1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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Cost of hospitalization is paid by county of residence rather than county of settlement so in proper case reimbursement may be had from county of legal settlement. Op. Atty. Gen. (339g-2), July 19, 1940.

Payment of traveling expenses is mandatory upon county board, but it cannot be made until an itemized claim is filed with board and allowed by them. Op. Atty. Gen., (1001c), June 10, 1941.

Cost of hospitalization in Minnesota General Hospital to be paid by county of residence rather than county of settlement of poor person. Op. Atty. Gen., (1001c), Jan. 6, 1943.

Matter is a legislative and not an executive or judicial question. Op. Atty. Gen. (1001c), Feb. 9, 1943.

County operating under town system of poor relief may not require or permit town to pay any portion of hospitalization of patients sent to the Minnesota general hospital. Op. Atty. Gen. (1001c), Apr. 30, 1943.

Where one receiving old age assistance moved to another county and later was sent to the University Hospital by the authorities of the latter county, the county of his residence and not the county of his settlement was liable for the hospital bill, if his death occurred before the effective date of Laws 1943, c. 31. Op. Atty. Gen. (1001c), Dec. 10, 1943.

4584. Expenses paid by counties.

State has no authority to reimburse county for charges to patients referred to Minnesota General Hospital, which was unable to receive them, necessitating treatment in other hospitals. Op. Atty. Gen., (1001c), Dec. 9, 1939.

University of Minnesota hospital expense may be paid by county from welfare fund. Op. Atty. Gen., (905B), May 14, 1940.

Where poor person residing in one county was subjected to an emergency appendectomy and hospitalized, and proper local authorities of county of settlement ratified hospitalization and medical care, county in which operation and hospitalization were had could pay the bill and recover from county of settlement, notwithstanding that it had an arrangement whereby cases taken care of in the hospital were in lieu of hospitalization in University Hospital. Op. Atty. Gen., (339g-2), May 31, 1940.

Cost of hospitalization is paid by county of residence rather than county of settlement so in proper case reimbursement may be had from county of legal settlement. Op. Atty. Gen. (339g-2), July 19, 1940.

A person does not have to be a pauper to be entitled to treatment at University Hospital and the county sending person to that hospital, rather than county of settlement, is liable. Op. Atty. Gen., (339g-2), May 1, 1941.

4590. County board to receive and investigate applications—Hospitalization.—The several boards of county commissioners in the state and any members of such a board may receive, investigate and act upon applications for treatment in the general hospital. (As amended Act Feb. 15, 1943, c. 31, §3.)

Probate court does not retain jurisdiction in proceeding under §4577 to §4585. Op. Atty. Gen., (1001c), March 8, 1940; note under §4579.

Section gives each individual member of county board authority to act on applications, but this does not include right to authorize transportation, and the payment therefore cannot be made until an itemized claim is filed with county board and allowed by them. Op. Atty. Gen., (1001c), June 10, 1941.

4590-1. County board may delegate powers to welfare board.—The county board and the several members thereof of any county in this state are hereby authorized to delegate to the county welfare board of such county all the rights, powers, and duties conferred upon it and them by Mason's Statutes 1927, Sections 4577 to 4590, with reference to the hospitalization of indigent persons. (Act of Feb. 15, 1943, c. 31, §6.)

STATE SOLDIERS WELFARE FUND

4605-1 and 4605-2. [Repealed.]

Repealed. Laws 1941, c. 548.

CHAPTER 26

Schools for the Deaf and the Blind

4610. Location—Organization.

Name of state school for the blind at Faribault, changed to, The Minnesota Braille and Sight Saving School. Act Apr. 21, 1941, c. 332, §1.

There is no appropriation out of which school for the deaf at Faribault may pay part of cost of improvement of street adjoining institution. Op. Atty. Gen. (88a-2), March 25, 1943.

4613. Blind student to receive expenses while at certain schools.

Under laws relating to dependent, neglected, and delinquent children, a probate court has power to commit a blind boy to state school for blind at Faribault. Op. Atty. Gen., (482a), Dec. 28, 1939.

4615. Certain children required to attend.

A blind child is subject to compulsory education law, and it is duty of county attorney to bring appropriate proceedings to compel parents to send a blind child to the state school for the blind. Op. Atty. Gen., (482a), Dec. 6, 1939.

Boy's failure to attend school is sufficient proof that he is a delinquent child. Op. Atty. Gen., (482a), Dec. 28, 1939.

4616. Duties of state board of control.

Director of Public Institutions has authority in respect to institutionalized blind, and Director of Social Welfare has authority in respect to blind persons not institutionalized. Op. Atty. Gen. (88a), Sept. 17, 1943.

4617. Payments by state board of control.

Director of Public Institutions has authority in respect to institutionalized blind, and Director of Social Welfare has authority in respect to blind persons not institutionalized. Op. Atty. Gen. (88a), Sept. 17, 1943.

CHAPTER 27

State Public School

4618. Location—Purpose.

State public schools with approval of director of division of public institutions may permit use of auditorium by private organizations for a theatrical performance. Op. Atty. Gen. (345c), Aug. 21, 1940.

CHAPTER 28

Railroads, Warehouses and Grain

RAILROAD AND WAREHOUSE COMMISSION

4634. Secretary—Employees.

Secretary to Railroad and Warehouse Commission is within classified service. Op. Atty. Gen. (644), Jan. 21, 1941.

Certain schedule bonds are approved. Op. Atty. Gen. (980a-4), Nov. 4, 1941.

4636. Procedure and office.

Participation in railroad and warehouse commission proceedings as basis for right to appeal. 25MinnLawRev 938.

4638. Proceedings before commission; etc.

Lenihan v. Tri-State Telephone & Tel. Co., 208M172, 293 NW601. Cert. den. 311US711, 61SCR392, 448, 85LEd463. See note under §5291.

4644. Complaint that rate is unreasonable; etc.
Telephone rates. State v. Tri-State Tel. & Tele. Co., 209M86, 295NW511; note under §5291.

4646. Investigation without complaint; etc.
Lenihan v. Tri-State Telephone & Tel. Co., 208M172, 293 NW601. Cert. den. 311US711, 61SCR392, 448, 85LEd463. See note under §5291.

4650. Procedure for appeals to district court from orders of Railroad and Warehouse Commission.
Participation in railroad and warehouse commission proceedings as basis for right to appeal. 25 Minn. Law Rev. 938.

4651. Proceedings on appeal—Orders not appealed from.
Power of railroad and warehouse commission to issue certificates of public convenience and necessity is legislative and administrative in character, and court can only decide judicial question whether order is reasonably supported by evidence and whether it is lawful and reasonable. Minneapolis & St. L. R. Co., 209M564, 297NW189. See Dun. Dig. 8078e.

Public convenience and necessity for proposed auto transportation service by a railroad was a fact question for commission. Id.

Order denying railroad leave to substitute station "custodian" for part-time agency service held unreasonable where annual gross revenue had decreased to $4,793.63 for preceding year, 78.8% thereof was derived from carload freight, which would be served practically as before, and where only inconvenience to patrons will be discontinuance of money transactions. State v. Chicago & N. W. Ry. Co., 210M147, 297NW715. See Dun. Dig. 8124.

4659. Appeals to supreme court.
An appeal from both a judgment, which is appealable, and an order, which is not appealable, will be treated as a valid appeal from judgment only and will be disregarded so far as it relates to the order. State v. Rock Island Motor Transit Co., 209M105, 295NW519. See Dun. Dig. 8082a.

An order denying an alternative motion for amended findings or a new trial is not appealable as a final order. Id.

Parties of record in proceeding before Railroad and Warehouse Commission, in which they fully participated by consent and without objection, who upon appeal to district court were notified to appear and did appear and enter formal appearance and by consent litigated the issues raised by appeal to supreme court, will be heard with other parties. Id.

Provisions that appeal shall be taken in same manner as in civil actions simply mean that procedure in appeals in civil actions shall be followed. Id.

Participation in railroad and warehouse commission proceedings as basis for right to appeal. 25MinnLaw Rev938.

4662. Dangerous crossings—Complaints—Hearings.
Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police power. Bybee v. C., 208M55, 292NW617. See Dun. Dig. 6944.

Railroad and warehouse commission has exclusive control of all matters involving railroad crossings and warning devices, but commissioner of highways has certain powers concerning approach signs on highways, and former can compel a railroad within a reasonable time to comply with general order fixing minimum standards and requirements for crossing signs, and a railroad has no vested rights to retain an old sign until such time as reconstruction would be required in maintenance of railroad. Op. Atty. Gen., (369m), Apr. 16, 1941.

4663. Report and order; etc.
Bybee v. C., 208M55, 292NW617; note under §4662.

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

On all cars of coal required by the commission to be weighed under this act, the consignor shall order and the carrier shall deliver the empty car before being loaded, free of switching charges, to a scale designated by the commission for weighing empty.

Any consignor failing to comply with any of the provisions of this act shall be subjected to a penalty of $25.00, to be recovered by the aggrieved consignee or purchaser.

All track scales now or hereafter used by common carriers or by shippers of coal for the purpose of weighing carload lots of coal shall be under the control and jurisdiction of and subject to inspection by such commission, and such scales over which the said commission assumes control and jurisdiction, shall be exempt from the juridiction of sealers of weights and measures. (As amended Mar. 25, 1943, c. 173, §1.)

4679. Duty of commission.
State is not entitled to recover fees for weighing coal loaded in carload lots for rail transportation at dock of shipper at Duluth, carried to, and unloaded at, shipper's retail yard in Minneapolis or St. Paul for the shipper's own use or consumption or sale at retail from piles. State v. Inland Coal & Dock Co., 208M216, 293NW611. See Dun. Dig. 10201.

4700. Powers and duties of commission; etc.
Where difference in length between alternative routes over lines of several carriers is more than 137 per cent greater than natural and customary route over line of original carrier between point of origin and final destination, both located on such railway, longer route being more burdensome to carriers, shipper who chose the latter route must bear established tariff over such route, and where bill of lading designated owner both as consignor and consignee, he was liable for legal freight charges though there was part payment on delivery. Scandrett v. H., 209M303, 296NW26. See Dun. Dig. 1205d.

Shipment being run in interstate commerce, all parties involved were alike charged with full knowledge of published rate and inescapable force. Id. See Dun. Dig. 1205f.

4718. Passenger trains may be discontinued, etc.
An amendment making section applicable to express or freight trains which furnish essential switching services would be constitutional. Op. Atty. Gen. (82o), Feb. 5, 1943.

RAILROADS AND COMMON CARRIERS

4733. Signs at crossings.
Rights, duties and liabilities of parties involved in collision between train and automobile is to be determined under state laws. Duluth, W. & Pac. Ry. Co. v. Zuck, (CCA8)119F(2d)74.

In crossing accident, whether mechanical stop sign worked as train approached held for jury. Krtinich v. D., 206M106, 287NW870. See Dun. Dig. 8177.

Slight negative testimony did not overcome positive affirmative testimony that requisite train signals by bell or whistle were sounded. Engberg v. G., 207M194, 290 NW579. See Dun. Dig. 8175.

