Railroads, Warehouses, Utilities, Grain, and Live Stock

CHAPTER 216

RAILROAD AND WAREHOUSE COMMISSION

216.01 ELECTION; VACANCIES.

HISTORY. 1871 c. 22 s. 1; 1874 c. 26 s. 1; 1875 c. 103 s. 1; G.S. 1878 c. 6 s. 67; 1885 c. 188 s. 1; 1887 c. 10 s. 9; G.S. 1878 Vol. 2 (1888 Supp. c. 6 s. 771i; G.S. 1894 ss. 387(a) to 387(c); 1895 c. 152 ss. 1, 2; 1899 c. 39 ss. 1, 3; R.L. 1905 ss. 1953, 1954; G.S. 1913 ss. 4171, 4172; G.S. 1923 ss. 4628, 4629; M.S. 1927 ss. 4628, 4629.

To become a complainant in a proceeding before the railroad and warehouse commission under the motor vehicle transportation act so as to have an appeal from the commission's order to the district court of the county of the person's residence, a verified complaint with the parties designated as described in sections 216.13 and 216.19, must be filed with the commission. The commission having instituted these proceedings on its own motion, an appeal may be taken to the district court of Washington county that being one of the counties wherein appellant was ordered to cease his transportation operations. Murphy v Weiss, 191 M 49, 253 NW 1.

The railroad and warehouse commission issued to respondents certificates of convenience and necessity to transport freight as a common carrier by motor between fixed termini and over legal routes. Two competing railroads operating between the same termini appealed. The court will not interfere with the practice or procedure of the commission unless contrary to statutory direction. The insufficiency of the findings of the commission and of the trial court is not available, for appellants did not request either one to make the findings more specific or to find upon any certain issue. Chicago Northwestern v Vershingel, 197 M 580, 286 NW 2, 709.

The phrase "next general election" means one occurring after there is sufficient time after the vacancy to give the notice required by law that the vacant office is to be filled at the election. One who has no certificate at election to a state office from the state canvassing board is not entitled to quo warranto to test the title of an incumbent appointee thereto. State ex rel v Atwood, 202 M 50, 277 NW 357.

"Appointive term" does not expire on election day. It expires on the date the certificate is issued to the successor. OAG Oct. 25, 1944 (371a-5).

When made in accordance with the interstate commerce act, the interstate commerce commission's orders prescribing divisions are equivalent to acts of congress requiring the carriers to serve for the amounts so specified. Baltimore & Ohio v United States, 298 US 364.

Control of public utilities in Minnesota. 16 MLR 457.

History of public utility legislation in Minnesota. 16 MLR 471.

216.02 QUALIFICATIONS.

HISTORY. 1871 c. 22 s. 1; 1874 c. 26 s. 1; 1885 c. 188 s. 1; 1887 c. 10 s. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77i; G.S. 1894 s. 387; R.L. 1905 s. 1955; G.S. 1913 s. 4173; G.S. 1923 s. 4630; M.S. 1927 s. 4630.

216.03 OATH; BOND; SALARY.

HISTORY. 1871 c. 22 ss. 2, 11; 1874 c. 26 ss. 1, 2; 1875 c. 103 ss. 1, 2; G.S. 1878 c. 6 ss. 67, 68; 1887 c. 10 ss. 9, 19; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss.

77i, 77s; G.S. 1894 ss. 387(d), 387(e), 397; R.L. 1905 s. 1956; 1911 c. 140 s. 2; G.S. 1913 s. 4174; G.S. 1923 s. 4641; M.S. 1927 s. 4641.

216.04 REMOVAL; QUORUM.

HISTORY. 1874 c. 26 s. 3; 1887 c. 10 s. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77i; G.S. 1894 ss. 387(b), 387(d), 387(f); 1899 c. 39 s. 2(b); R.L. 1905 s. 1957, 1958; G.S. 1913 ss. 4174(a), 4174(b); G.S. 1923 ss. 4632, 4633; M.S. 1927 ss. 4632, 4633.

216.05 SECRETARY; EMPLOYEES.

HISTORY. 1875 c. 103 s. 2; G.S. 1878 c. 6 s. 68; 1887 c. 10 s. 19; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77s; G.S. 1894 s. 397; R.L. 1905 s. 1959; 1911 c. 140 s. 3; G.S. 1913 s. 4175; 1921 c. 382 s. 1; G.S. 1923 s. 4634; M.S. 1927 s. 4634.

The railroad and warehouse commission is subject to the provisions of Laws 1925, Chapter 426; and this act authorizes the commission of administration and finance to classify and grade the employees of the various officials and departments and to fix salary scales for the various classes and grades so established but not the salary of individuals. The commission of administration and finance not having classified the employees of the railroad and warehouse commission nor fixed a scale of salaries, employees were entitled to the salaries fixed by the railroad and warehouse commission, and there was no legal ground for disapproving such fixing. State ex rel v Chase, 165 M 268, 206 NW 396.

Legislature may appropriate as it sees fit moneys credited to "grade inspection fund" as such moneys belong to the state. OAG May 16, 1933.

216.06 COMMON CARRIERS.

HISTORY. 1887 c. 10 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77a; 1889 c. 124; G.S. 1894 s. 379(a); 1895 c. 152; R.L. 1905 s. 1990; G.S. 1913 s. 4247; G.S. 1923 s. 4722; M.S. 1927 s. 4722.

A corporation constructing and operating a suburban street railway is a common carrier and has the right to acquire a right of way for condemnation and condemn streets and alleys of cities and villages and private property within such limits without securing a franchise from the municipal authorities. Minneapolis & St. Paul Suburban v Manitou, 101 M 132, 112 NW 13.

The defendant owns and operates a main line of railroad extending from Deer River north. It operates a number of connecting stub lines, the roadbed and ties of which are owned by a lumber company. The railway company owns everything except the roadbed and ties and maintains the roadbed in condition and is in exclusive control of the stub lines as a common carrier. In addition to the authorized charge for carrying freight, it exacts a charge of one dollar per car, called a trackage charge, for cars originating on the stub lines and pays that money so collected to the lumber company. It renders no service for such charge; consequently the charge is invalid. McCallum v Minneapolis & Rainy River, 129 M 121, 151 NW 974.

