commission. Op. Atty. Gen. (98a-3), June 30, 1936.

5314. Tax levy for construction.

Where levy for one year is insufficient to construct telephone system the levies of several years may be accumulated until the fund is sufficient for the purpose. Op. Atty. Gen., Apr. 24, 1930.

Town board has no authority to use the road and bridge fund to keep up the operating expenses of a township telephone company organized under State Fire Protection law. Op. Atty. Gen., Aug. 6, 1931.

It was not the intention of the legislature that maintenance cost be paid by the township, and a town board has no authority to levy a tax to take care of non-payment of delinquent telephone fees. Op. Atty. Gen. (98c-3), July 28, 1934.

Township maintaining telephone lines mainly for fire protection may pay switching charges out of fire fund. Op. Atty. Gen. (98a-23), Nov. 30, 1938.

5315. Town meetings and town boards to fix rentals.

Town treasurer is entitled to retain 2% of town telephone and toll charges handled by him. Op. Atty. Gen. (434a-8), Mar. 25, 1938.

It is duty of town board to collect rental charges and toll charges, or to employ someone who can perform such duty, and town clerk or town treasurer are not obliged to handle such collections. Id.

5317. Local exchanges shall permit connection.

Township telephone system may sever connection without consent of railroad and warehouse commission. Op. Atty. Gen. (434a-8), Apr. 24, 1936.

Township may connect its telephone system with telephone exchange located 20 miles outside township without any order of railroad and warehouse commission. Op. Atty. Gen. (98a-3), June 30, 1936.

5318. Private owners may sell telephone lines to township—Railroad and Warehouse Commission to fix value.—When, under the provisions of this act, a township telephone system shall be established in any township wherein any of the inhabitants of such town are already provided with telephone service furnished by any other telephone company, person or persons, such township shall, when so requested by said telephone company, person or persons, acquire from said telephone company all telephone equipment used by said telephone company, person or persons, in furnishing telephone service to the inhabitants of such township exclusively. For the purpose of determining the purchase price of such equipment application shall be made to the state railroad and warehouse commission, whose duty it shall be thereupon to determine the just compensation which the owner of such telephone equipment is entitled to receive therefor from the township. Before deciding upon such compensation, said commission shall at a public meeting which may be adjourned from time to time hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the township, and to the telephone company, person or persons concerned. An appeal may be taken to the district court of the county wherein such township is situated from that part of the order fixing the compensation to be paid, within thirty days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the commission shall become final at the end of thirty days, and when appeal is taken the decision of the district court or of the supreme court, if taken there from the district court shall be final.

When, under the provisions of this act a township telephone system has been established in any township, and it has been determined by the board of supervisors of said township to be for the best interest of public service and all parties concerned, to sell and

transfer said township telephone system to any telephone company, person or persons giving service organized for that purpose and qualified to purchase said system and operate the same, the said board or supervisors shall have authority to sell, transfer, and convey said township telephone system upon such reasonable price and terms as it may determine, provided, that there shall be presented to the board of supervisors by a petition signed by at least twenty-five per cent of the freeholders of said township asking the sale thereof, and, if such sale and agreed sale price be approved at an annual or special town meeting, it being stated in the notice of such annual and special meeting that the proposition will be considered thereat, by sixty-six per cent of the legal voters attending such meeting.

If any township telephone lines are sold under the provisions of this act, and the township has theretofore issued bonds for the construction thereof, and any part of said bonds are then outstanding and unpaid; the entire consideration received from the sale, or such part as may be necessary, shall be held and applied only for the payment and retirement of such bonds. ('21, c. 439, §7; Apr. 11, 1929, c. 150, §1.)

A town board is without power to give away an interest which it has purchased in an adjoining exchange. Op. Atty. Gen., Aug. 6, 1931.