Where there were two electric signals, one on either side of the railroad, and evidence is compelling that one was operating and they were operated by same electric circuit, there is no ground for inference, nothing more appearing, that other was not also working. Id. See Dun. Dig. 8175.

Over an open railroad crossing where the view of travelers on the highway is unobstructed and the crossing is protected by high "saw-buck" warning signs, automatic stop signs, and flashing red lights, a train speed of 50 miles per hour is, as matter of law, not negligent. Id. See Dun. Dig. 8180.

Absent unusual circumstances, failure of railway employes to anticipate that automobile would enter crossing without stopping is not evidence of negligence. Id. See Dun. Dig. 8183.

An instruction respecting duty of train crew on approaching a crossing held not to submit any issue of willful or wanton negligence, an issue neither pleaded nor proved. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8200.

In action for injuries at railroad crossing when automobile ran into side of passing train on a foggy night, evidence held not to establish a custom for train to put out flares at such crossings. Rhine v. Duluth, M. & I. R. Ry. Co., 210M281, 297NW852. See Dun. Dig. 8174.

One approaching a grade railroad crossing at 30 miles per hour in a dense fog could not with merit claim that he was confronted with a sudden and unexpected emergency when he first discovered the presence of a train, created because inadequate signs may have lulled him into a feeling of safety, especially absence of a reflector, since if there was any emergency it was clearly of his own making by failing to exercise a degree of care required of him as a matter of law. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 7020, 8195.

As affecting negligence, a railroad bi-secting a crossing of trunk highways has no jurisdiction or control over the usual state highway "crossroad" sign, usual circular disk sign "R. R." in large black letters with significant black cross on a light background, or the "junction" sign, which were prepared, installed, and maintained by state highway department. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 8177.

A boy 20 years of age approaching a grade railroad crossing in a dense fog at 30 miles per hour was guilty

of contributory negligence as a matter of law. Olson v. Duluth M. & I. R. Ry. Co., 213M106, 5NW(2d)492. See Dun. Dig. 8193.

4734. Width of crossings and grades.

Speed of 25 miles per hour of a combined passenger and freight train was not excessive as a matter of law at a rural crossing. Krtinich v. D., 206M106, 287NW870. See Dun. Dig. 8180.

In crossing accident whether bells and whistle on train were silent held for jury. Id. See Dun. Dig. 8175.

Railroad engineer had right to assume that truck approaching crossing would stop until a collision appeared imminent. Id. See Dun. Dig. 8183.

Failure of railroad to warn those in truck of approaching train was not a proximate cause of collision where driver of truck saw train, and either stepped on accelerator instead of foot brake or deliberately attempted to beat it to the crossing. Id. See Dun. Dig. 8197.

Driver's negligence in approaching a railroad crossing could not be imputed to sleeping passengers. Krause v. C., 207M175, 290NW294. See Dun. Dig. 8194.

Testimony of a passenger in a crowded Ford that he did not hear crossing whistle sounded or locomotive bell rung, it not appearing that such passenger was listening for sounds, or that windows of Ford were open, or that he heard rumbling of freight train running at 25 miles an hour at any moment prior to Ford's collision with 19th car from front, is of no probative value as against positive testimony of several witnesses in a position to know that whistle was sounded and bell rung. Id. See Dun. Dig. 8203.

Whether planks and crushed rock between rails of track on city street complied with statute held for jury. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8179.

4741. Railroad crossings to be protected.

A municipality in virtue of its delegated police power from the state, may by ordinance reasonably regulate speed of trains within its limits and court may not hold such ordinance void as in restraint of trade, unless its unreasonableness or want of necessity is clear, manifest and undoubted. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8180.

In action for death of passenger in automobile in collision on railroad crossing evidence held not to establish that deceased was negligent in riding with host who had drunk beer, there being no testimony that deceased saw him drink or that he was physically under influence of liquor. Id. See Dun. Dig. 8193.

4743-1. Crossings of railroads, streets and public highways; etc.

In action for death of automobile guest in collision at railroad crossing wherein it appeared that train was traveling at a speed in excess of 6 miles in violation of city ordinance, there was no error in excluding offer of defendants to show that if freight and passenger trains from other states running through 150 cities and villages were to be compelled to limit their speed to 6 miles per hour transportation would be unduly prolonged and limitation of speed would constitute an undue burden on interstate commerce, court receiving all evidence offered which related to grade and tracks through city involved. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8180.

Operation of a train in excess of speed provided by city ordinance is negligence warranting a recovery if proximate cause of collision at crossing. Id.

Court and not jury is to pass on question of unreasonableness of ordinance of a city limiting speed of a train and its applicability to particular crossing in view of precautions taken by railroad to protect travelers thereon. Id.

Statutory signals for trains approaching a highway crossing are solely for benefit of travelers on highway to warn them of approaching trains, and are immaterial where train is actually upon and occupying crossing when traveler arrives. Rhine v. Duluth, M. & I. R. Ry. Co., 210M281, 297NW852. See Dun. Dig. 8175.

Commission's requirements must be met, but if ordinary care requires more that requirement must also be met. Id.

Unless conditions at a crossing create hazards to public that justify a finding that warnings of existence of crossing required by commission do not constitute ordinary care, no further warning is required other than that prescribed by commission. Id.

4743-2. Same—Uniform warning signs—Types of.

Railroad and warehouse commission has exclusive control of all matters involving railroad crossings and warning devices, but commissioner of highways has certain powers concerning approach signs on highways, and former can compel a railroad within a reasonable time to comply with general order fixing minimum standards and requirements for crossing signs, and a railroad has no vested rights to retain an old sign until such time as reconstruction would be required in maintenance of railroad. Op. Atty. Gen., (369m), Apr. 16, 1941.

4743-3. Same—Railroads to erect signs.

Reflectorized signs may be required to be installed by general orders applied to federal aid road projects as a special or additional class, and in all cases no public funds may be used to install and maintain railroad crossing signs. Op. Atty. Gen., (369m), Apr. 16, 1941.

4743-4. Same—Additional warning signs—Railroads to provide.

Crossing held not extra-hazardous so as to require more than ordinary highway and railroad signs at crossing, as affecting motorist injured by running into 19th car of train. Krause v. C., 207M175, 290NW294. See Dun. Dig. 8174.

A level and open crossing, protected by "saw-buck" and automatic electric signals is not to be considered extra hazardous so as to permit a jury to say that additional warnings were required. Engberg v. G., 207M194, 290NW579. See Dun. Dig. 8177.

4743-7. Same—Drivers of vehicles to stop, etc.

Violation is not contributory negligence as matter of law. See §4743-17.

4743-8. Same—Drivers of vehicles required to reduce speed. [Repealed.]

Repealed. Laws 1937, c. 464, §144.

Violation is not contributory negligence as matter of law. See §4743-17.

An instruction that presumption of due care on part of a deceased is comparable to that of right conduct, every person is presumed to do what is right, but this presumption of due care on part of deceased may be overcome by ordinary proof by the greater weight of the evidence that due care was not exercised by deceased, was technically incorrect in that jury might understand that presumption is equivalent of evidence which defendant must meet and overcome, instead of charging that presumption vanishes when there is evidence of care deceased did take or omitted to take to avoid death. Lang v. C., 208M487, 295NW57. See Dun. Dig. 8201.

Driver's negligence at railroad crossing is not imputable to a guest passenger. Id. See Dun. Dig. 8194.

In action for death of a guest passenger in automobile at railroad crossing burden was upon railroad to show that deceased was guilty of negligence. Id. See Dun. Div. 8201.

A passenger in an automobile is not required to exercise care and caution required of driver at railroad crossing. Id. See Dun. Dig. 8193.

Whether speed of train in excess of 6 miles per hour in violation of city ordinance was proximate cause of collision at crossing, held for jury. Id. See Dun. Dig. 8180.

4743-12. Uniformity of devices for protection at grade crossings.

A railroad could not maintain electric bell at crossing after railroad and warehouse commission had ordered it replaced by "stop" signs. Krause v. C., 207M175, 290NW 294. See Dun. Dig. 8174.

4743-17. Uniformity of devices for protection at grade crossings.—Penalties.—Any person, firm or corporation violating any of the provisions of Sections 4743-1 to 4743-17 shall be guilty of a misdemeanor. Provided that the violation of Sections 4743-7 and 4743-8 shall not of itself constitute contributory negligence as a matter of law. (As amended Act Apr. 21, 1941, c. 338, §1.)

4754. Unlawful structures—Clearances.—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.

If after May 1, 1943, overhead structures or platforms or any structures designed only to be used in the loading or unloading of cars are rebuilt or remodeled, then such overhead structures shall be built with an overhead clearance of not less than 22 feet from the top of the rail and such structures or platforms shall be built with a side clearance of not less than eight feet six inches from the center line of the track

unless by order the Railroad and Warehouse Commission may provide otherwise.

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 of Laws 1913, Chapter 307.

Provided, that on and after May 1, 1943, it shall be unlawful for any common carrier, or any other person, to erect or construct on any standard gauge road on its line or on any standard gauge sidetrack or spur 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 hereafter 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 six inches 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 constructed at a less height than 22 feet, measured from the top of the track rail. (As amended Act Apr. 10, 1943, c. 390, §1.)

4754-1. Clearances on parallel tracks.—That on and after May 1, 1943, it shall be unlawful for any such common carrier to construct any track used for the purpose of moving any cars engaged in the movement of traffic where the center line of such track is at a distance of less than 14 feet from the center line of any other parallel track which it adjoins, provided that no ladder tracks shall be in closer proximity to any adjacent ladder track than 19 feet measured from the center line of each track, nor in closer proximity to any other parallel track than 17 feet measured from the center line of each track. The distance between tracks may be diminished or closed up a necessary distance for track intersections, gauntlet tracks, turnouts or switch points. (Act Apr. 10, 1943, c. 390, §2.)
[219.46(2)]

4754-2. May maintain existing structure.—It shall not be unlawful for any common carrier or any other person to maintain any overhead structure or structure alongside of a track referred to in Sections 1 and 2 of this act provided that said structure was not erected in violation of law. (Act Apr. 10, 1943, c. 390, §3.)
[219.46(3)]

4754-3. May maintain existing tracks.—It shall not be unlawful for any common carrier or any other person to maintain or reconstruct any tracks now in existence which were constructed after April 16, 1913, in accordance with the then existing clearance law or to maintain or reconstruct tracks which, if constructed prior to said date, were constructed with clearances as provided in Laws 1913, Chapter 307, or to maintain or reconstruct tracks built in accordance with the provisions of Laws 1913, Chapter 448. As to tracks that were constructed with a less clearance than 13 feet between center lines prior to April 16, 1913, it is hereby declared that the maintenance of a clearance of less than 13 feet between center lines in railroad switching yards may create a hazard and the Railroad and Warehouse Commission of this State is hereby authorized on petition by an affected party and after hearing, where a greater clearance can be reasonably provided, to require adequate and safe clearances as rapidly as possible in such yards. (Act Apr. 10, 1943, c. 390, §4.)
[219.46(4)]

4754-4. May extend existing yard tracks.—It shall not be unlawful to extend existing yard tracks or other tracks at the clearance which now exists between said tracks provided that said tracks were constructed either before or after April 16, 1913, with clearances as provided in Laws 1913, Chapter 307. (Act Apr. 10, 1943, c. 390, §5.)
[219.46(5)]

4754-5. May maintain additional tracks.—It shall not be unlawful to construct or maintain additional tracks at less than the required clearance on or under existing bridges which were constructed after April 16, 1913, with clearances as provided in Laws 1913, Chapter 307. (Act Apr. 10, 1943, c. 390, §6.)
[219.46(6)]

4754-6. Railroad and warehouse commission may grant order for less clearance.—The Railroad and Warehouse Commission after a hearing may authorize in the construction and reconstruction of bridges and tunnels by general order a less clearance than eight feet six inches from the center line of the track at a height of not to exceed six feet above the top of the rail and a clearance of less than eight feet six inches from the center line of the track at a point which shall not be less than 14 feet 6 inches above the top of the rail. (Act Apr. 10, 1943, c. 390, §7.)
[219.46(7)]

4755. Clearance—Exceptions.—That the Railroad and Warehouse Commission may upon application made, after a thorough investigation and hearing 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 construct any track or tracks at a less clearance 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 or construction of such overhead or side obstruction or tracks or the reconstruction and maintenance of the same at a less clearance than herein provided would not create a condition unduly hazardous to the employes of such common carrier or any person or corporation. (As amended Act Apr. 10, 1943, c. 390, §8.)