216.07 RAILROADS; TRANSPORTATION.

HISTORY. 1887 c. 10 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77a; 1889 c. 124; G.S. 1894 s. 379(b); R.L. 1905 s. 1991; G.S. 1913 s. 4248; G.S. 1923 s. 4723; M.S. 1927 s. 4723.

216.08 (Transferred to 219.815).

216.09 (Transferred to 219.695).

216.10 ATTORNEYS; PROCEEDINGS IN NAME OF STATE.

HISTORY. 1871 c. 22 s. 13; 1885 c. 188 ss. 21, 22; 1887 c. 10 s. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77i; G.S. 1894 s. 387(h); R.L. 1905 ss. 1960, 1979; G.S. 1913 s. 4176, 4199; G.S. 1923 ss. 4635, 4658; M.S. 1927 ss. 4635, 4658.

Laws 1887, Chapter 10, Section 3, Subdivision a, is inconsistent with and supersedes Laws 1887, Chapter 14, Section 1. State ex rel v St. Paul, Minneapolis, and Manitoba, 40 M 353, 42 NW 21.

216.11 PROCEDURE; RULES; OFFICE.

HISTORY. 1885 c. 188 s. 21; 1887 c. 10 s. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77i; G.S. 1894 ss. 387(f), 387(g); R.L. 1905 s. 1961; G.S. 1913 s. 4177; G.S. 1923 s. 4636; M.S. 1927 s. 4636.

216.12 DUTIES OF COMMISSION.

HISTORY. 1871 c. 22 s. 5; 1874 c. 26 s. 4; 1875 c. 103 ss. 3, 4; G.S. 1878 c. 6 ss. 69, 70; 1885 c. 188 ss. 5, 10; 1887 c. 10 s. 10; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77j; G.S. 1894 ss. 388, 388(a); 1905 c. 176; 1905 c. 279; R.L. 1905 s. 1962; G.S. 1913 s. 4178; 1921 c. 259 s. 1; G.S. 1923 s. 4637; M.S. 1927 s. 4637.

Laws 1887, Chapter 10, creating the railroad and warehouse commission and finding its duties, is construed as not authorizing an appeal to the district court from an order of the commission prescribing rates to be charged by common carriers. Railway Transfer Co. v Railroad & Warehouse Commission, 39 M 231, 39 NW 150.

No appeal lies to the district court from an order of the railroad and warehouse commission relating to the mode of operating a railway so as to promote the safety and convenience of the public. Objection to such an order can only be made by way of defense to an action brought to enforce it. Minneapolis & St. Louis Railway v Railroad & Warehouse Commission, 44 M 336, 46 NW 559.

In construing Laws 1897, Chapter 94, the word "village" refers only to incorporated villages. An order requiring the defendant railway company to build and maintain a passenger station at an unincorporated village of 100 inhabitants situated in an agricultural part of the state within seven-tenths of a mile of an existing passenger and freight station is illegal. The fact that the nearby station is across the line in another state is no basic reason for the order. State ex rel v Minneapolis & St. Louis Railroad, 76 M 469, 79 NW 510.

The railroad and warehouse commission has the legal right to exact from the defendants, a partnership engaged in this state in the business of a common carrier, information as to all of its property and business within the state but not as to its property out of the state nor as to its interstate business. The defendants cannot be permitted to determine for themselves whether or not they will answer; it is their duty to answer candidly so far as reasonably possible and state facts which they claim excuse them for not answering more fully. The railroad and warehouse commission may compel these answers by mandamus. State ex rel v U. S. Express Co. 81 M 87, 83 NW 465.

An order by the commission requiring a railway to provide a small station building and custodian service at a flag station is presumed to be valid. Where the nearest station in either direction is seven miles from such flag station and the county is a prosperous community and the annual revenue derived by the company from the flag station exceeds $7,000, the presumption in favor of the validity of the order of the commission is not overcome. State ex rel v Great Northern, 123 M 463, 144 NW 155.

The railroad and warehouse commission has authority in a proper case to order the defendant to remove its station building one-half mile from its present location up to the village which it serves; and the commission has the right to order all trains brought to a stop before any junction not provided with an interlocking device. Commission v Great Northern, 124 M 533, 144 NW 771.

The district court on appeal from an order of the commission does not put itself in the place of the commission and does not substitute its findings for those of the commission nor set aside an order on the court's conception of its wisdom; but the question of whether an order is reasonable is a judicial question. State v Great Northern, 130 M 57, 153 NW 247.

The commission has power to determine whether a depot is suitable and, if not, to require the construction of a suitable one. State v Great Northern, 135 M 19, 159 NW 1089.

The facts considered and held to justify an order of the commission requiring a railway company to enlarge its depot, construct a platform, and to provide agent service in an unincorporated village of 200 inhabitants where the traffic amounts annually to $8,000 or more. Hines v Minnesota & International, 151 M 402, 186 NW 797.

Where interstate commerce commission had authorized a railroad to abandon a branch line, state court lacked jurisdiction to restrain the railroad from abandoning the line because of a contract allegedly requiring the railroad to furnish service to the village of Mantorville, and hence the federal district court on removal did not acquire jurisdiction. Village of Mantorville v Chicago Great Western, 8 F. Supp. 791.

Control of public utilities in Minnesota. 16 MLR 479.

216.13 PROCEEDINGS BEFORE COMMISSION; HOW COMMENCED.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 s. 13; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77m(a); G.S. 1894 s. 391(a); R.L. 1905 s. 1963; G.S. 1913 s. 4179; G.S. 1923 s. 4638; M.S. 1927 s. 4638.

The duty to make physical connection between telephone companies rests in statutory law, not in common law; reasonable compensation must be paid for switching service; any rate insufficient to constitute a reasonable return on the value of the property used and the services required is confiscatory; and the issue of confiscation must be submitted to a judicial tribunal for determination upon its own independent judgment as to both the law and the facts. Western v Northwestern Bell, 188 M 524, 248 NW 220.

In proceedings initiated by nine rural telephone companies to obtain lower switching service rates, the commission made its order reducing the rate, and the district court of Otter Tail county affirmed the decision. The supreme court reviewed the decision on the ground that the commission did not acquire jurisdiction because of a failure to comply with sections 216.13 to 216.16. Dayton v Northwestern Bell, 188 M 547, 248 NW 218.

To become a complainant before the commission under the motor vehicle transportation act so as to have an appeal from the order go to the district court of the county of the person's residence, a verified complaint with the parties designated as prescribed in sections 216.13 to 216.16 must be filed with the commission. Murphy v Weiss, 191 M 49, 253 NW 1.