5319. Town boards to manage.—The town board of supervisors of any such township is hereby vested with all necessary authority to manage, maintain and operate any township telephone system constructed under the provisions of this act, and, to that end, may, among other things, contract for the connection of such township lines with exchanges owned by others for switching, lease the system for a reasonable compensation, local exchange and toll connections, hire and discharge such employees as may be necessary to operate and maintain such township system, establish rules and regulations, and, subject to the approval of the railroad and warehouse commission establish and from time to time change rates and charges, covering the service furnished to the users. ('21, c. 439, §8; Apr. 11, 1929, c. 150, §2.)

Town board may cancel out and refuse to connect with another exchange and operate its telephone service by house to house calls without a central exchange connection. Op. Atty. Gen., Aug. 6, 1931.

Town board has no authority to use the road and bridge fund to keep up the operating expenses of a township telephone company organized under State Fire Protection law. Op. Atty. Gen., Aug. 6, 1931.

One of three connected towns could not cut off the other towns. Op. Atty. Gen. (371b-13), May 14, 1936.

Town meeting or town board may permit persons other than town treasurer and clerk to handle collection of toll charges and fixed rentals. Op. Atty. Gen. (434a-8), Mar. 25, 1938.

CHAPTER 28B

Department of Banking—Division of Banking in Department of Commerce

5320. Department established.

Banking division of department of commerce created pursuant to Laws 1909, c. 201, as amended by Laws 1925, c. 426, art. 8, is a department of state government within meaning of §9677-1, and legislature contemplated administration of amount of fidelity bond for those for whom legislature has not fixed amount. Op. Atty. Gen. (980a-8), May 5, 1937.

5321. Superintendent of banks—Term—Qualifications—Bond.

It is not necessary that a formal commission of appointment be issued to acting commissioner of bank. Op. Atty. Gen. (29a-6), July 14, 1939.

5323. Powers and duties of superintendent.

179M217, 228NW926.

Duluth Morris Plan Company comes within provisions of section and gives commissioner of banks power and duty to safeguard rights of those dealing with it. Op. Atty. Gen., Jan. 19, 1933.

Whether Duluth Morris Plan Company may purchase of its own stock to hold for resale is a matter resting within discretion of commissioner of banks. Op. Atty. Gen., Jan. 19, 1933.

Where a variable clause appears in certificate of incorporation, commissioner of banks may insist on adoption of by-law fixing definite number of directors. Op. Atty. Gen. (29a-13), June 2, 1937.

5324. Supervision over banks and other financial corporations.

179M217, 228NW926.

Op. Atty. Gen., Jan. 19, 1933; note under §5323.

5325. Refusal to obey directions of examiner.

One is not excused by the absence of guilty knowledge or intention and his consequent moral innocence. 178M9, 225NW927.

This section applies whether the duty violated was imposed by the action of 1909 or by a prior statute. 179M217, 228NW926.

The offense consists in knowingly and intentionally or negligently failing to report, and it is error to reject evidence tending to show good faith and lack of knowledge that the report was false. 179M217, 228NW926.

Offense, held committed in Isanti County though report was sent by mail to Commissioner in Ramsey County. 179M217, 228NW926.

Rulings on evidence considered. 179M217, 228NW926.

5327. Employes in office of superintendent of banks.

Legislature intended to fix amount of fidelity assurance of deputy and twelve examiners, leaving amount of bond for assistant and second assistant examiners to determination of administration, after passage of §9677-1. Op. Atty. Gen. (980a-8), May 5, 1937.

5328. State bank examiners or employees prohibited from holding bank stock.—No person who is a bank examiner or other officer or employee of the division of banking of the department of commerce of this state shall be interested, either directly or indirectly, as a stockholder, director, officer, trustee, assignee, employee, or otherwise, in any bank, savings bank, trust company, financial institution, or corporation holding the stock of any such a corporation within this state, or which carries on a banking business within this state, either directly or indirectly, or through an affiliated group or chain bank operating within this state. If the wife, or any other member of the household of a bank examiner or other officer or employee shall be so interested, it shall be conclusively presumed that said bank examiner or other officer or employee is indirectly interested in the corporation within the meaning of this act; but the meaning of the words "directly or indirectly" is not otherwise qualified. The provision of this section shall not apply to the Commissioner of Banks. ('15, c. 164, §1; Mar. 7, 1931, c. 43, §1.)