4756. Distance between tracks. [Repealed.]
Repealed. Laws 1943, c. 390, §9.

4757. Tracks for switching or storing: [Repealed.]
Repealed. Laws 1943, c. 390, §9.

4766. Charges to be reasonable.
Rules and regulations promulgated by carriers regarding absorption of switching charges is a "practice" within meaning of Mason's U. S. C. A., tit. 49, §§1, 15. Northern Pac. Ry. Co. v. U. S., (DC-Minn), 41 F. Supp. 439. Aff'd, 62 S. C. R. 1166. See Dun. Dig. 1205f.
Different practices with regard to absorption of switching charges, held unreasonable. Id.

4808. Free transportation for commission.
Commission may issue its own uniform pass for free transportation on buses, railroad trains and pullman cars, and need not request individual passes from carrier, and a motor bus or a railroad company cannot restrict use of such passes to business concerning themselves respectively. Op. Atty. Gen., (368d-18), Dec. 7, 1939.

4819. City councils to have power to grant franchises.
Industrial commission has authority to determine necessity of automatic windshield wipers on one-man streetcar, but any requirement that two men operate streetcar is a matter for city to determine. Op. Atty. Gen. (270c-4), Dec. 29, 1942.

4832. Public schedule of rates.
Rules and regulations promulgated by carriers regarding absorption of switching charges constituted a "practice" within meaning of the requirement of the Interstate Commerce Act that carriers establish, observe, and enforce just and reasonable regulations and

practices affecting classifications, rates or tariffs. Northern Pac. Ry. Co. v. U. S., (DC-Minn), 41FSupp439. Aff'd 62SCR1162. See Dun. Dig. 1205f.

Certain practices with regard to absorption of switching charges held unreasonable. Id.

4879. Caboose cars.—It shall be unlawful for any person, corporation or company operating any railroad in the State of Minnesota to require or permit the use of any caboose cars unless said caboose cars shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door at each end thereof, and with suitable water closets, cupolas or bay windows, platforms, guard rails, grab irons, and steps for the safety of persons in alighting or getting on said caboose cars and said caboose cars shall be equipped with at least two four-wheeled trucks. Shatter-proof glass shall be used in the door or doors of said caboose when the present glass in said door or doors is replaced. (As amended Act Apr. 15, 1941, c. 230, §1.)

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4880. Penalties for violation.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4886. Depots and waiting rooms.—Every such railroad company shall provide and maintain at all villages and cities upon its lines, depots with a suitable waiting room for passengers and a room for storage of freight. In places of four hundred inhabitants or more, such depots shall have an adequate waiting room for passengers, of sufficient size to accommodate all passengers stopping thereat, and not less than fifteen by eighteen feet in size and ten feet in height, properly and comfortably furnished, heated, lighted and ventilated, and in such condition open for the reception of passengers for at least one-half hour before and after the arrival of each passenger train. (As amended Act Apr. 20, 1943, c. 520, §1.)

Evidence held to sustain finding of negligence of railroad when passenger fell down steps leading from platform of railroad station. Becker v. T., 208M332, 294NW 214. See Dun. Dig. 8124.

4887. Certain depots to be kept open.

Order denying railroad leave to substitute station "custodian" for part-time agency service held unreasonable where annual gross revenue had decreased to $4,793.63 for preceding year, 78.8% thereof was derived from carload freight, which would be served practically as before, and where only inconvenience to patrons will be discontinuance of money transactions. State v. Chicago & N. W. Ry. Co., 210M147, 297NW715. See Dun. Dig. 8124.

4892. Toilet rooms at stations, etc.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4910. Fire extinguishers and tools.—Every such company shall keep, at each end of each passenger and sleeping car run or operated by it, fire extinguishers of good and approved construction, in good condition for use, and in a safe and convenient position, and in each car one saw and one ax to be kept inside of the car, in convenient places for use in case of accident. Any company violating any provision of this section shall forfeit to the state not more than one thousand dollars, and any officer, agent, or employee of such company who shall be responsible for such violation shall be guilty of a gross misdemeanor, and punished by a fine of not more than one thousand dollars. (As amended Act Apr. 23, 1941, c. 390, §1.)

4914. Automatic couplers on freight cars.

Where evidence in action under the Employers Liability Act was sufficient to go to jury upon question whether coupling could not be made by impact railroad was prima facie guilty of negligence and question of proximate cause of switchman's death was for the jury, though the switchman was also negligent, since his negligence was not a defense. Chicago St. P. M. and O. Ry. Co. v. Muldowney, (CCA8), 130F(2d)971. Cert. den. 63SCR526. See Dun. Dig. 6022e.

Fact that couplers involved in accident resulting in death of switchman would not couple automatically on impact could be proved by circumstantial evidence. Id. See Dun. Dig. 6022e.

The duty imposed upon a common carrier engaged in interstate commerce by rail to equip and maintain on all cars used by it couplers coupling automatically by impact is an absolute one. Id. See Dun. Dig. 6022e.

Such duty is not merely to provide such couplers but also to keep them in such operative condition that they will always perform their functions, and the test of compliance is the operating efficiency of the couplers with which the car is equipped. Id.

Evidence held sufficient to take case to jury on question of violation of Safety Appliance Act. Ross v. D., 207M157, 290NW566. See Dun. Dig. 6022n.

4915. Grab irons.

Physical facts did not demonstrate that switchman did not fall from car and receive injury by reason of a defect in ladder or strap iron. Blanton v. Northern Pac. Ry. Co., 215M442, 10NW(2d)382. See Dun. Dig. 6022h.

4926. Abandonment of road.

Whether railroad permitting taking up of rails for use in war effort thereby abandons right of way is a question of fact. Op. Atty. Gen. (365b-12), Oct. 12, 1942.

4932. Fire caused by engine—Insurable interest.

Any negligence of railroad in failing to discover and to guard against defective part on coal car proximately causing derailment of coal and tank cars, a wreck, and a fire, and failure to discover and to guard against defective fusible valve on tank car proximately causing tank car to explode when subjected to external heat from fire, could not have been the proximate cause of injury to a spectator one block away who was injured in a stampede following the explosion. Wiseman v. N. P. Ry. Co., 214M 101, 7NW(2d)672, 13NCCA(NS)526. See Dun. Dig. 8160.

4933. Liability of corporations for injury or death to employes.

4. Employee.

Where railroad company and wholesale grocery company entered into agreement whereby a checker and trucker employed by railroad performed all of his duties at grocery plant and was required to perform such services as should be required by foreman of grocery plant as well as check freight to be shipped by railroad, railroad to be reimbursed for all wages by grocery company, including social security, it being agreed between railroad and employee that he should remain an employee of railroad with all rights pertaining thereto, checker was employee of railroad alone even while doing work for grocery company. Ryan v. Twin City Wholesale Grocer Co., 210M21, 297NW705. See Dun. Dig. 5801.

Although the fact that an employee obtains employment by means of false statements may be ground for rescission of contract of employment, it is insufficient to render such contract void or to terminate the relation of master and servant, as affecting liability of master for negligence. Blanton v. Northern Pac. Ry. Co., 215M442, 10NW(2d)382. See Dun. Dig. 5801, 5857, 6022d.

Evidence sustained finding that switchman was not guilty of fraud in stating in his application that he had not suffered any physical injury, when in fact he had suffered injury to his nose requiring an operation. Id.

Where plaintiff had worked for railroad more than 90 days when injured and had not been rejected, he became an employee under rule of railroad relating to applicants for positions in its yard service, and, as such, he was under the protection of the Federal Employers' Liability and Safety Appliance Acts. Id. See Dun. Dig. 6022d.

6. Negligence.

Evidence of failure to warn section foreman of train operating on track in fog held not to justify conclusion that defendant's negligence, if any, was a proximate cause of death of decedent, who discovered train and attempted to flag it. Turner v. N., 207M187, 290NW563. See Dun. Dig. 6022o.

Failure to inspect coupler after unsuccessful contact and evidence from which jury could conclude that defendant employee knew or should have known that if switch engine did not couple with cars on which plaintiff was working, these cars would continue down track at considerable rate of speed when switch train stopped, and that plaintiff would jump on and ride cars on which he was working, and that a collision with other cars standing down the track would occur, warranted a finding of negligence. Ross v. D., 207M157, 290NW566. See Dun. Dig. 6022e.

Master is under duty of warning employe of dangers incident to cleaning floors with carbon tetrachloride,

fumes from which may cause death. Symons v. G., 208 M240, 293NW303. See Dun. Dig. 5929.

Master is under duty to exercise reasonable care for safety of his servant. Symons v. G., 208M240, 293NW 303. See Dun. Dig. 5855.

Where reasonable inquiry would disclose to master that carbon tetrachloride furnished to servant will give off fumes dangerous to life, master may be held for negligence. Symons v. G., 208M240, 293NW303. See Dun. Dig. 5929.

Where railroad checker and trucker performed all of his duties in a wholesale grocery plant under an agreement whereby grocery paid his wages and railroad social security, railroad company under its duty to exercise ordinary care and caution not to put checker to work in a place of danger would be liable for consequences of any negligent piling of sugar sacks by employees of grocery company in same manner as if piling had been done by employees of railway company in ordinary course of its business. Ryan v. Twin City Wholesale Grocer Co., 210M21, 297NW705. See Dun. Dig. 5857b, 5883.

9. Evidence.

Evidence of custom of railroads in general with respect to attempting to couple to moving cars was admissible. Ross v. D., 207M157, 290NW566. See Dun. Dig. 6022e.

In action against railroad and engineer wherein counsel for plaintiff by cross-examination under the statute qualified engineer as a man of long experience and well versed in his duties as an engineer, in fact making him an expert, it would seem that his conclusion that he did all that could be done when brakeman's light disappeared was admissible. Hill v. Northern Pac. R. Co., 210M190, 297NW627. See Dun. Dig. 3331.