Where a village is preparing to file a petition for improvement in bus service reasonable expense for making research and survey on which to base the petition would be for a public purpose. OAG April 5, 1944(476b-1).

The powers of a state commission are special, and limited to such authority as is legally conferred by express provisions of law, or such as is by fair implication and intendment incident to and included in the authority expressly conferred, for the purpose of carrying out and accomplishing objects for which it was created. Reasonable doubt as to the existence of any particular power should be resolved against the exercise of such power. Legislative power to fix divisions of joint rates between connecting carriers for the future may be lawfully delegated to a state commission. Backus-Brooks Co. v Northern Pacific, 21 F.(2d) 4.

216.14 NOTICE TO RESPONDENT.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 s. 13; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77m(b); 1891 c. 106 s. 2; G.S. 1894 s. 391(b); R.L. 1905 s. 1964; G.S. 1913 s. 4180; G.S. 1923 s. 4639; M.S. 1927 s. 4639.

Proceedings are nugatory unless there is a full compliance with the provisions of this section. 1936 OAG 13, May 12, 1936(371b).

216.15 ANSWER.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 s. 13; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77m(b); 1891 c. 106 s. 2; G.S. 1894 s. 391(b); R.L. 1905 s. 1965; G.S. 1913 s. 4181; G.S. 1923 s. 4640; M.S. 1927 s. 4640.

216.16 HEARINGS BEFORE COMMISSION.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 ss. 13, 14; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss. 77m(b), 77n(a), 77n(b); 1891 c. 106 s. 2; G.S. 1894 ss. 391(b), 392(a), 392(b); R.L. 1905 s. 1966; 1907 c. 305; G.S. 1913 s. 4182; 1921 c. 157 s. 1; G.S. 1923 s. 4641; M.S. 1927 s. 4641.

Speculative benefits standing alone will not justify an interference with existing rates otherwise reasonable. North Hennepin v Chicago, St. Paul & Omaha, 160 M 506, 200 NW 808.

Rate making for the future is an inherently legislative act whether done by the legislature directly or by an administrative body to which is delegated the duty of fixing rates in detail, and the commission in fixing rates must make findings of fact sufficiently specific to enable the court to determine whether the commission has complied with all statutory requirements and whether all substantial rights of the company have been observed. State v Tri-State Telephone, 204 M 516, 284 NW 294.

216.17 NOTICES AND ORDERS; SERVICE.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 s. 13; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77m(b); 1891 c. 106 s. 2; G.S. 1894 s. 391(b); R.L. 1905 s. 1967; G.S. 1913 s. 4183; G.S. 1923 s. 4642; M.S. 1927 s. 4642.

216.18 WITNESSES.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 ss. 13, 19; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss. 77m(b), 77s; G.S. 1894 ss. 391(b), 397; R.L. 1905 s. 1968; G.S. 1913 s. 4184; G.S. 1923 s. 4643; M.S. 1927 s. 4643.

The constitutional and legislative provisions relative to home rule charters of villages and cities do not authorize a city to grant its city council the right to punish a witness for contempt. Such power is not to be inferred but must be clearly granted either by the constitution or by statute. State ex rel v Fitzgerald, 131 M 116, 154 NW 750.

The City of Minneapolis on relation to the district court of Hennepin county was granted a peremptory writ of mandamus requiring the street railway company to permit representatives of the city to inspect the books and papers of the company in order to prepare for a hearing before the railroad and warehouse commission relative to the establishment of rates. The command of the writ cannot be avoided on any of the following grounds: (1) That application for the inspection should have been made to the commission instead of to the court; (2) that such an application had been made to and denied by the commission; (3) that the proposed inspection was not relevant to the inquiry; (4) that the city had an adequate remedy in law; or (5) that the judgment and writ went beyond the findings. State ex rel v Minneapolis Street Railway Company, 154 M 401, 191 NW 1004.

216.19 RATE UNREASONABLE; COMPLAINT; DUTY OF COMMISSION.

HISTORY. 1887 c. 10 s. 8; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1891 c. 106 s. 1(e); G.S. 1894 s. 386(e); R.L. 1905 s. 1969; G.S. 1913 s. 4185; G.S. 1923 s. 4644; M.S. 1927 s. 4644.

Under Laws 1887, Chapter 10, as amended by Laws 1891, Chapter 106, the railroad and warehouse commission, when reducing rates on the complaint of anyone, may for the purpose of preventing discrimination by its own acts reduce the rates on the whole line or system. The test as to what rates are reasonable is determined by ascertaining what under the circumstances is a reasonable income on the cost of reproducing the road at the present time. Burden is on the railroad company to show that the rates fixed by the commission are unreasonable. Steenerson v Great Northern, 69 M 353, 72 NW 713; State ex rel v Minneapolis & St. Louis Railway Co. 80 M 191, 83 NW 60.

The commission, by inviting a city in which a telephone company maintained an exchange to attend a hearing to determine reasonableness of telephone rates,

did not make such city a party to the proceeding by permitting it to file objections to the rates in effect and to participate in the proceedings had before the commission. State v Tri-State, 146 M 247, 178 NW 603.

Speculative benefits will not justify an interference with existing rates. North Hennepin v Chicago, St. Paul & Omaha, 160 M 506, 200 NW 808.

Orders issued by the commission are subject to the same tests and command the same regard as enactments of the legislature. All essential facts on which the order of the commission is based must be found, but the commission is not obligated to display the weight given by it to any part of the evidence or to disclose the mental operations by which it reached its result. State v Tri-State, 204 M 516, 284 NW 294.

Questions whether division of joint rates is just, reasonable, or equitable as to future, and reparations for damages sustained on account of unjust, unreasonable, and inequitable divisions in the past, will not be considered by the courts until the commission has determined what is a just, reasonable and equitable division of joint rates between the carriers involved. Backus-Brooks Co. v Northern Pacific, 21 F(2d) 4.

Where a joint tariff between two or more roads has been agreed upon, such tariff is assumption within the control of the legislature as if it related to transportation over a single line. Rates fixed by the commission are presumed to be reasonable, and the burden of proof is upon the railroad company to show otherwise. A tariff fixed by the commission for coal in carload lots is not proved to be unreasonable by showing that if such tariff were applied to all freight, the road would not pay operating expenses. Minneapolis & St. Louis v Minnesota, 186 US 257.

