

CHAPTER 218

COMMON CARRIERS; TRANSPORTATION

218.01 RAILROAD AND RAILWAY.

HISTORY. 1885 c. 188 s. 25; 1887 c. 10 s. 1(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77a; 1889 c. 124; 1913 c. 90 s. 4; G.S. 1913 s. 4351; G.S. 1923 s. 4841; M.S. 1927 s. 4841.

The commission has no jurisdiction over industrial railroads. OAG Aug. 3, 1934, 371d, 8.

218.02 TRANSPORTATION.

HISTORY. 1885 c. 188 s. 25; 1887 c. 10 s. 1(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77a; 1889 c. 124; 1913 c. 90 s. 4; G.S. 1913 s. 4351; G.S. 1923 s. 4841; M.S. 1927 s. 4841.

218.03 RAILWAY CORPORATIONS.

HISTORY. 1874 c. 26 s. 14; 1913 c. 90 s. 4; G.S. 1913 s. 4351; G.S. 1923 s. 4841; M.S. 1927 s. 4841.

218.04 CHARGES TO BE REASONABLE.

HISTORY. 1874 c. 26 s. 15; 1875 c. 103 ss. 7, 8; G.S. 1878 c. 6 ss. 73, 74; 1885 c. 188 s. 20; 1887 c. 10 ss. 2(a), 2(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77b; G.S. 1894 ss. 380(a), 380(b); 1895 c. 91; R.L. 1905 s. 2007; G.S. 1913 s. 4285; G.S. 1923 s. 4766; M.S. 1927 s. 4766.

The commission and on appeal the court should be liable in receiving evidence upon the question of what is a reasonable rate, and in its discretion may receive evidence and hear arguments in behalf of any person specially, although indirectly, interested in the result. *Steenerson v Great Northern Ry. Co.* 60 M 461, 62 NW 826.

It is within the corporate powers of a common carrier to agree, as an inducement for business, to store goods at terminal points in the state free of charge for 90 days, subject to stipulated charges thereafter until removed provided that this free storage is in accordance with duly published tariff regulations and open without discrimination to all shippers. *State v Minneapolis & St. Louis*, 115 M 116, 131 NW 1075.

The shipper's common law right of action for damages for discrimination in rates is not taken away by our rate-regulating statutes. *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3.

Following *Sullivan v Minneapolis & Rainy River Ry. Co.* 121 M 488, the court elaborates on the rules and methods and procedure for the recovery by a shipper who has been discriminated against. *Seaman v Minneapolis & Rainy River Ry.* 127 M 180, 149 NW 134.

While unequal and unreasonable charges for passenger transportation is prohibited, the language of Laws 1913, Chapter 536, is so ambiguous as to be unenforceable. *State ex rel v Chicago, Milwaukee & St. Paul*, 128 M 25, 150 NW 172.

The main line in addition to its published tariff rates may not add an additional trackage charge against cars originating on stub lines. *McCallum v Minneapolis & Rainy River*, 129 M 121, 151 NW 974.

The interstate commerce commission established maximum interstate freight rates effective in certain districts of Minnesota, and the carriers advanced their

MINNESOTA STATUTES 1945 ANNOTATIONS

1313

COMMON CARRIERS; TRANSPORTATION 218.08

rates to that maximum. These rates being higher than the intrastate rates the disparity produced unjust discrimination against certain cities. Held, that the varying rates in effect in the different portions of the state were legally established under either federal or state authority, and since the discriminations complained of can only be avoided by the modification of one or both of the legally established rates, and rate-making is a legislative and not a judicial function, the trial court correctly ruled that the action brought by the state to compel carriers to remove discriminations could not be maintained. *State ex rel v Northern Pacific*, 168 M 393, 210 NW 399.

Public utilities duty to serve without discrimination. 13 MLR 104.

218.05 PASSENGER RATES.

HISTORY. 1874 c. 26 s. 5; 1913 c. 536 s. 1; G.S. 1913 s. 4286; 1917 c. 23 s. 1; G.S. 1923 s. 4767; M.S. 1927 s. 4767.