11. Questions for jury.

In action for death of a railroad policeman killed while inspecting seals on cars by being struck by an unlighted train backing on an adjacent track negligence was for jury. Tiller v. Atlantic Coast Line R. Co., 63SCR444, rev'g (CCA4), 128F(2d)420. See Dun. Dig. 6022i.

A jury case is not made out unless reasonable minds could conclude from the evidence that defendant's negligence proximately caused injury. Turner v. N., 207M187, 290NW563. See Dun. Dig. 6022o.

Whether deceased employee was acting within scope of his authority in cleaning floor of oil room or was merely cleaning his coat with carbon tetrachloride, when fumes caused his death, held for jury. Symons v. G., 208 M240, 293NW303. See Dun. Dig. 5858.

12. Damages.

Verdict for $18,000 reduced to $15,000 was not excessive where plaintiff's loss of earnings alone exceeded amount allowed. Ross v. D., 207M157, 290NW566. See Dun. Dig. 2597.

Whether injury to head caused insane condition of plaintiff held for jury. Id. See Dun. Dig. 2570.

Verdict for $17,500 to a railroad man 48 years of age suffering an injury to his knee unfitting him for railroad work was not excessive. Ryan v. Twin City Wholesale Grocer Co., 210M21, 297NW705. See Dun. Dig. 2597.

Verdict for $20,000 was not excessive for a sacroiliac strain injury. Blanton v. Northern Pac. Ry. Co., 215 M442, 10NW(2d)382. See Dun. Dig. 6022k.

13. Federal Employer's Liability Act.

In action by brakeman under Federal Employers' Liability Act for injuries caused by giving way of a decayed and worn out guard rail against which plaintiff was leaning while properly on walkway of a bridge engaged in performing his duties of flagging a work train, verdict for plaintiff was sustained as against contentions of absence of negligence and proximate causation as well as of plaintiff's contributory negligence and assumption of risk. Thomson v. Boles, (C.C.A.8), 123 F. (2d) 487. Cert. den. 62SCR632. See Dun. Dig. 6022h, 6022k, 6022l, 6022o.

While Federal Employer's Liability Act abolishes the defenses of negligence of fellow servant, contributory negligence and assumption of risk, there can be no recovery in the absence of negligence on the part of the employer, and the employer is not an insurer of the safety of his employee, and hence a railroad company was not liable for the death of a switchman, resulting from injuries caused by presence of ridges and bumps of packed ice upon footboard on switch engine, where the presence of such packed ice was due solely to the negligence of the decedent in failing to correct the existing condition. McGivern v. Northern Pac. Ry. Co., (CCA 8), 132F(2d)213. See Dun. Dig. 6022i.

4935. Contributory negligence not to bar a recovery.

In an action under the Federal Employer's Liability Act for death of a railroad employee caused by sudden movement of a box car under which he was working, question whether or not blue flag was properly displayed by the employee held for the jury. Lowden v. Burke, (C.C.A.8), 129 F. (2d) 767. See Dun. Dig. 6022k.

As affecting liability for death of a clerk from using carbon tetrachloride for cleaning floors, express authorization to use such fluid for that purpose is unnecessary where implied authority may be inferred. Symons v. G., 208M240, 293NW303. See Dun. Dig. 5884.

4936. Employee not to be held to have assumed risk of employment.

3. Risks assumed.

Every vestige of the doctrine of assumption of risk was obliterated from the Federal Employers' Liability Act by the amendment of 1939. Tiller v. Atlantic Coast Line. R. Co., 63SCR444, rev'g (CCA4), 128F(2d)420. See Dun. Dig. 6022l.

6. Instructions.

It was not error to refuse a request on subject of assumption of risk where it was not before the jury or in the case. Hill v. Northern Pac. R. Co., 210M190, 297NW 627. See Dun. Dig. 6022l.

4937. Contrary contracts declared void.

An agreement entered into by railroad trustees with injured railroad employee by which employee agreed not to bring action in any venue other than the one where accident took place did not violate the provisions of sections 5 and 6 of the Federal Employers' Liability Act [45 Mason's USCA 55, 56], which prohibited any railroad from contracting to avoid liability for injury. Clark v. Lowden, (DC-Minn), 48FSupp261. See Dun. Dig. 6022b.

BILLS OF LADING

THE ISSUE OF BILLS OF LADING

4961. Definition of non-negotiable or straight bill.

Where bill of lading had all elements of a straight bill, except that it was on yellow paper, and contained notification clause, it was a straight bill. Rountree v. Lydick-Barmann Co., 150SW(2d)(Tex)173.

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING

4969. Justification of carrier in delivering.

Delivery of goods by carrier to person named in notification clause in a straight bill of lading which named shipper as consignee was not delivery to the consignee. Rountree v. Lydick-Barmann Co., 150SW(2d)(Tex)173.

4970. Carrier's liability for misdelivery.

Where carrier delivered goods to person named in notification clause on a straight bill of lading on which shipper was consignee, shipper could recover from carrier for loss suffered thereby. Rountree v. Lydick-Barmann Co., 150SW(2d)(Tex)173.

4980. Liability for non-receipt or misdescription of goods.

Where a carrier receives goods knowing that some are not in good condition and issues a bill of lading reciting that they are in good order, the carrier is not allowed to assert the contrary where the bill of lading is in the hands of a purchaser for value. Esbeco Distilling Corp. v. Owings Mills Distillery, (DC-Md), 43 F. Supp. 380. See Dun. Dig. 1310.

NEGOTIATION AND TRANSFER OF BILLS

4999. Demand, presentation or sight draft must be paid; etc.

Carriers issuing order bill of lading with draft attached, held liable where it delivered the goods to a warehouse company controlled by the drawee and purchaser without surrender of the bill of lading and payment of the draft, though the draft was indorsed by the shipper, was payable on 20 days sight, and was accepted by the drawee. Penn. R. Co. v. B., (CCA6), 111F(2d)983.

MOTOR VEHICLE TRANSPORTATION FOR HIRE

5015-1. Meaning of terms used.

A motor carrier engaged in transportation by motor vehicle over public highways between designated depots, stations and sidings of freight tendered to it by a railroad which has undertaken to carry freight as a common carrier by rail is a common carrier between fixed termini or over a regular route, whose operation is authorized only under a certificate of public convenience and necessity under Laws 1925, c. 185, and is not authorized as a contract or common carrier under Laws 1933, c. 170. State v. Rock Island Motor Transit Co., 209M105, 295NW519. See Dun. Dig. 8078c.

5015-2. Definitions.—(a) The word "Commission" means the Railroad and Warehouse Commission of the State of Minnesota.

(b) The term "Corporation" means a corporation, company, association or joint stock association.

(c) The term "person" means an individual, firm or copartnership.

(d) The word "certificate" means the certificate of public convenience and necessity authorized to be issued under the provisions of this act.

(e) The term "public highway" means every street, road, or highway in this state, and shall in-

clude any highway, state road, county road, public street, avenue, alley, driveway, boulevard, or other place built, supported, maintained, controlled or used by the public or by the state, county, district, or municipal officers for the use of the public as a highway or for the transportation of persons or property or as a place of travel or communication between different localities or communities.

(f) The term "motor vehicle" shall include all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons or property for compensation as common carriers, except motor vehicles used exclusively in transporting children to or from school, and motor vehicles used by any transportation company engaged exclusively in transporting agricultural, horticultural, dairy, or other farm products from the point of production to the primary market, or to motor vehicles used exclusively in transporting or delivering dairy products or to motor vehicles engaged exclusively in transporting or delivering freight within any city or village in this state or between contiguous villages or cities, or by any transportation company engaged in operating taxicabs, or hotel buses to or from a depot to a hotel.

(g) The words "between fixed termini or over a regular route," when used in this act, mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor vehicle, even though there may be departures from said termini or route, whether such departures be periodical or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route," within the meaning of this act, shall be a question of fact to be determined by the Commission.

(h) The term "auto transportation company," when used in this act, means every corporation or person owning, controlling, operating or managing any motor-propelled vehicle not usually operated on or over rails used in the business of transporting persons or property for compensation as common carriers over any public highway in this state between fixed termini or over a regular route; provided, that the term "auto transportation company" as used in this act, shall not include corporations or persons engaged exclusively in the transportation of children to or from school, or any transportation company engaged exclusively in transporting agricultural, horticultural, dairy, or other farm products from the point of production to the primary market, or to motor vehicles used exclusively in transporting or delivering dairy products, or to motor vehicles engaged exclusively in transporting or delivering freight within any city or village in this state or between contiguous villages or cities, or any transportation company engaged in operating taxicabs or hotel buses from a depot to a hotel.

(i) The word "railroad" means the movement of cars on rails regardless of the motive power used therefor, whether operated on a private right of way or in a public highway.

(j) "Contiguous city, town or village," as used herein, means any city, town or village whose boundary is immediately adjacent to the boundary of another city, town or village which is the terminus of any auto transportation company, or through which is operated any route of any auto transportation company. (As amended Act Mar. 2, 1943, c. 100, §1.)

Contractors connected with method of delivery of automobiles known as the drive-a-way method are within this act. Op. Atty. Gen., (633), July 7, 1941.

5015-4. Powers and authority of Commission as to rates, fares, charges, classifications, facilities, routes, accounts, services and operation of auto transportation companies—Revocation, etc. of certificates.—The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate every auto transportation company in this state; to fix just, reasonable and nondiscriminatory rates, fares, charges, and classifications; to regulate the facilities, accounts, service, and safety of operations of each such auto transportation company, and make rules and regulations for proper inspection of motor vehicles and to provide for the installation of safety devices thereon, and to require the installation of proper automatic speed control regulators if, in the opinion of the Commission, there is a necessity therefor; and may require the construction and maintenance or furnishing of suitable and proper depot or waiting room or accommodation or shelter in any village or city in this state or at any point on the highway traversed which the Commission may deem just and proper for the protection of passengers or property; to require the filing of annual and other reports, tariffs, schedules or other data by such auto transportation companies; to supervise and regulate auto transportation companies in all matters affecting the relationship between such auto transportation companies and the traveling and shipping public, and to extend the termini of any route of any passenger—carrying auto transportation company holding a certificate as such to any contiguous city, town or village, as defined herein, and to alter or change the route of any auto transportation company so that said route will also operate through any contiguous city, town or village, as defined herein; provided, however, that the power and authority of the Commission so to extend the termini of any such route or further change of any such route shall not apply to any route terminating within the boundaries of a city of the first class and extending less than 35 miles beyond the boundaries of such city. The Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act, applicable to any and all auto transportation companies.

In prescribing rates to be charged for the carrying of freight, persons, or property, the Commission shall take into consideration among other things, the kind and character of service to be performed, and the effect of such rates upon other common carriers, if any, and so far as possible avoid unreasonable competition with existing common carriers.

No time schedule, tariff or rates shall be put into effect or be changed or altered except upon hearing duly had and an order therefor by the Commission. Notice of such hearing shall be served upon any competing common carrier; provided, however, that if it appears that an emergency exists or that there is need for a minor or unimportant change in the time schedule, the Commission may authorize a modification thereof without a hearing and the service of notice as herein provided, but in such event notice of such fact shall thereafter be served within a reasonable time upon any competing common carrier, which shall have the right within fifteen days thereafter tc complain that it is being injured by such change and a hearing shall thereupon be granted.

