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.

Edited by

William H. Mason

Assisted by

The Publisher's Editorial Staff

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1940

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. 1689, 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, 225 NW432.

A carrier is bound to exercise highest degree of care toward its passengers. Mardorf v. D., 199M325, 271NW 588. 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, 214 NW17.

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; exemployees 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), 82F(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, 225N W111.

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, 214 NW890.

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. 6022*l*.

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. 6022*l*.

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 co-operative 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, malthouses 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.

* * * * * * *

(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 ifcumber, 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