218.06 PASSENGERS; MAXIMUM RATES.

HISTORY. 1874 c. 26 s. 5; 1907 c. 97 s. 1; 1911 c. 331 s. 1; G.S. 1913 s. 4288; G.S. 1923 s. 4769; M.S. 1927 s. 4769.

It is a reasonable regulation to require passengers without a ticket who tender cash for transportation to pay ten cents more than the regulation fare; the passenger being furnished with a receipt which entitles him to refundment of the ten cents. *Allen v Chicago, St. Paul, Minneapolis & Omaha*, 116 M 119, 133 NW 462.

An act establishing a lower rate than the maximum passenger rate for the carriage of members of the city's military force when such members are traveling in discharge of their military duties is not an unlawful discrimination. *State ex rel v Chicago, Milwaukee & St. Paul*, 118 M 380, 137 NW 2.

The question whether railroad passenger or freight rates prescribed by statute are reasonable or unreasonable and confiscatory is a judicial question exclusively for determination by the courts. The court may suspend the enforcement of such rates pending trial of the action. The trial court erred in excluding the writ of injunction from evidence on the trial of an indictment against the defendant for alleged violation of the statute. *State v Chicago, Milwaukee & St. Paul*, 130 M 144, 155 NW 320.

Law 1907, Chapters 97 and 232, and orders of the commission thereunder reducing rates; do not violate the United States Constitution, Article 1, Section 8. This modifies *Shepard v Northern Pacific Railway Co.* 184 F 765. *Minnesota Rate Cases*, 33 SC 729; *United States v Eason*, 8 F. Supp. 374.

When is a suit against a state officer a suit against the state. 13 MLR 139.

218.07 FREIGHT RATES; RIGHT OF CARRIER IN FIRST INSTANCE; UNIFORM CLASSIFICATION.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1905 c. 176 s. 1; G.S. 1913 s. 4290; G.S. 1923 s. 4771; M.S. 1927 s. 4771.

A carrier cannot collect a trackage charge without services rendered. *McCallum v Minneapolis & Rainy River*, 129 M 121, 151 NW 974.

In determining whether a shipment is intrastate or interstate the intention of the shipper is important. The fact that an interstate shipment is reshipped by the consignee in the car in which it is received, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the state from having an independent and intrastate character, and if the last movement is interstate, it does not necessarily follow that the first movement was also interstate. *Becher v Northern Pacific*, 158 M 77, 197 NW 103.

218.08 NOTICE OF CHANGE TO BE POSTED.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1905 c. 176 s. 2; G.S. 1913 s. 4291; G.S. 1923 s. 4772; M.S. 1927 s. 4772.

MINNESOTA STATUTES 1945 ANNOTATIONS

218.09 COMMON CARRIERS; TRANSPORTATION

1314

The legal rate for fence posts remained at 75 per cent of the legal maximum rate for lumber as fixed by Laws 1907, Chapter 232. *Bell v Great Northern*, 135 M 271, 160 NW 688.

A change in the tariffs of a railroad company voluntarily made reducing rates to all shippers on all commodities at all stations in the state becomes effective without obtaining the consent of the commission, and after such change has been made, the original rate cannot be restored without the consent of the commission after hearing and notice. *National Elevator Co. v Chicago, Milwaukee & St. Paul*, 143 M 162, 173 NW 418.

218.09 RATES NOT TO BE CHANGED WITHOUT ORDER OR CONSENT OF COMMISSION.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1905 c. 176 s. 3; G.S. 1913 s. 4292; G.S. 1923 s. 4773; M.S. 1927 s. 4773.

The jurisdiction of the state courts in an action by a shipper against a common carrier for damages caused by unlawful discrimination in rates is not affected by the provisions of the interstate commerce act where the shipments involved are intrastate. *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3.

In shipping sand and gravel from Henry's Spur to points within Minneapolis city limits the shipper requested the commission to establish a reasonable switching charge rate within the switching limits of Minneapolis. The commission established a rate of \$5.00 per car which the court sustained as reasonable. *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610.