No auto transportation company shall abandon or discontinue any service established under this act without an order of the Commission therefor.

Any auto transportation company may depart from the route over which it is authorized to operate for the purpose of transporting chartered or excursion parties to any point in the State of Minnesota on such terms and conditions as the Commission may prescribe.

No auto transportation company shall charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges which have been duly approved therefor by an order of the Commission; nor shall any auto transportation company refund or remit in any manner or by any

device, any portion of the rates, fares and charges required to be collected by the Commission's order, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as have been provided for by an order of the Commission.

The Commission may, at any time, upon its own motion, or upon application of any city, town or village contiguous to a city, town or village which is the terminus of any route of an auto transportation company, subject to the limitations of the proviso hereinbefore set forth or through which is operated the route of any transportation company, by its order, duly entered after a hearing had upon notice to the holder of any certificate hereunder and an opportunity to such holder to be heard, extend the terminus of any route of any transportation company to any such contiguous city, town or village, or cause to be ordered the alteration of any route of any transportation company which is operated through any city, town or village so that said route will also be operated through any contiguous city, town or village: provided that public convenience and necessity therefor be proved at a hearing thereon, or upon like application and hearing, at which it shall be proven that such holder wilfully violates or refuses to observe any of its proper orders, rules, or regulations or any provision of this act, suspend, revoke, alter, or amend any certificate issued under the provisions of this act; but the holder of any such certificate shall have all the rights of rehearing, review and appeal as to such order of the Commission as is provided for in this act. (As amended Act Mar. 2, 1943, c. 100, §2.)

5015-8. Certificates—When granted.

Word "necessity" is used not in its lexicographical sense as being indispensably requisite, nor as synonymous with the word "convenience," but as contemplating a definite public need for a transportation service for which no reasonably adequate public service exists. Minneapolis & St. L. R. Co., 209M564, 297NW189. See Dun. Dig. 8078c.

Application of a railroad stands upon same basis as that of any other applicant. Id.

Public convenience and necessity for proposed auto transportation service by a railroad was a fact question for commission. Id.

5015-9. Transfer, etc., of certificates.

Transfer by corporation of certificates of public convenience to an individual automatically transfers the plates and but one fee in each year for each vehicle in excess of one is all that is required. Op. Atty. Gen. (633c-4), Sept. 8, 1943.

5015-12. Laws applicable.

Public convenience and necessity for proposed auto transportation service by a railroad was a fact question for commission. Minneapolis & St. L. R. Co., 209M564, 297NW189. See Dun. Dig. 8078c.

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 reasonably regulate or control the routing, parking, speed, or the safety of operation of a motor vehicle operated by any transportation company under the terms of this act, or the general police power of any such city or village over its highways; nor shall this act be construed as abrogating any provision of the charter of any such city now organized and operating under said Section 36 [of] Article 5, 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; but no such city of the first class, or any city or village shall prohibit or deny the use of the public highways within its territorial boundaries by any such transportation company solely for transportation of passengers or property received within such boundaries to destinations beyond such boundaries, or for transportation of passengers or property from points beyond such boundaries to destinations within the same, or for transportation of passengers or property from points beyong such boundaries through such municipality to points beyond the boundaries of such municipality, where such operation is pursuant to a certificate of convenience and necessity issued by the Commission. (As amended Act Apr. 14, 1943, c. 434, §1.)

Power of city of Minneapolis extends to care and control of its streets and it may regulate and even exclude carrying on of a transportation business thereon for private gain, or grant privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. State v. Palmer, 212M388, 3NW (2d)666.

Laws 1925, c. 185, §18, is germane to subject expressed in title of act. Id.

5015-20. Definitions.

Commission may publish and distribute without charge a tariff of rates for truck operators. Op. Atty. Gen. (371a-3), Aug. 18, 1943.

Legal duties resulting from decision of Supreme Court finding part of section unconstitutional. Op. Atty. Gen. (371b-1), Dec. 1, 1943.

(g).

A motor carrier engaged in transportation by motor vehicle over public highways between designated depots, stations and sidings of freight tendered to it by a railroad which has undertaken to carry freight as a common carrier by rail is a common carrier between fixed termini or over a regular route, whose operation is authorized only under a certificate of public convenience and necessity under Laws 1925, c. 185, and is not authorized as a contract or common carrier under Laws 1933, c. 170. State v. Rock Island Motor Transit Co., 209M105, 295NW 519. See Dun. Dig. 8078c..

5015-20a. Railroad and Warehouse Commission may issue temporary certificates of public convenience.—The term "Emergency Motor Carrier" as used herein shall mean every person or corporation transporting persons or freight by motor propelled vehicles for compensation as a common carrier over the public highways of this state between fixed termini or over a regular route, but whose authority so to do is subject to the restrictions contained in subsections (b) and (c) hereof and is limited by its certificate to the existing war emergency and six months thereafter.

(a) Any person or corporation desiring to operate as an Emergency Motor Carrier shall make application to the Railroad and Warehouse Commission for an Emergency Certificate upon forms to be furnished by the Commission. Such application shall be accompanied by a fee of $10.00. Upon the filing of the application the Commission shall fix a time and place for hearing thereon and shall give not less than three nor more than ten days' notice thereof to competing carriers and all other persons whom the Commission shall deem to be interested parties. If the Commission shall find from the evidence that the war emergency makes necessary the proposed service or any part thereof, an Emergency Certificate therefor shall be issued to the applicant.

(b) Emergency Certificates shall be granted to passenger carriers only when it appears from the evidence that special needs arising out of the war emergency make existing transportation service inadequate to meet such needs.

(c) Emergency Certificates shall be granted to freight carriers only when motor carrier service is to be substituted for rail service between points located on the line of a railroad which has entered into an agreement with such Emergency Motor Carrier under which such motor carrier is to transport the railroad's less than carload freight and such freight is to move on a thru bill of lading or express receipt issued by the rail carrier.

(d) Emergency Certificates shall be issued for the duration of the existing wars and six months thereafter.

(e) All such certificates heretofore granted by the Commission under authority of the Governor's Execu-

tive Order No. C-6 dated April 1, 1942, are hereby ratified and confirmed.

(f) In all other respects, the laws, and the rules and regulations of the Commission governing the operations of Auto Transportation Companies shall govern the operations of Emergency Motor Carriers. (Act Mar. 29, 1943, c. 210, §1.)
[221.175]

5015-21. Permits — Commission to regulate and supervise trucks—Minimum rates.—(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 terms and conditions as provided in Section 5015-23 as amended; 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. (As amended Mar. 29, 1943, c. 210, §2.)

(b) * * * * *.

5015-22. Must have permits to operate.

Interstate commerce act gave the interstate commerce commission power to determine what commodities should be hauled and what class of shippers should be served by one operating as a contract carrier on July 1, 1935. Noble v. U. S., (DC-Minn), 45FSupp793. Aff'd 319US88, 63SCR950. See Dun. Dig. 4895.

5015-23. Petitions to be filed with the 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; and names and addresses of its officers, if a corporation; 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 unless the commission shall have determined that the vehicles do not meet the safety standards set up by the commission or that the applicant is not fit and able to carry on the operations of a permit carrier. A permit once granted continues in full force and effect until abandoned or revoked, subject to compliance by the permit holder with all other provisions of law governing permit carriers. 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 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. Nothing in this act shall prevent the 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 served by said railroad and which service shall only be a service supplementary to the rail service now established by such carrier. (As amended Mar. 29, 1943, c. 210, §3.)

State v. Rock Island Motor Transit Co., 209M105, 295 NW519; note under §5015-20(g).

5015-24. Fees of applicants.—To perpetuate the rights granted him under the provisions of Section 5015-23 the permit holder shall annually on or before January 1 file with the Commission notice of his intention to operate under said permit during the ensuing year and pay into the treasury of the State of Minnesota a fee in the sum of $7.50 for each vehicle operated by him under authority of said permit. 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 pays the fees for such semi-trailers. The Commission shall furnish a distinguishing plate for each vehicle for which a fee has been paid, which plate shall at all times be displayed on the vehicle to which it has been assigned. Plates may be reassigned to another vehicle without fee by the Commission upon application of the permit holder. The name and place of residence of the owner of the vehicle shall be stincilled or otherwise shown in a conspicuous place on said vehicle. No plate issued under the provisions of this section shall be effective after the first day of January of the year following the year of its issue. New plates shall be issued upon application therefor made in accordance with this section as amended and upon the payment of the fees prescribed herein; provided that in the event a permit has been suspended or revoked the Commission may order a hearing upon an application for 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 of each year 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. (As amended Mar. 29, 1943, c. 210, §4.)

Transfer by corporation of certificates of public convenience to an individual automatically transfers the plates and but one fee in each year for each vehicle in excess of one is all that is required. Op. Atty. Gen. (633c-4), Sept. 8, 1943.

5015-25. Bonds of applicants.

"Over-all Retrospective Coverage" plan of insurance. Op. Atty. Gen., (517J), Feb. 7, 1940.

5015-27. Compensation for carriers to be fixed by Commission.

Co-operative trucking association operating under permit from railroad and warehouse commission may transport goods for its members, and such association may distribute net income arising from such trucking operations to its members who are ultimate producers and consumers, but may not distribute such income to members who are engaged in exclusively mercantile pursuits. Op. Atty. Gen., (93-A-11), July 7, 1941.

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 the provisions of this Act as amended. The provisions of Sections 5015-23, 5015-24, 5015-25, 5015-26, 5015-27, 5015-28 and 5015-29, Mason's Supplement 1940, shall govern the issuance, renewal, and cancellation of permits to common carriers and the operations thereunder. (As amended Mar. 29, 1943, c. 210, §5.)

5015-32. Permits must be secured—Petition—Fee—Public liability and indemnity insurance.—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 name and address of the applicant; the names and addresses of its officers, if a corporation; a description of each vehicle which the applicant intends to use 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 additional fee of $7.50 shall be paid for each of such vehicles, in excess of one. Provided that the Com-

mission is hereby empowered to enter into reciprocal agreements with the regulatory bodies of other states whereby the payment of permit fees provided for in this section may be waived in whole or in part in the case of a nonresident of this state or a corporation or partnership whose principal place of business is outside this state if reciprocal privileges are extended under such agreement to residents of this state and to corporations or partnerships whose principal place of business is in this state.

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 cancellations 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 for the transportation of property exclusively in interstate or foreign commerce 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 transferred, sold or otherwise conveyed. 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. (As amended Mar. 29, 1943, c. 210, §6.)

One who solicited and forwarded freight through independent operators was not entitled to a federal grandfather permit to operate as a common carrier. Moore v. U. S., (DC-Minn), 41FSupp786. See Dun. Dig. 1701, 8078c.

Application required by Laws 1941, c. 213, does not take place of petition required of interstate contract carriers provided by Laws 1933, c. 170, as affecting contractors connected with delivery of automobiles by the drive-a-way method, and former has in view payment to state of sum as contribution for use of highways, while latter has rather to do with expense arising from administration of law regulating public carriage. Op. Atty. Gen., (633), July 7, 1941.