216.20 RATE UNREASONABLE; COMPLAINT BY ATTORNEY GENERAL; DUTY OF COMMISSION.

HISTORY. 1911 c. 50 s. 1; G.S. 1913 s. 4186; G.S. 1923 s. 4645; M.S. 1927 s. 4645.

To become a complainant in a proceedings before the commission so as to have an appeal from the commission's order go to the district court of the county of the person's residence, a party must file a verified complaint in accordance with the statute. In this case the commission having instituted the proceedings, the appeal was properly taken to the district court of Washington county, it being one of the counties wherein appellant was ordered to cease transportation operations. Murphy v Weiss, 191 M 49, 253 NW 1.

216.21 INVESTIGATION WITHOUT COMPLAINT; NEW RATES; NOTICE.

HISTORY. 1871 c. 22 s. 5; 1874 c. 26 s. 4; 1875 c. 103 ss. 3, 4; G.S. 1878 c. 6 ss. 69, 70; 1885 c. 188 ss. 5, 10; 1887 c. 10 s. 10; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77j; G.S. 1894 ss. 388(a), 388; 1897 c. 67; R.L. 1905 s. 1970; 1911 c. 87 s. 1; G.S. 1913 s. 4187; G.S. 1923 s. 4646; M.S. 1927 s. 4646.

The shipper's common law right of action for damages for discrimination in rates is not taken away by our rate-regulating statutes which furnish no civil remedy to the shipper. The shipper would have a right of action even though the statutory prohibition of discrimination in rates were deemed to create a new obligation on the part of the carrier. The jurisdiction of the state courts of an action by a shipper against a common carrier for damages resulting from unlawful discrimination is not affected by the provisions of the interstate commerce act, where the shipments involved are within points within the state and the transportation is wholly therein. Sullivan v Minneapolis & Rainy River Railway, 121 M 488, 142 NW 3.

At a proceeding brought before the railroad and warehouse commission by individual companies the commission did not acquire jurisdiction because of failure to comply with sections 216.13 to 216.16. Dayton v Northwestern Bell, 188 M 547, 248 NW 218; Murphy v Weiss, 191 M 49, 253 NW 1.

The constitution limits the rate-making power by prohibiting deprivation of property without due process of law or the taking of private property for public use without just compensation. When properly challenged as exceeding these

limitations, acts of the legislature or its agent in rate making are necessarily subject to judicial review upon the facts and the law. State v Tri-State, 204 M 516, 284 NW 294.

216.22 MOVEMENT OF LIVE STOCK; INVESTIGATION; REGULATION OF SPEED.

HISTORY. 1911 c. 317 s. 1; G.S. 1913 s. 4188; G.S. 1923 s. 4647; M.S. 1927 s. 4647.

216.225 RAILROADS; GROSS EARNINGS; CLASSIFICATION.

HISTORY. 1913 c. 90 s. 7; G.S. 1913 s. 4354; G.S. 1923 s. 4844; M.S. 1927 s. 4844.

216.23 REASONABLENESS OF EXPRESS RATES; PROCEEDINGS; CITATIONS; PARTIES.

HISTORY. 1911 c. 86 s. 1; G.S. 1913 s. 4190; G.S. 1923 s. 4649; M.S. 1927 s. 4649.

216.24 APPEALS TO DISTRICT COURT FROM ORDERS OF COMMISSION; PROCEDURE.

HISTORY. 1874 c. 26 s. 18; 1885 c. 188 s. 23; 1887 c. 10 s. 15(d); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77o(d); 1891 c. 106 s. 3; G.S. 1894 s. 393(d); 1895 c. 107; R.L. 1905 s. 1971; 1907 c. 167 s. 1; G.S. 1913 s. 4191; 1917 c. 291 s. 1; G.S. 1923 s. 4650; M.S. 1927 s. 4650.

No appeal lies to the district court from the order of the commission relating to the mode of operating a railway so as to promote the safety and convenience of the public. Objection to such an order can only be made by way of defense to an action brought to enforce it. Minneapolis & St. Louis v Commission, 44 M. 336, 46 NW 559.

On an appeal to the district court relative to regulation and fixing of rates, another carrier, not a party to the proceedings although indirectly affected, cannot be permiited as a matter of right to intervene or to be made a formal party to the case. Steenerson v Great Northern, 60 M 461, 62 NW 826.

The district court on appeal from an order of the commission reviews the order only so far as to determine whether or not it is unlawful and unreasonable. Such an order is unreasonable if contrary to the federal or state constitution or laws, or beyond the power of the commission, or based upon a mistake of law, or if without evidence to support it, or if so arbitrary as to be beyond the exercise of reasonable discretion. State v Great Northern, 130 M 57, 153 NW 247.

Speculative benefits will not justify an interference with existing rates. North Hennepin v Chicago, St. Paul & Omaha, 160 M 506, 200 NW 808.

The order of the district court directing the commission to make a return is appealable to the supreme court. In the fixing of rates one factor is the fair value of the street railway property. An order made in the course of the proceeding finding the value is not appealable to the district court, but an order fixing the rate is appealable and on such appeal the question of value is before the court. City of St. Paul v Commission, 163 M 274, 203 NW 972.

Court on appeal may not fix the rate of fare. It only determines upon its own judgment and upon original evidence as to whether the rate fixed by the commission is confiscatory or fair. City of Duluth v Commission, 167 M 311, 209 NW 10.

Inasmuch as the order of the commission appealed from does not affect bus service in the county of Hennepin, the attempted appeal to the district court of that county conferred no jurisdiction. Princeton v District Court, 179 M 90, 228 NW 444.

On an appeal from an order of the commission granting a suburban railroad company leave to abandon part of its right of way, it was error to refuse the appellants, villages affected by the order, the opportunity of offering evidence

before or unless they offered all of the testimony taken before the commission. Minneapolis & St. Paul Suburban v Village of Excelsior 186 M 573, 244 NW 61.

On appeal from an order of the commission concerning the Cashman distance tariff act, the burden is upon the appellant to show that the finding of the commission is not supported by the evidence. Chicago, M. St. P. & P. R. v Foley Bros. 191 M 335, 254 NW 435.

The powers of the reviewing court are purely judicial and lack legislative attributes. Its function is to protect constitutional rights, not to sit as a board of revision with appellate legislative authority to substitute its own judgment for that of the commission. State v Tri-State, 204 M 516, 284 NW 294.