At the time of the passage of Laws 1907, Chapter 232, the tariff on fence posts in carload lots was 75 per cent of its lumber rates. Laws 1907, Chapter 232, fixed the lumber rate at less than defendant's schedule. The carrier did not obtain the consent of the commission to its schedule. Held, that the legal charge should have been 75 per cent of the new rate established by the 1907 law, and the shipper is entitled to a judgment against the carrier for the difference between the new rate and the amount charged on defendant's schedule. *Bell v Great Northern*, 135 M 271, 160 NW 688.

Where the carrier absorbs the switching charges and charges its published schedule of rates, this constitutes a change in an existing tariff and is not a "first instance" tariff. This change reducing the tariff becomes effective without obtaining the consent of the commission, but a change back to the original rate cannot be made except with the consent of the commission after full hearing and notice. *National Elevator Co. v Chicago, Milwaukee & St. Paul*, 143 M 162, 173 NW 418.

218.10 PUBLIC PROPERTY EXCEPTED.

HISTORY. 1872 c. 23; 1887 c. 10 s. 1(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1905 c. 176 s. 4; G.S. 1913 s. 4293; G.S. 1923 s. 4774; M.S. 1927 s. 4774.

218.11 RATES; APPLICATION FOR CHANGE; NOTICE; HEARING.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1905 c. 176 s. 5; G.S. 1913 s. 4294; G.S. 1923 s. 4775; M.S. 1927 s. 4775.

See 218.23.

218.12 EMERGENCY RATE.

HISTORY. 1905 c. 176 s. 6; G.S. 1913 s. 4295; G.S. 1923 s. 4776; M.S. 1927 s. 4776.

218.13 JOINT THROUGH RATES; CONNECTING LINES TO TRANSFER.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(d); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1913 c. 344 s. 1; G.S. 1913 s. 4229; G.S. 1923 s. 4699; M.S. 1927 s. 4699.

Where a railroad corporation together with its stockholders owned the controlling stock in another railroad and the two roads connected and were operated as a continuous line and they were not competing lines although each maintained

MINNESOTA STATUTES 1945 ANNOTATIONS

1315

COMMON CARRIERS; TRANSPORTATION 218.17

a separate legal individuality, the two constituted one road for the purpose of establishing freight rates. *State v Chicago & Northwestern*, 133 M 413, 158 NW 627.

The legal effect of through traffic agreement between two or more railroad companies is in effect the creation of a new and independent continuous line, and the roads come within the jurisdiction of the tariff order issued by the commission carrying into effect Laws 1913, Chapter 90, and the court has power to enforce such order by a peremptory writ of mandamus. The order affects only intrastate shipping and cannot interfere with interstate commerce. *State ex rel v Chicago, Milwaukee & St. Paul*, 139 M 55, 165 NW 869.

218.14 CLASSIFICATION OF COMMODITIES.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1907 c. 232 s. 1; G.S. 1913 s. 4298; G.S. 1923 s. 4779; M.S. 1927 s. 4779.

The common law imposes upon carriers the duty of equality in freight rates to all shippers similarly circumstanced for the transportation of the same class of goods the same distance. The shipper's common law right of action for damages for discrimination in rates is not taken away by our rate-making statutes. *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3; *State v Chicago, Milwaukee & St. Paul*, 130 M 144, 153 NW 320.

Where a railway company operates two lines of railroad between the same points and the rate over one line is less than over the other, it is the duty of the company to transport shipments so as to give the shipper the benefit of the cheaper rate, and in this case where one tariff was interstate and the other intrastate, it did not justify the defendant in disregarding plaintiff's right to transportation over the cheaper line. *Solum v Northern Pacific*, 133 M 93, 157 NW 996; *State v Chicago & Northwestern*, 133 M 413, 158 NW 627; *Bell v Great Northern*, 135 M 271, 160 NW 688.