5328-1. Penalty for violation.—Any person violating the provisions of this act shall be disqualified from holding any office or employment in the division of banking of the department of commerce, and shall be removed from such office or employment by the commissioner of banks immediately upon knowledge of such violation. (Act Mar. 7, 1931, c. 43, §2.)

5332. Fees for examination of financial institutions.—Each bank, trust company, savings bank, local or general building and loan association and credit union organized under the laws of this state, shall pay into the state treasury for each authorized regular or special examination made at any time by the commissioner of banks of such institution, a fee to be determined as follows:

In the case of state banks, trust companies, or savings banks, for each examination a minimum fee of

$40.00 plus an amount equal to three cents for each $1,000 of assets in excess of $25,000, and not exceeding $300,000; where the assets exceed $300,000 and do not exceed $500,000, a minimum fee of $50.-00, plus three cents for each $1,000 of assets in excess of $25,000; where the assets exceed $500,000 and do not exceed $1,000,000, a minimum fee of $60.00 plus three cents for each $1,000 of assets in excess of $25,000; where the assets exceed $1,000,000 and do not exceed $3,000,000, a minimum fee of $80.00, plus three cents for each $1,000 of assets in excess of $25,000; where the assets exceed $3,000,-000, a minimum fee of $100.00, plus three cents for each $1,000 of assets in excess of $25,000 up to $5,-000,000, and two cents per thousand for each $1,000 of assets in excess of $5,000,000, and in the case of trust companies an additional amount equal to two cents for each $1,000 value of properties held in trust for the benefit of others.

In the case of local building and loan associations, for each examination, a minimum fee of $25.00, plus an amount equal to 2 cents for each $1,000 of assets in excess of $15,000.

In the case of credit unions a fee of $10.00 where the assets do not exceed $2,000; a fee of $15.00 where the assets exceed $2,000 and do not exceed $4,000; a fee of $17.00 where the assets exceed $4,000 and do not exceed $6,000; a fee of $20.00 where the assets exceed $6,000 and do not exceed $8,000; a fee of $25.00 where the assets exceed $8,000 and do not exceed $10,000; a fee of $30.00 where the assets exceed $10,000 and do not exceed $15,000; a fee of $35.00 where the assets exceed $15,000 and do not exceed $20,000; a fee of $40.00 where the assets exceed $20,000 and do not exceed $25,000; and where the assets exceed $25,000, a minimum fee of $40.00, plus 10 cents for each $1,000 of assets in excess thereof.

Said fees shall be paid by the institution examined within twenty days after a statement of the amount thereof shall have been rendered the institution examined by the commissioner of banks, and if not so paid shall bear interest at the rate of six per cent per annum. (As amended Apr. 17, 1937, c. 276, §1.)

Sec. 2 of Act Apr. 17, 1937, cited, provides: "all acts or parts of acts inconsistent herewith are hereby repealed."

5332-1. Examiners powers enlarged.—The examiner in charge of liquidation in the banking division of the department of commerce is hereby authorized to sign the name of the commissioner of banks and to act for him in all matters connected with the liquidation of insolvent corporations under the supervision and control of the commissioner of banks, with the same force and effect as though the commissioner himself had signed or acted. Provided, that said examiner shall have no authority to order an assessment against the stockholders of an insolvent state bank or trust company under the provisions of Laws 1927, Chapter 254 [§§7699-20 to 7699-247]. (Act Apr. 9, 1931, c. 137.)

Examiner in charge of liquidation may sign examiner's name, including affidavits incident to borrowing of money from Reconstruction Finance Corporation. Op. Atty. Gen., Jan. 22, 1934.