Proceedings before the Minnesota railroad and warehouse commission in the matter of separation of grades by railroads are not judicial proceedings, and the court on appeal does not try the matter anew as an administrative body nor substitute its findings for those of the commission. State v Chicago, M., St. P. & P., 50 F(2d) 430.

Where Minnesota railroad and warehouse commission exercised its jurisdiction where question was squarely presented to it and determined that a joint rate order applied over connecting railroads, and there was no appeal from its orders, or any subsequent petition to review the commission's findings, and shippers and railroads alike assumed that joint rates applied over 25 years, a federal district court was without jurisdiction to review the commission's decision, or to determine whether defendant railroad and connecting road were a single line for rate making purposes. Watab Paper v Northern Pacific, 58 F. Supp. 927.

Control of public utilities in Minnesota. 16 MLR 520.

216.25 APPEAL; ORDERS NOT APPEALED; PROCEEDINGS.

HISTORY. 1885 c. 188 s. 23; 1887 c. 10 s. 15(d); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77o(d); 1891 c. 106 s. 3; G.S. 1894 s. 393(d); 1895 c. 107; R.L. 1905 s. 1972; 1907 c. 167 s. 2; G.S. 1913 s. 4192; G.S. 1923 s. 4651; M.S. 1927 s. 4651.

The commission, and on appeal, the court, should be liberal in receiving evidence upon the question of what is a reasonable rate to be made by the carrier proceeded against, and in their discretion may receive evidence and hear arguments in behalf of any person or corporation specially, although indirectly, interested in the result. Steenerson v Great Northern, 60 M 461, 62 NW 826.

The burden is on the railroad company to show that the rates fixed by the commission are unreasonable. When reducing rates on the complaint of anyone, the commission, for the purpose of preventing discrimination by its own acts, may reduce the rates on the whole line. Steenerson v Great Northern, 69 M 353, 72 NW 713.

On appeal from the commission the court should take judicial notice of all those general matters of which the commission should have knowledge and on which it would act without proof thereof made on formal notice. Steenerson v Great Northern, 69 M 353, 72 NW 713.

Where a connecting switch is necessary to facilitate the transfer of cars from one road to another to benefit both state and interstate traffic, there is concurrent jurisdiction in the state and federal authorities to order such connection. On appeal from the order of the commission, the burden is on the appellant railroad to show want of necessity. Jacobson v Wisconsin, 71 M 519, 74 NW 893; State ex rel v Minneapolis & St. Louis, 80 M 191, 83 NW 60; Minneapolis & St. Louis v Minnesota, 186 US 257.

An order by the commission requiring a railway company to provide a station building and custodian service at a flag station is presumed to be valid until it be shown affirmatively that such order is unreasonable. State ex rel v Great Northern, 123 M 463, 144 NW 155.

The burden of showing that any order of the commission is unreasonable rests upon the appellate road. Schain v Great Northern, 137 M 157, 162 NW 1079; Brogger v. Chicago, St. Paul & Omaha, 137 M 338, 163 NW 662.

Unless the court so directs, an appeal does not stay or suspend the order of the commission. No administrative order is suspended by an appeal unless the

statute so provides. School District v Consolidated School District, 151 M 58, 185 NW 962.

Application of motor vehicle mail carrier for order of court staying operation of order of district court relating to order of railroad and warehouse commission pending appeal to the supreme court should be made to the district court in the first instance unless some extraordinary reason exists for invoking the power of the supreme court. State v Lefebvre, 172 M 601, 215 NW 188.

On appeal from the district court the findings of fact of the commission are prima facie correct, and its order prima facie reasonable; the burden of proving otherwise is on the appellate road. Under the facts in this case the order of the commission was based upon a mistake of law, and the district court was justified in ordering agency service at the Pitt station. Abrahamson v Canadian Northern, 177 M 136, 225 NW 94.

While a railroad company has the constitutional right to abandon a road operated at a loss, the legislature has not given the commission power to authorize an abandonment of a road on that ground. In this case, however, the petitioner has for many years operated its line from Wildwood to White Bear at a loss caused by motor competition public and private, and the finding of the commission approved by the district court that the abandonment will not result in substantial injury to the public is sustained by the evidence. Minneapolis & St. Paul v Village of Birchwood, 186 M 563, 244 NW 57.

On appeal from an order of the commission granting the suburban railway company leave to abandon its road between Deephaven Junction and Tonka Bay, it was error on the part of the district court to refuse the Villages of Excelsior and Tonka Bay, affected by the order, the opportunity of offering evidence. Minneapolis & St. Paul v Villages of Excelsior & Tonka Bay, 186 M 573, 244 NW 61.

In an appeal from an order of the commission as to reasonable compensation for switching services the issue of confiscation must be submitted to the district court for determination upon its own independent judgment as to both the law and facts. Western Buse Telephone v Northwestern Bell, 188 M 524, 248 NW 220.

In a controversy growing out of the motor vehicle transportation act in order that an appeal from the commission's order go to the district court of the county of the person's residence, a verified complaint designating the parties must be filed with the commission; otherwise if the commission on its own motion instituted the proceedings, the appeal may properly be taken to one of the counties wherein the appellant was ordered to cease his transportation operations. Murphy v Weiss, 191 M 49, 253 NW 1.

On appeal from an order of the commission the burden is on the appellant to show that the finding of the commission is not sustained by the evidence. Chicago, St. Paul & Pacific v Foley Bros. 191 M 335, 254 NW 435.

The district court found that the evidence sustained the findings of the commission that respondents were entitled to certificates of public convenience and necessity to transport freight as a common carrier over the route in question. Chicago & Northwestern v Verschingel, 197 M 580, 268 NW 2, 709.

Rate-making is an inherently legislative act whether done by the legislature directly or by an administrative body. The reviewing court in a rate case may overthrow the mandate of the commission only when the commission has so abused its discretion as to constitute confiscation or otherwise render its action arbitrary. State v Tri-State Telephone, 204 M 516, 284 NW 294.

The application of a railroad for a certificate of public convenience and necessity to operate as a common carrier of freight by motor vehicle stands on the same basis as that of any other applicant, and whether the proposed certificate is granted is a fact question for the commission, and where as here the commission was guided in its findings by applicable rules of law and its findings are supported by the evidence, its order is not unlawful. State v Minneapolis & St. Louis, 209 M 564, 297 NW 189.