The rule in the *Solum* case, 133 M 93, that where a carrier has two routes, one intrastate and the other interstate, in the absence of shipping directions he is bound to select the cheaper for the shipper, does not apply where the carrier does not have two direct routes between the place of shipment and destination. *Comstock Farmers Elevator Co. v Great Northern*, 137 M 470, 163 NW 280.

The statutory rates for carrying grain were lower than the published rates. The defendant paid the published rates, and when the statutory rate was upheld by the courts, the carrier refunded the overcharges. The plaintiff cannot recover of the defendant such refunds as money had and received. *Houck v Hubbard*, 140 M 186, 167 NW 1038.

Where a state enacted successive regulations of rates to be charged by roads on intrastate business, each of which necessarily affected the earnings of the railroad companies, the validity of such regulations as to whether or not they were confiscatory is to be considered separately; the first without reference to the subsequent ones, and the latter with reference to the effect of those previously enacted. *Perkins v Northern Pacific*, 155 F 445.

A suit to restrain a state officer from executing an unconstitutional statute violating plaintiff's right to his irreparable damage is not a suit against the state, and individual officers charges with the enforcement of an unconstitutional act violating the federal constitution may be enjoined by a federal court of equity. *Hubbell v Leonard*, 6 F Supp. 152.

218.15 MAXIMUM RATES.

HISTORY. 1907 c. 232 s. 2; G.S. 1913 s. 4299; G.S. 1923 s. 4780; M.S. 1927 s. 4780.

218.16 WEIGHT OF CARLOAD; WHEN DISTANCE NOT GIVEN.

HISTORY. 1907 c. 232 s. 3; G.S. 1913 s. 4300; G.S. 1923 s. 4781; M.S. 1927 s. 4781.

218.17 EXCESS RATES PROHIBITED.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1907 c. 232 s. 4; G.S. 1913 s. 4301; G.S. 1923 s. 4782; M.S. 1927 s. 4782.

MINNESOTA STATUTES 1945 ANNOTATIONS

218.18 COMMON CARRIERS; TRANSPORTATION

1316

218.18 RATES; DUTIES OF RAILROAD COMPANIES.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1909 c. 136 ss. 6, 8; G.S. 1913 ss. 4305, 4306; G.S. 1923 ss. 4786, 4787; M.S. 1927 ss. 4786; 4787.

In an action for damages based upon the common law or the statutory duty not to discriminate in rates the shipper may recover the difference between the charges exacted of him and those accepted from the most favored shipper. *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3.

218.19 RATES; FAILURE TO ADOPT; DUTY OF ATTORNEY GENERAL; DUTY OF CARRIER; REPORTS.

HISTORY. 1872 c. 23; 1887 c. 10 ss. 8(f), 8(g); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1909 c. 195 s. 1; G.S. 1913 s. 4307; G.S. 1923 s. 4788; M.S. 1927 s. 4788.

At the time Laws 1907, Chapter 232, which lowered the lumber rate, went into effect, defendant's tariff on fence posts in carload lots was 75 per cent of its lumber rates. The carrier never obtained the consent of the commission to a new schedule established by it nor obtained a change in the fence post rate. The legal rate for fence posts therefore remained at 75 per cent of the legal maximum rate for lumber as fixed by the 1907 act, and the attorney general may enforce the lower tariff. *Bell v Great Northern*, 135 M 271, 160 NW 688.

In 1907 the Minnesota legislature fixed a maximum rate, and the carriers went into the federal court to test the new rate and obtained an injunction restraining the collection of the new rate. They advertised in the press to pay the difference between the lower and the higher rate if the decision was against the carriers. The carriers were defeated in 1913, and this plaintiff brought suit for the difference between the lower and the higher tariff charged. Laws 1909, Chapter 195, authorizing the attorney general to sue for recovery of excessive freight charged by the railway corporations, does not prevent the shipper from bringing suit on his own behalf. *Big Diamond Milling Co. v Chicago, Milwaukee & St. Paul*, 142 M 181, 171 NW 799.

218.20 EXCESS RATES; CARRIER TO PAY TO COMMISSION.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(g); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1909 c. 195 s. 2; G.S. 1913 s. 4308; G.S. 1923 s. 4789; M.S. 1927 s. 4789.