Filing of policy of insurance as required by Laws 1941, c. 213, obviates required filing of any additional insurance as provided by Laws 1933, c. 170. Id.

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 10 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 alleged. If upon said hearing the Commission shall determine that any of the provisions of this Act or of said Laws 1925, Chapter 185, or any order of the Commission thereunder 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. The district court upon application may enforce such cease and desist order by injunction or other appropriate writ or proceedings. (As amended Mar. 29, 1943, c. 210, §7.)

5015-38. Appeals.

Parties of record in proceeding before Railroad and Warehouse Commission, in which they fully participated by consent and without objection, who upon appeal to district court were notified to appear and did appear and enter formal appearance and by consent litigated the issues raised by appeal to supreme court, will be heard with other parties. State v. Rock Island Motor Transit Co., 209M105, 295NW519. See Dun. Dig. 8082a.

An order denying an alternative motion for amended findings or a new trial is not appealable as a final order. Id.

An appeal from both a judgment, which is appealable, and an order, which is not appealable, will be treated as a valid appeal from judgment only and will be disregarded so far as it relates to the order. Id.

5015-42. Monies to be paid into state treasury.

Commission may publish and distribute without charge a tariff of rates for truck operators. Op. Atty. Gen. (371a-3), Aug. 18, 1943.

5015-45 to 5015-54. [Suspended.]

Suspended until 60 days after cessation of hostilities. Laws 1943, c. 225.

It is within discretionary powers of railroad and warehouse commission to send out inspectors to enforce act, bearing in mind that highway patrol also has legal duty to arrest anyone violating act. Op. Atty. Gen. (640), June 10, 1940.

Patrolmen may break seals on commercial trucks in order to make inspections. Op. Atty. Gen. (632A-24), Aug. 30, 1941, superseding Op. Atty. Gen., Aug. 19, 1938.

STORAGE AND SHIPMENT OF GRAIN

TERMINAL WAREHOUSES

5016. Public terminal warehouses—Definition.

Public terminal warehouse act only applies to grain warehouses located within the switching limits of St. Paul, Minneapolis and Duluth and other points in state which may be designated as such by railroad and warehouse commission. Op. Atty. Gen. (645b-15), July 7, 1942.

5023. Inspection of terminal warehouse.

Grain destined for transportation in interstate commerce, inspected and graded in another state by federal licensed inspectors, is required to have further inspection and grading by federal or state inspectors when offered for storage in terminal warehouses in this state. Op. Atty. Gen. (215c-1), July 27, 1943.

5025. Warehousemen to post statement of grain in warehouse—Report to commission.—Every terminal warehouseman shall post conspicuously in his business office, on or before Tuesday morning of each week, a statement of the amount of grain of each kind and grade in store in his warehouse at the close of business on the preceding Saturday and render a like statement, verified by him or his bookkeeper having personal knowledge of the facts to the warehouse registrar of the commission. He shall also make a daily statement to said registrar of the amount of each kind and grade of such grain received in store in his warehouse the preceding day; the amount shipped or delivered, and the warehouse receipt canceled on such delivery, stating the number of each receipt and the amount, kind and grade of grain shipped or delivered thereon; the amount, kind and grade of grain delivered for which no warehouse receipt was issued and how and when the same was received, the aggregate of such reported cancellation and delivery of unreceipted grain corresponding in amount, grade and kind with the shipments and deliveries reported; and shall also at the same time report the receipts canceled upon issue of new ones, with the number of each such receipt canceled and that issued in its place. He shall also furnish the registrar any further information regarding receipts issued or canceled necessary for correct record of all such receipts and of grain received and delivered and shall make a further verified statement to the commission of the condition and management of any terminal warehouse under his control, at such times and in such form as the commission may require. (As amended Act Apr. 24, 1941, c. 430, §1.)

5031 to 5037. [Repealed.]
Repealed. Laws 1943, c. 84.

5037-1. Board of grain appeals—Members—Appointment — Salaries. —There is hereby created a board of grain appeals, the office of which shall be located in Minneapolis. The board shall consist of three members to be appointed by the Governor as hereinafter provided; shall have the same qualifications as grain inspectors; and shall hold office until their successors are appointed and qualified.

The salaries of the members of such board shall be fixed by the Railroad and Warehouse Commission and approved by the Governor, and such salaries and the necessary expenses of such board shall be paid out of the grain inspection fund on the order of the commission. (Act Feb. 27, 1943, c. 84, §1, Eff. Aug. 1, 1943.)
[233.135]

5037-2. Terms of office of appointees—Bond.—On or before the first day of August, 1943, one of such members shall be so appointed for the term of one year; one for the term of two years; one for the term of three years, and thereafter appointments thereto shall be for the full term of three years. The Governor may remove any member for cause and fill any vacancy for an unexpired term. Before entering on the duties of the office, each appointee shall give bond to the state with surety to be approved by the Governor in the sum of $1,000 conditioned for the faithful discharge of the duties of the office. The surety shall be a surety company authorized to transact business in the State of Minnesota. (Act Feb. 27, 1943, c. 84, §2; Eff. Aug. 1, 1943.)
[233.136]

5037-3. Official title—Meetings of Board.—The official title of such board shall be "The Minnesota Board of Grain Appeals" and it shall have jurisdiction over all grain appeal cases brought before it.

The Board shall meet annually on or before June 15, and establish the grades of all grain subject to state inspection which shall be known as the "Minnesota grades", and all grain received at any public warehouse shall be graded accordingly. Such grade shall not be changed before the next annual meeting without the concurrence of at least two members of the Board. At the time of establishing "Minnesota grades" it shall be the duty of such board to establish such rules and regulations as such board shall deem necessary for the carrying out of the provisions and purposes of this act; and shall publish such rules and regulations in such manner as the commission shall approve. In establishing the grades, in addition to the physical qualities of the grain, there shall be taken into consideration the milling and bread-producing quality of all grain products used as human food. The Board shall determine the grade and dockage, if any, of all grain in all cases where appeals from the decisions of the Chief Inspector have been taken and for such purpose they may request fresh samples of such grain to be furnished direct to the Board. Dockage shall be considered as being of two classes. First, that having value and second, that having no value. At the annual meeting the Board shall ascertain and determine what dockage contained in grain is of value and publish a list thereof in connection with the publication of said Minnesota grades. Any foreign content of the grain shall not be considered in establishing the grade. The Board shall render assistance and advice to the Chief Inspector of grain so as to enable him to instruct the Deputy Inspectors of grain in accordance with the decision and work of the Board. Whenever grain containing dockage of value is sold to any public, local warehouse or mill, terminal warehouse, or to any flour mill located in St. Paul, Minneapolis, or Duluth, or any other point within the State of Minnesota, which is now or may hereafter be designated as a terminal point, such sale shall not be considered to include such dockage of value, but such dockage shall be paid for at its market value or shall be returned to the vendor of said grain at the option of the vendee. (Act of Feb. 27, 1943, c. 84, §3, Eff. Aug. 1, 1943.)
[233.137]

5038. Chief inspector.
Chief grain inspector is "head of a department or division" and is not in classified civil service. Op. Atty. Gen., (644), June 6, 1941.

5042. Appeals—Procedure.—Any owner, consignee, or shipper of grain, or any warehouseman, who is dissatisfied with the inspection of grain by any chief or deputy inspector may appeal from his decision to the nearest grain inspection board by filing notice of such appeal with the chief deputy inspector and paying a fee, to be fixed by the commission, which shall be refunded if the appeal is sustained. Such deputy inspector shall forthwith transmit the notice to said board of grain appeals. The decision of said board, fixing the grade of such grain shall be final. (As amended Act Feb. 27, 1943, c. 84, §4, Eff. Aug. 1, 1943.)

LOCAL WAREHOUSES

5059. Public local Grain Warehouses, defined.—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 commission.

All elevators, flour, cereal and feed mills, malthouses or warehouses located in either of said cities receiving grain in less than minimum carload lots shall also be required to conform to all laws relating to public local grain warehouses. (As amended Apr. 7, 1943, c. 345, §1.)

A concern at Mankato intending to purchase beans and flax as agents for United States Government, all to be purchased in car lots except purchases made at plant that are trucked in from locality should be licensed as a public local grain warehouse. Op. Atty. Gen. (645b-15), July 7, 1942.

5060. Warehousemen must be licensed to buy grain. —Any person, firm or corporation operating a public local grain warehouse shall be licensed to buy grain annually by the commission. Application for license must be filed with the commission and the license issued before transacting warehouse business.

Every license shall expire at midnight on the thirtieth day of June, the fee shall be $5.00 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, other than a licensed warehouseman, who shall purchase grain from the owner thereof for the purpose of resale shall first procure a license therefor from the 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. Such license shall be renewed annually and shall also expire on June thirtieth. The fee for each such buyer's license shall be $5.00. Before any such license shall be issued the applicant therefor shall file with the commission a bond to the State with a corporate surety, approved by the commission, in a penal sum of not less than $1,500 conditioned that the applicant will pay upon demand to such owner the purchase price of such grain. Nothing in this section shall apply to any one purchasing seed grain for his own use or to any person who engages in the pur-

chase of grain for his own use or consumption; but the word "use" or the word "consumption" as used herein, shall not be construed to mean or include the sale of such grain at retail or wholesale; provided that nothing herein contained shall apply to persons, firms or corporations or their employees buying or selling grain in any Chamber of Commerce, Board of Trade or Grain Exchange.

Any public local grain warehouseman, or such purchaser of grain, operating without first obtaining such license shall be deemed guilty of a misdemeanor; each day of such operation shall constitute a separate offense; for which such public local grain warehouseman, or purchaser of grain, shall forfeit to the State $50.00; and such operation may be enjoined upon complaint of the commission. (As amended Apr. 24, 1941, c. 432, §1; Apr. 7, 1943, c. 345, §2.)

Truckers who go into another state and buy grain and haul it into this state for resale are not required to procure a license under this section. Op. Atty. Gen. (215A-4), Aug. 11, 1941.

5061. Warehouses must be kept open.—All public local grain warehouses shall be kept open for business in order to properly serve the public. Upon application and sufficient cause shown the commission may allow any such warehouse to close for such length of time as may be stated in the order issued therein. Nothing in this section contained shall apply to flour, cereal and feed mills and malthouses, doing a manufacturing business. (As amended Apr. 7, 1943, c. 345, §3.)

5062. Licenses may be revoked.—Any person, firm or corporation operating a public local grain warehouse who shall fail to keep the same open for the transaction of the business for which license has been issued, without first having received written permission from the commission to close, shall be guilty of a misdemeanor, and the license issued may be revoked by the commission and no reissue of license will be made to such warehouseman, or anyone associated or connected with him or them for a period not exceeding two years.

In case of loss or destruction by fire or other cause of any licensed public local grain warehouse, it shall be the duty of the licensee thereof to notify the commission in writing of any loss arising therefrom, forthwith.