Order of the commission denying railroad leave to substitute custodian service for part-time agency service at Meriden held reasonable, and the finding of the district court affirming the order of the commission is reversed. State v Thomson, 210 M 147, 297 NW 715.

The State of Minnesota is without pecuniary interest in the controversy between city and railroads over grade separation, and the sole function of the railroad and warehouse commission was to determine what method of grade separation it would approve and order, and the court on appeal from an order of the commission will examine the entire matter in controversy. State v Chicago, St. Paul & Pacific, 50 F(2d) 430.

A statute which attempts to confer administrative of legislative powers on the court is unconstitutional. An appeal to the state district court from an order of the commission relating grade separation by railroads is a "civil suit" removable to the federal court. State v Chicago, St. Paul & Pacific, 50 F(2d) 430.

Control of public utilities in Minnesota. 16 MLR 520.

216.26 DISMISSAL IN CERTAIN CASES; PROCEDURE.

HISTORY. 1887 c. 10 s. 15(e); 1903 c. 189-1; R.L. 1905 s. 1973; G.S. 1913 s. 4193; G.S. 1923 s. 4652; M.S. 1927 s. 4652.

216.27 FILING PAPERS; EFFECT.

HISTORY. 1887 c. 10 s. 15(e); 1903 c. 189-1; R.L. 1905 s. 1974; G.S. 1913 s. 4194; G.S. 1923 s. 4653; M.S. 1927 s. 4653.

216.28 REBATES; DUTIES OF COMMISSION.

HISTORY. 1905 c. 176 s. 8; G.S. 1913 s. 4297; G.S. 1923 s. 4778; M.S. 1927 s. 4778.

Laws 1907, Chapter 232, fixed the tariff on fence posts in carload lots at 75 per cent of its lumber rate. Said law fixed the lumber rates at less than defendant's schedule. It is held that the legal rate for fence posts remained at 75 per cent of the legal maximum rate for lumber as fixed by chapter 232, and consequently plaintiff may recover the amount of the overcharge. Bell v Great Northern, 135 M 271, 160 NW 688.

A schedule of rates published providing for the absorption of the switching charges of connecting carriers, where under its schedule of rates previously published the shipper was required to pay such charges, is a change in an existing tariff and not a "first instance" tariff. A change in tariffs voluntarily made reducing rates to all shippers on all commodities at all stations becomes effective without obtaining the consent of the commission. After such a change has been made, the original rate cannot be restored without the consent of the commission after a hearing upon notice. National Elevator v Chicago, Milwaukee, 143 M 162, 173 NW 418.

216.29 INTERSTATE COMMERCE COMMISSION; STATE COMMISSION TO COOPERATE WITH.

HISTORY. 1923 c. 50 s. 1; G.S. 1923 s. 4719; 1927 c. 405 s. 1; M.S. 1927 s. 4719.

In this case the court is not concerned whether the issue is interstate or intrastate. Decision of the problem of sufficiency of evidence to show proximate cause will be the same whether the case arises under the federal or the state railroad liability act. McDermott v Minneapolis, Northfield & Southern, 204 M 215, 283 NW 116.

216.30 I. C. COMMISSION; JOINT HEARINGS.

HISTORY. 1923 c. 50 s. 2; G.S. 1923 s. 4720; 1927 c. 405 s. 2; M.S. 1927 s. 4720.

216.31 APPEARANCE BEFORE INTERSTATE COMMERCE COMMISSION.

HISTORY. 1923 c. 50 s. 3; G.S. 1923 s. 4721; 1927 c. 405 s. 3; M.S. 1927 s. 4721.

216.32 INTERSTATE COMMERCE COMMISSION; STATE COMMISSION TO INSTITUTE PROCEEDINGS.

HISTORY. 1905 c. 279 s. 1; G.S. 1913 s. 4201; G.S. 1923 s. 4660; M.S. 1927 s. 4660.

A tax imposed by Hawaii designated to effectuate a plan for control and supervision of the utilities of the territory is not void as applied to a particular utility. A common carrier of freight and passengers by water between different points within the Territory was a public utility, and the Shipping Act of 1916, enacted by the Congress of United States, did not oust the Public Utilities Commission of Hawaii of all jurisdiction over common carriers by water between ports within the Territory, and the imposition of the tax by the Territory does not violate the commerce laws of the federal constitution. Inter-Island Navigation Co. v Territory of Hawaii, 305 US 306, 83 L.Ed. 193, 59 SC 205.

216.33 INTERSTATE COMMERCE COMMISSION; MATTER PENDING; STATE COMMISSION MAY APPEAR.

HISTORY. 1905 c. 279 s. 1; G.S. 1913 s. 4202; G.S. 1923 s. 4661; M.S. 1927 s. 4661.

216.34 SCALES; INSPECTION OF.

HISTORY. 1907 c. 357 s. 1; G.S. 1913 s. 4209; G.S. 1923 s. 4668; M.S. 1927 s. 4668.

216.35 SCALES; SEALING DEVICES FOR; DUTY OF COMMISSION.

HISTORY. 1909 c. 319 s. 1; G.S. 1913 s. 4210; G.S. 1923 s. 4669; M.S. 1927 s. 4669.

216.36 SCALES; SEALING DEVICE; WHEN REQUIRED.

HISTORY. 1909 c. 319 s. 2; G.S. 1913 s. 4211; G.S. 1923 s. 4670; M.S. 1927 s. 4670.

216.37 SCALES; FAILURE TO INSTALL; TAMPERING WITH SEALING DEVICE; PENALTIES.

HISTORY. 1909 c. 319 s. 3; G.S. 1913 s. 4212; G.S. 1923 s. 4671; M.S. 1927 s. 4671.

216.38 SCALES; COMMISSION MAY REQUIRE.

HISTORY. 1921 c. 172 s. 1; G.S. 1923 s. 4672; M.S. 1927 s. 4672.

216.39 TRACK SCALES.

HISTORY. 1911 c. 252; 1913 c. 129 s. 1; G.S. 1913 s. 4213; G.S. 1923 s. 4673; M.S. 1927 s. 4673.

The commission has no jurisdiction over the matter of stenciling of weights on freight cars. OAG June 12, 1935(371b), 8.

216.40 TRACK SCALES; EQUIPMENT FOR TESTING.

HISTORY. 1913 c. 128 s. 1; G.S. 1913 s. 4215; G.S. 1923 s. 4675; M.S. 1927 s. 4675.