See annotations under sections 218.18 and 218.19.

218.21 EXCESS RATES; FAILURE TO PAY; DUTY OF COMMISSION AND ATTORNEY GENERAL; CLAIMS; UNCLAIMED AMOUNTS.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(g); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1909 c. 195 s. 3; G.S. 1913 s. 4309; G.S. 1923 s. 4790; M.S. 1927 s. 4790.

See annotations under sections 218.18 and 218.19.

218.22 CARRIER TO KEEP ACCOUNTS; FAILURE; PENALTY.

HISTORY. 1909 c. 195 s. 4; G.S. 1913 s. 4310; G.S. 1923 s. 4791; M.S. 1927 s. 4791.

218.23 CERTAIN PROVISIONS REPEALED.

HISTORY. 1909 c. 195 s. 5; G.S. 1913 s. 4311; G.S. 1923 s. 4792; M.S. 1927 s. 4792.

218.24 REFUNDMENT OF EXCESS FREIGHT, BAGGAGE, AND EXPRESS CHARGES.

HISTORY. 1911 c. 306 s. 1; G.S. 1913 s. 4313; G.S. 1923 s. 4794; M.S. 1927 s. 4794.

MINNESOTA STATUTES 1945 ANNOTATIONS

1317

COMMON CARRIERS; TRANSPORTATION 218.31

218.25 CLAIMS, WHEN ADJUSTED AND PAID; HOW PRESENTED.

HISTORY. 1911 c. 306 s. 2; G.S. 1913 s. 4314; G.S. 1923 s. 4795; M.S. 1927 s. 4795.

Under this section imposing upon a common carrier a penalty for failure to adjust a claim and imposing a like penalty upon a person presenting a fraudulent claim is not unconstitutional either as class legislation as depriving carriers of their property without due process of law or as depriving the parties affected the equal protection of law. *Riskin v Great Northern*, 126 M 138, 147 NW 960.

A claim for loss in transit required by an express receipt is sufficient when made by the consignee although the consignor is the real party in interest. *Beltrami v American Railway Express*, 160 M 221, 199 NW 568.

218.26 IN WHAT AMOUNT LIABLE.

HISTORY. 1911 c. 306 s. 3; G.S. 1913 s. 4315; G.S. 1923 s. 4796; M.S. 1927 s. 4796.

218.27 PENALTY FOR FAILURE; FRAUDULENT CLAIMS.

HISTORY. 1911 c. 306 s. 4; G.S. 1913 s. 4316; G.S. 1923 s. 4797; M.S. 1927 s. 4797.

This act is constitutional. *Riskin v Great Northern*, 126 M 138, 147 NW 960.

A statute requiring every shipper of grain to place an informative tag in each car shipped has no application to shipments originating in another state. *Farmers Elevator Co. v Great Northern*, 131 M 152, 154 NW 954; *National Elevator Co. v Great Northern*, 140 M 382, 168 NW 134.

218.28 REMEDY CUMULATIVE.

HISTORY. 1911 c. 306 s. 5; G.S. 1913 s. 4317; G.S. 1923 s. 4798; M.S. 1927 s. 4798.

218.29 NATIONAL GUARD, NAVAL MILITIA, OR RESERVE; CHARGES FOR TRANSPORTING.

HISTORY. 1909 c. 493 s. 1; G.S. 1913 s. 4319; G.S. 1923 s. 4799; M.S. 1927 s. 4799.

In an action to compel the defendant company to carry a member of the State National Guard traveling under orders, at a rate lower than the maximum passenger rate, it does not appear that the act contravenes either the federal or the state constitution, and it is not an unlawful discrimination of which the defendant may complain. *State ex rel v Chicago, Milwaukee and St. Paul*, 118 M 380, 137 NW 2.

218.30 REFUSAL TO TRANSPORT; PENALTIES.

HISTORY. 1909 c. 493 s. 2; G.S. 1913 s. 4320; G.S. 1923 s. 4800; M.S. 1927 s. 4800.