Upon the sale or lease of a public local grain warehouse, when the person, firm or corporation operating the same is licensed only to buy grain such transfer of license will be had free of charge by applying to the commission for the same, provided, however, that the party selling or leasing the same shall first file with the commission a report of the business done from the preceding day of June, up to the time of such sale or lease, and where the public local grain warehouseman is licensed to buy and store grain and such warehouseman shall satisfy the commission that proper provision has been made for the purchase, redelivery, or continuation of the storage of such grain as may be outstanding on storage receipts, and shall also file the report above mentioned, the license of such person, firm or corporation to buy grain will be transferred free of charge. (As amended Apr. 7, 1943, c. 345, §4.)

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 the commission deems it 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. (As amended Apr. 7, 1943, c. 345, §5.)

5063. Grain to be received for storage; Receipt for; Penalties.

(a) Every person, firm or corporation operating a public local grain warehouse licensed to store grain shall receive for storage, so far as the capacity of the warehouse will permit, all grain tendered him, without discrimination of any kind; provided such grain is sound and in a warehouseable condition and of proper grade for delivery on terminal market contracts. Upon delivery of grain for storage a legal warehouse storage receipt shall be issued to the owner or his agent which shall state the place and date when the grain was received, the name of the owner of the grain, the kind and grade of the grain according to the official terms established by the state board of grain appeals, or by the Secretary of Agriculture of the United States, the gross weight, dockage and net weight of the grain as per Minnesota standard weight, and in addition thereto such receipt shall contain either on its face or reverse side the following specific warehouse and storage contract:

(b) This grain is received, insured and stored to 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 15 days, or part thereof, shall be free. Storage after the first 15 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 each other grains, and all other stated lawful charges accrued up to the time of said return of this receipt, the above amount, kind and grade of grain will be delivered within the time prescribed by law to the person above named or his order either from this warehouse, or if the owner so desires, in quantities not less than a carload in a public bonded warehouse at any terminal point upon the same line of railway within this state where state or federal inspection and weighing is in force, the grade and weight thereof to be determined by state or federal inspection and weighing as provided by law, and such grain to be subject to the usual freight, inspection, weighing and switching charges.

(c) Attached to the receipt shall be a stub record stating number and date of receipt and the gross weight, dockage and net weight; such stub record to remain in the possession of the person, firm or corporation issuing the receipt and shall be open for inspection by the commission or interested parties. The receipts shall be consecutively numbered and delivered to the owner or his agent. All storage receipts shall state the date of delivery, except where the delivery of a certain lot for storage is not completed, when such receipt shall be dated not later than Saturday of the week of delivery. All special bin receipts and stub records thereof shall have plainly marked thereon the words "Special Bin". Any such person, firm or corporation may insert on said receipt the following clause: "If any of the grain embraced in this receipt shall prove to be covered by any chattel mortgage or other lien, or the partial or absolute title prove to be in another other than the party to whom this receipt was issued, the same shall, if discovered before delivery of the grain, be a sufficient reason for a refusal to deliver to the holder of the receipt, or, if discovered after the delivery of the grain, such delivery shall be deemed an overdelivery, for which said holder of

this receipt to whom such delivery is made, shall be accountable."

(d) Any provision or agreement in such receipt not contained in the aforesaid specific warehouse and storage contract shall be void. The failure to issue such receipt as directed, or the issuance of slips, memoranda or any other form of receipt embracing a different warehouse or storage contract shall be deemed a misdemeanor, and no such slip, memoranda, or other form of receipt shall be admissible in evidence in any civil action, provided, nothing in this chapter contained shall be construed to require or compel any party or parties operating a flour, cereal or feed mill or malthouse, doing a manufacturing business, to receive, store or purchase at said mill any kind of grain.

(e) The person, firm or corporation issuing such receipt shall be held liable to the owner for the delivery of the kind, grade and net quantity of grain called for by said receipts. The term "grain" shall include the following products: Wheat, corn, oats, rye, barley, flaxseed, speltz and soy beans.

(f) Such person, firm or corporation shall purchase grain in conformity with the official grades of grain established from time to time by the state board of grain appeals or by the Secretary of Agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by state or federal officials pursuant to law. The official grades so established and any change that may be made from time to time shall be posted in a conspicuous place in their warehouse.

(g) No licensed person, firm or corporation shall issue a receipt for grain not actually received into his warehouse.

(h) Any person, firm, association or corporation, or any officer or agent of either thereof, who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than $50.00 or by imprisonment in the county jail for not less than 30 days. The Railroad and Warehouse Commission of this state shall have the power and it shall be their duty whenever they find, after a hearing, that the provisions of this act have been violated by any person holding a license to conduct a public local grain warehouse in this state, to revoke such license, and in such case no new license shall be granted to the person whose license is so revoked, nor to any one either directly or indirectly engaged with him in said business for the period of one year, except that the commission is authorized and empowered, upon application, to permit such licensed public local grain warehousemen to execute and perform agreements with the Secretary of Agriculture representing the several agencies of the United States Department of Agriculture, when such agreements may provide rates for handling and storing grain contrary to those prescribed by the statutes of Minnesota. (As amended Apr. 24, 1941, c. 431, §1; Apr. 7, 1943, c. 345, §6.)

5064. Form of Owners Receipt on Storage Receipt.—The form of receipt hereinafter set forth shall be printed on such storage receipt and shall be executed by the owner or his agent in case the grain represented thereby is purchased by such public local grain warehouseman, and said warehouseman shall record such purchase as to the total amount paid and the amount paid per bushel on the stub record of his storage receipt book.

Form of Receipt

Received from..... dollars net in full payment for the grain represented by this storage receipt. Gross price per bushel..... storage per bushel.....net price per bushel.....All blank spaces in this receipt were filled in before the same was signed by me, and I hereby certify that I am the owner of the grain for which this storage receipt was issued and that there are no liens, chattel mortgages or other claims against the grain represented by this storage receipt.

Signed.....
(Owner)

Dated.....19....

Nothing in this section contained shall be construed to affect in any manner the conditions of the storage contract specified in section 5063. (As amended Apr. 7, 1943, c. 345, §7.)

5065. Grain delivered on surrender of storage receipt.—On the return and surrender of any storage receipts and payment of all lawful charges, the grain represented thereby shall be immediately deliverable to the owner, or his order, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. If not delivered within 24 hours after such demand and proper facilities have been provided, the public local grain warehouseman issuing such storage receipt shall be liable to the owner in damages not exceeding one cent a bushel for each day's delay, unless he shall make delivery to different owners in the order demanded as rapidly as it can be done by ordinary diligence. The owner of the storage receipt shall order the car or other vehicle in which the grain covered by his receipt is to be transported, and the grain shall be delivered forthwith when the car or other vehicle so ordered is in proper condition for loading and is placed at the warehouse.

If any dispute or disagreement arises between the party receiving and the party delivering the grain at any public local grain warehouse in this state as to the proper grade or dockage, or both, of any grain, an average sample of at least three quarts of said grain in dispute may be taken by either or both of the parties interested. Said sample or samples shall be certified to by both the owner and public local grain warehouseman as being true samples of the grain in dispute on the day upon which the grain is delivered. Such samples shall be forwarded in a suitable sack by parcel post or express, prepaid, with the name and address of both parties, to the chief inspector of grain at St. Paul or Minneapolis, who shall, upon request, examine said grain, and adjudge what grade or dockage or both said samples of grain are entitled to under the inspection rules. If the grain in question is damp, or otherwise out of condition, a pint of such samples shall be placed in an airtight container and forwarded with such sample or samples. (As amended Apr. 7, 1943, c. 345, §8.)

In action by bank on a note, wherein the defendant sought to recover for plaintiff's failure to sell upon demand storage tickets for grain deposited as security, and evidence showed an undivided interest in grain by a third party named with defendant in storage ticket, in absence of evidence showing an express agreement to the contrary, it was the condition of loan agreement that defendant obtain consent of third party to disposition of grain though bank agreed to sell grain on demand. State Bank of Madison v. Joyce, 213M380, 7NW(2d)385. See Dun. Dig. 10145.

That bank undertook to foreclose a chattel mortgage held by borrower from bank upon interest of third party in grain pledged with bank as security for note, did not show conclusively that foreclosure was attempted by bank pursuant to an agreement that it would sell the grain on demand, and it did not relieve the defendant from necessity of showing that third party would consent to a sale of the grain or that bank agreed to see to it that third party would consent, as affecting rights of defendant to damages from the bank for failure to sell on demand. Id.

5066. Licensed public local grain warehouseman shall keep record.—Every public local warehouseman shall keep in proper books a record of all grain received, stored or shipped, stating the weight, grade, dockage for dirt or other cause, and the name of the owner. (As amended Apr. 7, 1943, c. 345, §9.)

5067. Standard weights to be used.—It shall be unlawful for any person, firm or corporation engaged in the purchase, sale or storage of grain at any public local grain warehouse in this state, as the same is now

or may be hereafter defined by law to use any other measure for such grain than the standard bushel; and the number of pounds to be used or called a bushel shall be the number of pounds provided by law as the standard weight of the kind of grain in question; provided, however, that during the months of October and November not exceeding 80 pounds and during the months of December and January not exceeding 72 pounds may be so used as the standard bushel of new ear corn. (As amended Apr. 7, 1943, c. 345, §10.)

5068. Pooling to be prohibited.—It shall be unlawful for any person, firm or corporation engaged in the buying, selling or handling of grain in any public local grain warehouse or for and for any agent of the person, firm or corporation, operating the same, to enter into any contract, agreement, combination or understanding, with any other person, firm or corporation owning or operating any other public local grain warehouse at any railway station, with their agents, whereby the amount of grain to be received or handled by the warehouses, at such station, shall be equalized or pooled between the warehouses or whereby the profits or earnings derived from these warehouses shall be divided, pooled, or apportioned, or whereby the price to be paid for any kind of grain at such station shall be fixed or in any manner affected, and each day of the continuance of such agreement, contract or understanding shall constitute a separate offense. (As amended Apr. 7, 1943, c. 345, §11.)

5069. Penalties.—Any person, firm or corporation, or any officer or agent of either thereof who shall violate the provisions of section 5068 of Mason's Minnesota Statutes 1927 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $50.00 or more than $100.00, and by imprisonment in the county jail for not less than 30 days, or more than three months. It shall be the duty of the commission whenever it finds, after a hearing, that any of the provisions contained in sections 5059-5076 of said Statutes have been violated by any person holding a license to operate a public local grain warehouse in this state, to revoke such license, and in such case, no new license shall be granted to the person whose license is so revoked nor to anyone either directly or indirectly engaged with him in said business, for the period of one year. (As amended Apr. 7, 1943, c. 345, §12.)

5070. Reports to be filed.—Every such public local grain warehouseman shall, on or before the tenth day of June of each year, render to the commission on blanks or forms prepared by it, an itemized and verified report of all business transacted by him under such license during the year beginning June 1st of the preceding year and ending May 31st of the current year.

Such report shall state the gross bushels of all grain of various kind in the 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; flour, cereal and feed mills and malthouses, doing a manufacturing business, 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 require special reports from such warehousemen at such times as the commission may deem expedient.

No license shall be issued to any public local grain warehouseman who has failed to make the annual report as required herein.

The commission may cause each 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 when deemed proper, and the property, books, records, accounts, papers, and proceedings of every such public local grain 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. 7, 1943, c. 345, §13.)