216.41 TRACK SCALES; INSTALLED; COST.

HISTORY. 1923 c. 118 ss. 1, 2; G.S. 1923 ss. 4676, 4677; M.S. 1927 ss. 4676, 4677.

216.42 WEIGHING COAL; TRACK SCALES; POWERS OF COMMISSION.

HISTORY. 1911 c. 326 s. 1; G.S. 1913 s. 4216; G.S. 1923 s. 4678; M.S. 1927 s. 4678; 1943 c. 173 s. 1.

216.43 COAL; CARLOAD LOTS; DUTY OF COMMISSION.

HISTORY. 1911 c. 326 s. 2; G.S. 1913 s. 4217; G.S. 1923 s. 4679; M.S. 1927 s. 4679.

The 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. State v Inland Coal & Dock, 208 M 216, 293 NW 611.

Coal must be weighed at distributing points unless used or consumed by the shipper. OAG August 30, 1934 (371b).

216.44 COAL; WEIGHERS; FEES.

HISTORY. 1911 c. 326 ss. 3, 4; G.S. 1913 ss. 4218, 4219; G.S. 1923 ss. 4680, 4681; M.S. 1927 ss. 4680, 4681.

216.45 GRAIN SECTIONS APPLICABLE TO COAL.

HISTORY. 1911 c. 326 s. 5; G.S. 1913 s. 4220; G.S. 1923 s. 4682; M.S. 1927 s. 4682.

216.46 SCALES IN STOCKYARDS; POWERS OF COMMISSION.

HISTORY. 1913 c. 252 s. 1; G.S. 1913 s. 4221; G.S. 1923 s. 4683; M.S. 1927 s. 4683.

The Great Northern Railway Company voluntarily installed stock scales at 54 of its stations in Minnesota, and such scales are a convenience pertaining to the transportation of stock. Its refusal to furnish stock scales at the station of Bertha was such a discrimination against that village that the commission had authority to require stock scales to be supplied at that station. State ex rel v Great Northern, 122 M 56, 141 NW 1102.

Competing truckers cannot compel a railroad company to make its stock pens and stock scales available. 1936 OAG 9, Jan. 26, 1936 (365a).

216.47 STOCK WEIGHERS; APPOINTMENT OF; BONDS; REPORTS; CERTIFICATES; QUALIFICATIONS; ACTION ON BONDS; REVOCATION OF APPOINTMENT.

HISTORY. Ex. 1919 c. 40 ss. 1, 2, 4 to 6; G.S. 1923 ss. 4685, 4686, 4688 to 4690; M.S. 1927 ss. 4685, 4686, 4688 to 4690.

216.48 WEIGHING STOCK; FEES.

HISTORY. Ex. 1919 c. 40 s. 3; 1921 c. 146 s. 2; G.S. 1923 s. 4687; M.S. 1927 s. 4687.

216.49 STOCK WEIGHER; IMPERSONATING; PENALTY.

HISTORY. Ex. 1919 c. 40 s. 7; G.S. 1923 s. 4691; M.S. 1927 s. 4691.

216.50 FALSE CERTIFICATES OF WEIGHTS; PENALTIES.

HISTORY. Ex. 1919 c. 40 s. 8; G.S. 1923 s. 4692; M.S. 1927 s. 4692.

216.51 SUPERVISOR OF WEIGHTS; "STATE WEIGHER;" USE OF PROHIBITED.

HISTORY. Ex. 1919 c. 40 s. 9; G.S. 1923 s. 4693; M.S. 1927 s. 4693.

216.52 WEIGHER; INTERFERENCE WITH.

HISTORY. Ex. 1919 c. 40 s. 10; G.S. 1923 s. 4694; M.S. 1927 s. 4694.

216.53 WATER IN STOCKYARDS; POWERS OF COMMISSION.

HISTORY. 1913 c. 252 s. 3; G.S. 1913 s. 4223; G.S. 1923 s. 4695; M.S. 1927 s. 4695.

Where reasonably necessary a railway company must keep and maintain stock pens in such condition and equipped with such facilities that animals confined therein awaiting shipment may receive proper care during a reasonable time. In the absence of statutory provisions a railway company is not required to furnish feed or water to live stock in its pens awaiting shipment unless the company has accepted the care and control thereof. Zakrzewski v Great Northern, 125 M 125, 145 NW 801.

216.54 RATES; SCHEDULE OF; POWERS OF COMMISSION.

HISTORY. 1872 c. 23; 1874 c. 26 ss. 5 to 7; 1887 c. 10 s. 3; 1887 c. 14 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; 1893 c. 108 s. 1; G.S. 1894 ss. 381(a) to 381(d), 381(f); 1895 c. 91; R.L. 1905 ss. 1981, 2018; 1911 c. 313 ss. 1, 2; 1913 c. 344 s. 2; G.S. 1913 s. 4230; G.S. 1923 s. 4700; M.S. 927 s. 4700.

Fairness of past divisions of joint intrastate rates must be determined by state commission before judicial relief can be granted. A minority stockholder of a railroad may file a complaint with the state commission and on proper showing secure revision of joint intrastate rates and divisions thereof. The commission has power to fix divisions of joint rates between carriers. Backus-Brooks v Northern Pacific, 21 F(2d) 4, 275 US 562.

Where connecting railroads were operated by separate corporations and were treated as separate roads for all purposes in 1914, where Minnesota railroad and warehouse commission promulgated a joint rate order, such fact indicated that the joint rate order, which did not specifically exempt such railroads, was intended to apply to them. Watab Paper v Northern Pacific, 58 F. Supp. 927.

216.55 RATES; RAILROADS; COMMISSION TO INVESTIGATE.

HISTORY. 1871 c. 22 s. 3; 1874 c. 26 s. 4; 1921 c. 408 s. 1; G.S. 1923 s. 4701; M.S. 1927 s. 4701.

216.56 RAILROADS; CONNECTION WITH MANUFACTORIES.

HISTORY. 1893 c. 65 s. 3; G.S. 1894 s. 7732; R.L. 1905 s. 1983; 1913 c. 367 s. 1; G.S. 1913 s. 4231; G.S. 1923 s. 4702; M.S. 1927 s. 4702.