218.31 FREE PASSES, TRANSPORTATION ON REDUCED RATES PROHIBITED; EXCEPTIONS.

HISTORY. 1885 c. 188 s. 25; 1887 c. 10 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77a; 1889 s. 124; 1907 c. 449 s. 1; 1913 c. 92 s. 1; G.S. 1913 s. 4335; 1917 c. 53; 1923 c. 121 s. 1; G.S. 1923 s. 4807; 1927 c. 86 s. 1; M.S. 1927 s. 4807; 1929 c. 162 s. 1; 1935 c. 79; M. Supp. s. 4807.

Plaintiff and his employee, Goltz, had caretaker return passes, one on the Great Northern and the other on the Northern Pacific, which they exchanged for tickets, and with the consent of the ticket agent Gruhl and Goltz traded tickets. Gruhl being injured, the defendant claimed that he was a trespasser. The evidence justified the jury in finding that there was no intention to defraud, that the rights

MINNESOTA STATUTES 1945 ANNOTATIONS

218.32 COMMON CARRIERS; TRANSPORTATION

1318

of the railway company were not violated, and plaintiff was a passenger for hire and entitled to recovery. *Gruhl v Northern Pacific*, 140 M 353, 168 NW 127.

A free pass having on its back "may be revoked by the railroad company at any time" is not a contract but a license which may be revoked by the licensor at any time; and a licensee is conclusively presumed as a matter of law to know that a license is revocable at the pleasure of the licensor, and if he seeks to travel on a free pass, he does so at his peril, and where as in this case the trainmen declined to recognize the pass and forcibly evicted plaintiff from the train, plaintiff may not recover damages for the eviction. *Bergerson v Great Northern*, 158 M 20, 196 NW 670.

Plaintiff, traveling in the caboose of defendant company by permission of the conductor and with no knowledge of any rule forbidding the conductor to permit passengers to ride, was injured through gross negligence of those in charge of another of defendant's trains. He is not precluded from recovering for these injuries because of this violation of the antipass statute. *Fraser v Great Northern*, 166 M 308, 207 NW 644.

A county attorney retained by the railroad company as its attorney is not an "employee" and therefore cannot accept a railroad pass. 1934 OAG 2, Nov. 26, 1934(368d).

218.32 FREE TRANSPORTATION; COMMISSION; SECRETARY; EX-PERTS; AGENTS.

HISTORY. 1907 c. 449 s. 2; G.S. 1913 s. 4336; G.S. 1923 s. 4808; 1925 c. 283; M.S. 1927 s. 4808.

The assistant attorney general assigned to the railroad and warehouse commission may be granted free transportation. OAG Jan. 8, 1934.

218.33 FREE TRANSPORTATION OF HIGHWAY MATERIAL.

HISTORY. 1911 c. 192 s. 1; G.S. 1913 s. 4338; G.S. 1923 s. 4810; M.S. 1927 s. 4810.

218.34 POOLING FORBIDDEN.

HISTORY. 1887 c. 10 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77d; G.S. 1894 s. 382; R.L. 1905 s. 2011; G.S. 1913 s. 4341; G.S. 1923 s. 4831; M.S. 1927 s. 4831.

218.35 PUBLIC SCHEDULE OF RATES.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(a); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; G.S. 1894 s. 386(a); 1897 c. 265; R.L. 1905 s. 2012; 1907 c. 377 s. 1; G.S. 1913 s. 4342; G.S. 1923 s. 4832; M.S. 1927 s. 4832.

A modern common law imposes upon common carriers the duty of equality in freight rates to all shippers similarly circumstanced for the transportation of the same class of goods the same distance; and our statutes prohibiting such discrimination are declaratory of the common law. *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3.

Laws 1913, Chapter 90, requiring railroad tariffs to be based upon distance applies to movement of cars or commodities between stations and not to switching or like movements within a shipping point such as a village or city. *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610.