5334. Certain securities to be deposited with State treasurer.

Securities deposited with commissioner of banks by national bank desiring to act in a fiduciary capacity must be redeposited with state treasurer. Op. Atty. Gen., Jan. 13, 1934.

CHAPTER 29

Public Health

5337. Meetings—Officers—Quorum.

Official bonds of secretary of department of health should be referred to commission of administration and finance for approval, and continuation certificate should not be approved, such bonds should be cumulative. Op. Atty. Gen. (45a), May 7, 1937.

5339. General duties of board—Reports.

Op. Atty. Gen., June 28, 1933; note under §5345.

Division of hotel inspection cannot compel all places of business serving food and refreshments to be equipped with hot and cold running water and to have their sinks connected with a sewer, nor ordering separate toilet rooms for both sexes in restaurants and places of refreshment, but it can order restaurants and places of refreshment, to install two tanks behind bars to sterilize glasses and provide proper drain for glasses if such requirements are necessary for proper sterilization. Op. Atty. Gen. (238d), Oct. 24, 1935.

5345. State board of health, general and special rules.

Op. Atty. Gen., June 20, 1933; note under §9580.

Resolution by state board of health that plans and specifications must be prepared by person not prohibited from doing so under Laws 1933, c. 404, is not bound to act according to such resolution, it being merely a declaration of policy. Op. Atty. Gen., June 28, 1933.

City may not construct a swimming pool until plans and specifications are approved by the state board of health. Op. Atty. Gen. (225m), Apr. 30, 1935.

Court will not take judicial notice of health regulations. Op. Atty. Gen. (225b-4), May 21, 1935.

Health department has authority to return and quarantine tubercular patient in hospital or sanatorium. Op. Atty. Gen. (225f-1), Aug. 30, 1935.

Plans and specifications of sewage disposal plant of a metropolitan drainage district are to be approved by state board of health. Op. Atty. Gen. (225m), June 1, 1936.

Under regulation 200 adopted by state board of health, department may pass upon plans submitted to it and approve or disapprove, though plans are prepared by an engineer who is not qualified under state law. Op. Atty. Gen. (255m), June 3, 1937.

Establishing, enforcing and releasing quarantine constitutes control of communicable disease and is a purely public charge payable in first instance by town or village, which may in turn recover one-half from county, but disease control measures necessary for public protection but which also benefit patients, such as vaccination, antitoxin, hospitalization, are primarily liability of patient, but may be allowed as public charge when all possible efforts to secure payment by responsible individual have failed. Op. Atty. Gen. (611a-1), June 16, 1939.

(7).

A venereal disease is a communicable disease and expense and care of a pauper family afflicted with such disease should be divided equally between village and county, and municipality should first pay such expense and apply to county for reimbursement of half thereof. Op. Atty. Gen. (225f-3), Nov. 14, 1934.

(8).

Board of control cannot administer toxin-antitoxin and scarlet fever serum without obtaining consent of relatives of children committed to home school for girls. Op. Atty. Gen., Mar. 24, 1934.

School district funds cannot be used to vaccinate school children to prevent spread of small pox during an epidemic. Op. Atty. Gen. (611a-9), Feb. 1, 1935.

(10).

A death certificate is not conclusive proof of cause of death. Jorstad v. B., 196M568, 265NW814. See Dun. Dig. 3348.

5348. Local boards—Health officers.

Member of town board may receive compensation as health officer as well as member of board. Op. Atty. Gen., Feb. 7, 1929.

Town board cannot appoint as health officer one who is not a duly licensed physician. Op. Atty. Gen., Apr. 16, 1931.

Action of voters at town meeting in attempting to elect a health officer is nugatory. Op. Atty. Gen., Apr. 16, 1931.

Village is not compelled to establish its own board of health, but where it does establish one, village is liable for costs and expenses lawfully incurred under its direction. Op. Atty. Gen., Apr. 28, 1932.

Where village has no board of health, it is, nevertheless, liable for costs and expenses lawfully incurred un-