5071. Warehousemen must be licensed to store grain.—Before receiving any grain in any public local grain warehouse for storage, the person, firm or corporation operating the same shall first apply to and secure from the commission a grain storage license for such warehouse. A license fee of $5.00 shall be paid to the commission for each license issued and shall be deposited in the state treasury and credited to the grain inspection fund. All such licenses shall expire at midnight on the 30th day of June, following their issuance.

Before any such license is issued, the public local grain warehouseman shall file with the commission a bond in such sum as the commission may prescribe, which sum shall not be less than $1,500. 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 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 deems necessary for the protection of the storage receipt holders. The surety on such bonds shall be a surety company authorized to transact business in the State of Minnesota.

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 public local grain warehouseman who shall violate the provisions of this section shall forfeit to the state for each violation the sum of $50.00, and such violation shall be cause for revocation of license. (As amended Apr. 7, 1943, c. 345, §14.)

5072. Termination of license.—Storage contracts or 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 in this section 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 the public local grain warehousemen 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 such original storage contract, the licensed warehouseman shall, upon the expiration of such 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. 7, 1943, c. 345, §15.)

5073. Storage contract may be renewed.—Upon the payment of all legally accrued charges and the return of the storage receipt, the public local grain warehouseman and the storage receipt holder may by mutual consent enter into an agreement for the renewal of such storage. When such agreement is made, the warehouseman shall issue a new storage receipt to the owner and cancel the former receipt by indorsing thereon the words "Cancelled by the issuance of storage receipt No. ....," inserting the number of the new storage receipt thereon. The cancelled storage receipt shall be signed by the warehouseman, his agent, or manager, and the holder. (As amended Apr. 7, 1943, c. 345, §16.)

5074. Discrimination prohibited.—No person, firm or corporation, operating a public local grain warehouse licensed by the commission to store grain, shall discriminate in the charges made or the services rendered to the owners of stored grain, nor shall he discriminate in the receiving of grain offered for storage. (As amended Apr. 7, 1943, c. 345, §17.)

5075. Grain delivered considered sold; Unless.—All grain delivered to a public local grain warehouseman shall be considered sold at the time of delivery, unless arrangements shall have been made with such licensed public local grain warehouseman prior to or at the time of delivery thereof to apply the same on contract, for shipment or consignment, or for storage. (As amended Apr. 7, 1943, c. 345, §18.)

5076. Must issue scale tickets.—Every public local grain warehouseman, upon receiving grain into his warehouse, shall issue for each load of grain so received a uniform scale ticket. Such tickets shall be bound in books of convenient size, shall be consecutively numbered and provisions be made in said books for at least one carbon copy of each ticket. One carbon copy of each ticket shall not be detached from said book and shall remain in the possession of the public local grain warehouseman as a permanent record. The original ticket shall be delivered to the person from whom grain is received upon receipt of each load of such grain. Such tickets shall have printed across the face "This is a memorandum, non-negotiable, possession of which does not signify that settlement has or has not been consummated." Such tickets shall state specifically whether such grain is received on contract, for storage, or for shipment on consignment, or sold. If such grain is received on contract or sold the price shall be indicated on such ticket. All such tickets shall be signed by the public local grain warehouseman, or his agent or manager. (As amended Apr. 7, 1943, c. 345, §19.)

WAREHOUSE RECEIPTS

(UNIFORM WAREHOUSE RECEIPTS ACT)

PART I.—THE ISSUE OF WAREHOUSE RECEIPTS

5111. Form of receipts—Essential terms.

While act provides that receipts shall state location of warehouse in which goods are stored, alteration to conform to holder's agreement to accept delivery at other points is permissible. Pittman v. Union Planters Nat. Bank & Trust Co., (CCA6), 118F(2d)211, 45AmB(NS)615. Cert. den. 62SCR65.

One who had no title to goods could not pass any valid title by negotiation of a warehouse receipt to an innocent purchaser for value. Dunnagan v. Griffin, 151SW(2d)(Tex)250.

Where warehouse receipts had been negotiated to bank as security for a loan, the fact that warehouseman gave borrower permission to move goods involved did not affect bank's title. State v. Schwarzchild, 22Atl(2d)(Vt)177.

Loans upon grain stored by Commodity Credit Corporation—receipts—bond. Op. Atty. Gen. (645a-23), Nov. 1, 1943.

PART II.—OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

5130. Liability for care of goods.

Lippincott Distributing Co. v. P., 137OhioSp.399, 30NE(2d)691. Aff'd 31NE(2d)(OhioApp)694.

Depositor of goods in warehouse was real party in interest to sue for their destruction by fire, notwithstanding that depositor's insurer had advanced money under loan receipts which provided that the money was advanced not as payment but as a loan. Price & Pierce v. Jarka Great Lakes Corporation, (DC-Mich), 37FSupp939.

Failure to keep doors of warehouse locked in which wood pulp was housed or to provide a watchman whose duty it was to make sufficiently frequent inspections to prevent fire from reaching stage where it was beyond control by any available means constituted negligence. Id.

In actions based on contract where the negligence of the warehouseman is no part of plaintiff's case but constitutes an affirmative defense under the pleadings, warehouseman has burden to establish the existence of a lawful excuse for his refusal to deliver and in order to establish such excuse he must show that he was free from negligence. Id.

A warehouseman who has both manufactured and sold the goods to a person who stores them with him is under no greater obligation to that person as respects the quality of the goods than if he had been only a manufacturer-vendor. Esbeco Distilling Corp. v. Owings Mills Distillery, (DC-Md), 43 F. Supp. 380. See Dun. Dig. 10145.

Complaint alleging that warehouseman had without consent of plaintiff shipped plaintiff's goods from Indiana to California was sufficient as against contention that no consideration for contracts was alleged, allegations being sufficient to support action in conversion. Shank Fireproof Warehouse Co. v. H., 29NE(2d)(IndApp)1003.

Indiana statute dealing with duties and liabilities of warehousemen held not repealed by Uniform Warehouse Receipts act. Id.

A prima facie case is made by showing delivery of piano to warehouse in good condition and its return in damaged condition. McDonald v. B., 198So(La)545.

PART III.—NEGOTIATION AND TRANSFER OF RECEIPTS

5150. Rights of person to whom a receipt has been negotiated.

Where consignee is entrusted by consignor with possession of merchandise for purposes of sales, with authority to pass title thereto, and consignee, in violation of trust and confidence reposed in him, deals with consigned merchandise fraudulently and disposes of it to innocent purchaser for value, without notice, in manner not authorized by consignment agreement, consequences of such wrongdoing fall upon consignor, who voluntarily furnishes consignee with means of wrongdoing, rather than upon innocent third party. Lippincott Distributing Co. v. P., 30NE(2d)(Ohio)691.

Where one entrusted with possession of merchandise on consignment from owner places it in warehouse and obtains negotiable warehouse receipts therefor, and subsequently pledges them to bank as collateral security for promissory note, and bank thereafter takes possession of merchandise by virtue of such warehouse receipts, title of bank in such merchandise is superior to that of consignor. Id.

5172. Supervision by Commission over warehousemen.—That the Railroad and Warehouse Commission shall have general supervision of all warehousemen doing business in cities and villages in this state having a population of 5,000 or more persons according to the last federal census or within five miles of the boundary of such cities or villages, as warehousemen are defined in this act, and shall keep itself informed as to manner and method in which their business is conducted. It shall examine such business and keep itself informed as to its general condition. Capitalization, rates and other charges, its rules and regulations, and the manner in which the plants, equipments and other property owned, leased, controlled or operated, are constructed, managed, conducted and operated, not only with reference to the adequacy, security and accommodation afforded to the public by their service, but also in respect to the compliance with the provisions of this act or with the orders of the commission. (As amended Apr. 9, 1941, c. 139, §1.)

5173. Construction of various terms.—(a) The word "commission" when used in this act shall mean the Minnesota State Railroad and Warehouse Commission.

(b) The term "commission" when used in this act means one of the members of the commission.

(c) The term "warehouseman" when used in this act means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their trustees, assignees or receivers appointed by any court whatsoever, controlling, operating or managing in any city or village in this state having a population of 5,000 or more persons according to the last federal census or within five miles of the boundary of such city or village in this state, directly or indirectly, any building or structure or any part thereof, or any buildings or structures, or any other property whatsoever and using the same for the storage or warehousing of goods, wares or merchandise for hire, but shall not include persons, corporations or other parties operating grain or cold storage warehouses.

(d) The term "corporation" when used in this act includes any corporation, company, association, joint stock company or association.

(e) The term "person" when used in this act includes any individual, firm, or copartnership.

(f) The term "service" when used in this act is used in its broadest sense and includes not only the use and occupancy of space for storage purposes, but also any labor expended and the use of any equipment, apparatus and appliances or of any drayage or other facilities, employed, furnished or used in connection with the storage of goods, wares and merchandise, subject to the provisions of this act.

(g) The term "rate" when used in this act includes every individual or joint rate, charge or other compensation of any warehouseman, either for storage or for any other service furnished in connection therewith, or any two or more such individual or joint rates, charges or other compensations of any warehouseman, or any schedule or tariff therof, and any rule, regulations, charge, practice or contract relating thereto. (As amended Apr. 9, 1941, c. 139, §2.)

WAREHOUSES IN CITIES AND VILLAGES WITH POPULATION OF 5,000 OR MORE

5189. Warehouseman 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 same 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 $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.

License may be refused for good cause shown and revoked by the commission for violation of law or of any rule or regulation by it prescribed, upon notice and after hearing. (As amended Act Apr. 19, 1943, c. 495, §1.)

LIVE STOCK COMMISSION MERCHANTS

5239. Defined—License—Bond.

Livestock community sale bond executed by a partnership should be signed by all partners. Op. Atty. Gen., (293a-3), Dec. 28, 1939.

CHAPTER 28A

Department of Weights and Measures

WEIGHING AND GRADING OF SLAUGHTER LIVESTOCK

5285-11. Definitions.

(e).

It is necessary to have a license to sell horses to packing plants for slaughter. Op. Atty. Gen. (293b-13), May 25, 1943.

5285-18. Buyers must be licensed after June 30, 1935.

Livestock community sale bond executed by a partnership should be signed by all partners. Op. Atty. Gen., (293a-3), Dec. 28, 1939.

On granting of petition for reinstatement as an attorney at law court retained jurisdiction during a probationary period of three years. Gennow, 210M593, 299 NW683. See Dun. Dig. 682a.

It is necessary to have a license to sell horses to packing plants for slaughter. Op. Atty. Gen. (293b-13), May 25, 1943.

5285-25. Overages to be turned over to state treasurer.—All excess moneys arising from inability to make fractional change at tariff rates, in the weighing of animals, by the railroad and warehouse commission, which excess is retained by any person, firm, corporation, or association shall be paid on demand to the railroad and warehouse commission and forthwith deposited in the office of the state treasurer and credited to the live stock weighing fund therein; and that all such moneys heretofore similarly arising and retained, which have been heretofore paid to such commission and are now in the state treasury and not otherwise appropriated, are hereby appropriated and credited to such live stock weighing fund. (Act Mar. 15, 1943, c. 123, §1.)

[239.225]