The appellant was by order of the commission directed to construct a sidetrack from its main line to a stone quarry and crushing plant near Mendota. The order was affirmed by the district court, and an appeal taken. The order did not place upon the railway company an unreasonable burden, and the operation of the sidetrack and switch connecting it with the main line would in no way affect the safety of trains on the main line. Property for the sidetrack may be obtained by condemnation. State v Chicago, Milwaukee, 115 M 51, 131 NW 859.

The state under its police power may require a railroad company to provide such sidetrack facilities to adjacent industries as are necessary and reasonable. The expense may be apportioned between the company and the industry. Where a sidetrack becomes a part of the tracking of a railroad to be operated as part of the railway system, the taking of property therefore is a taking for a public purpose and resort may be had to condemnation. Ochs v Chicago, Northwestern, 135 M 323, 160 NW 866.

216.57 BIENNIAL REPORT; DUTY OF COMMISSION.

HISTORY. 1905 c. 122 s. 2; 1907 c. 290 s. 2; G.S. 1913 s. 4234; G.S. 1923 s. 4705; M.S. 1927 s. 4705.

216.58 COMMISSION TO REPORT TO GOVERNOR.

HISTORY. 1871 c. 22 s. 5; 1872 c. 26 s. 1; 1875 c. 103 s. 4; G.S. 1878 c. 6 s. 70; 1885 c. 188 s. 9; 1887 c. 10 s. 18; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77r; G.S.

1894 ss. 396, 396(a), 396(b); R.L. 1905 s. 1985; G.S. 1913 s. 4236; G.S. 1923 s. 4707; M.S. 1927 s. 4707.

216.59 RAILROAD VALUATION; DETAILED STATEMENT BY JUNE 30 OF EACH YEAR.

HISTORY. 1871 c. 22 s. 6; 1875 c. 103 s. 5; G.S. 1878 c. 6 s. 71; 1885 c. 188 ss. 6 to 8; 1887 c. 10 s. 17; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77s; 1909 c. 147 s. 1; 1913 c. 125 s. 1; G.S. 1913 s. 4241; 1917 c. 22 s. 1; G.S. 1923 s. 4712; M.S. 1927 s. 4712.

216.60 INQUISITORIAL POWERS OF COMMISSION.

HISTORY. 1871 c. 22 s. 9; 1874 c. 26 s. 4; 1875 c. 103 s. 6; G.S. 1878 c. 6 s. 72; 1913 c. 125 s. 2; G.S. 1913 s. 4242; G.S. 1923 s. 4713; M.S. 1927 s. 4713.

216.61 MILLING IN TRANSIT; COMMISSION TO ADJUST CREDITS WHERE MILL DESTROYED.

HISTORY. 1911 c. 98 s. 1; 1913 c. 17 s. 1; G.S. 1913 s. 4246; G.S. 1923 s. 4717; M.S. 1927 s. 4717.

216.62 PASSENGER TRAINS; DISCONTINUED ONLY WITH CONSENT OF COMMISSION.

HISTORY. 1923 c. 214 s. 1; G.S. 1923 s. 4718; M.S. 1927 s. 4718.

216.63 RATES UNREASONABLE; POWERS OF COMMISSION.

HISTORY. 1907 c. 232 s. 5; G.S. 1913 s. 4302; G.S. 1923 s. 4783; M.S. 1927 s. 4783.

216.64 RATES; DUTIES OF RAILROAD COMPANIES; PENALTIES.

HISTORY. 1907 c. 232 s. 6; G.S. 1913 s. 4303; G.S. 1923 s. 4784; M.S. 1927 s. 4784.

216.65 RULES AND REGULATIONS; COMMISSION MAY PRESCRIBE; REVISE.

HISTORY. 1917 c. 118 s. 7; G.S. 1923 s. 4952; M.S. 1927 s. 4952.

216.66 CARS; COMMISSION TO REGULATE DISTRIBUTION.

HISTORY. 1921 c. 307 s. 1; G.S. 1923 s. 4855; M.S. 1927 s. 4855.

216.67 LAWS; ENFORCEMENT; DUTY OF COMMISSION.

HISTORY. 1905 c. 208 s. 3; 1907 c. 202; 1909 c. 173 s. 2; 1909 c. 377 s. 3; 1909 c. 488 s. 10; G.S. 1913 ss. 4271, 4395, 4403, 4420; 1921 c. 244 s. 2; G.S. 1923 ss. 4752, 4891, 4894, 4902, 4923; M.S. 1927 ss. 4752, 4891, 4894, 4902, 4923.

The statute protects agricultural lands against injuries incidental to closing of a ditch dug along a railroad right of way. Peterson v Northern Pacific, 132 M 265, 156 NW 121.

Two independent fires joined and together proceeded to destroy plaintiff's standing timber. One of the fires was started by defendant's locomotive. The other fire, while not started by defendant, had been burning for several days on and along defendant's right of way spreading toward plaintiff's land, and under such circumstances defendant owed plaintiff the duty of using ordinary care, and the evidence justifies the finding of the jury that defendant was negligent. The defendant is liable in damages to the plaintiff. Farrell v Minneapolis & Rainy River, 121 M 357, 141 NW 491.

216.68 FORFEITURES; VIOLATIONS; PENALTIES.

HISTORY. 1871 c. 22 ss. 7, 9; 1874 c. 26 ss. 4, 16; 1875 c. 103 ss. 5, 8, 10; G.S. 1878 c. 6 ss. 71, 74, 76; 1885 c. 188 ss. 14, 27; 1887 c. 10 s. 12; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77L; G.S. 1894 s. 390; 1905 c. 122 s. 3; R.L. 1905 s. 1987; 1911 c. 317 s. 2; 1913 c. 125 s. 2; G.S. 1913 ss. 4189, 4235, 4243; G.S. 1923 ss. 4648, 4706, 4714; M.S. 1927 ss. 4648, 4706, 4714.

The right of a railroad to abandon its road because it cannot be operated without a loss, not being covered by statute, the Minnesota commission has no jurisdiction over such question and cannot grant permission to abandon. Since neither the commission nor state district court could grant the railroad a right to abandon its road because operated at a loss, the fact that the railroad has taken an appeal to the state district court from the order of the commission denying its right of abandonment on the ground it would result in substantial injury to the public does not estop the railroad from bringing suit in federal court to restrain interference with the proposed abandonment of its road. This presents a federal question over which the federal district court has jurisdiction. Hill City Ry. Co. v Youngquist, 32 F(2d) 819.