Baggage means such articles of necessity and convenience as are carried by passengers for their personal use. It does not include merchandise held for sale, but if the carrier knowingly accepts such merchandise as baggage, the carrier's liability is the same as in the case of other baggage. *Ferris v Minneapolis & St. Louis*, 143 M 90, 173 NW 178.

218.36 CHANGE IN SCHEDULE.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; G.S. 1894 s. 386(b); 1899 c. 100; R.L. 1905 s. 2013; G.S. 1913 s. 4343; G.S. 1923 s. 4833; M.S. 1927 s. 4833.

MINNESOTA STATUTES 1945 ANNOTATIONS

1319

COMMON CARRIERS; TRANSPORTATION 218.39

A change in the tariffs of the railroad company voluntarily made reducing rates to all shippers on all commodities at all stations becomes effective without obtaining the consent of the commission; but the carrier may not change back to the original rate without the consent of the commission after a hearing upon notice. *National Elevator Co. v Chicago, Milwaukee & St. Paul*, 143 M 162, 173 NW 418.

218.37 SCHEDULES TO BE FILED.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(d); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; G.S. 1894 s. 386(d); R.L. 1905 s. 2014; G.S. 1913 s. 4344; G.S. 1923 s. 4834; M.S. 1927 s. 4834.

A car of coal was shipped over defendant's line from Superior to Minneapolis, and while still in possession of defendant, plaintiff asked that the car be transferred to Montevideo provided that a through freight rate be authorized, otherwise the shipment was not to be made. This defendant agreed to. After shipment and delivery it was found that defendant had no scheduled through rate between Superior and Montevideo, but the through rate from Superior to Montevideo on the Milwaukee road was \$47.04 less than the tariff paid by the shipper. This suit was for recovery of that difference. There could be no recovery. The tariff rates for the transportation of goods and property by common carriers are fixed and prescribed by law of which all concerned are charged with notice. A railroad company is under no legal duty or obligation to correctly quote the rate of a connecting line. *Goodnow v Northern Pacific*, 136 M 420, 162 NW 519; *Ferris v Minneapolis & St. Louis*, 143 M 90, 173 NW 178; *National Elevator Co. v Chicago, Milwaukee & St. Paul*, 143 M 162, 173 NW 418.

218.38 UNLAWFUL CHARGES.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(b); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; G.S. 1894 s. 386(b); R.L. 1905 s. 2015; G.S. 1913 s. 4345; G.S. 1923 s. 4835; M.S. 1927 s. 4835.

Because of a valid order of the interstate commerce commission a higher rate than that formerly in force became necessary, and such rate was collected by the defendant carrier. Plaintiff claims that a lower rate had never been canceled by the commission and was in effect. The trial court properly held that the new advanced rate was properly established and the old rate by inference annulled, and properly ordered judgment for the carrier. *Crookston Milling Co. v Great Northern*, 185 M 563, 242 NW 287; *Sullivan v Minneapolis & Rainy River*, 121 M 488, 142 NW 3.

The defendant, a forwarding agent, was a private and not a common carrier, and so free to contract for its compensation irrespective of railroad tariffs. If it accepted property for shipment by rail subject to "classifications and tariffs," it could collect no additional compensation and was bound to perform its services for the fixed tariff charge. *Northwest Tablet Co. v Universal Carloading*, 189 M 582, 250 NW 456.

Where the bill of lading has a proviso that there is no recourse against the shipper for under charge if the freight is delivered without payment of all charges, and there was a notation that the freight was prepaid, the carrier has no recourse on the shipper, and its remedy, if any, is against the consignee. *Chicago v Hopkins*, 48 F. Supp. 60.

218.39 SWITCHING CHARGES.

HISTORY. 1874 c. 26 s. 9; 1885 c. 188 ss. 16 to 18; 1887 c. 10 s. 7(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77g; G.S. 1894 s. 385(c); R.L. 1905 s. 2016; G.S. 1913 s. 4346; G.S. 1923 s. 4836; M.S. 1927 s. 4836.

The commission was within its powers in ordering the Great Northern and the Minneapolis Western to cease making a switching charge for handling inbound shipments. *Minneapolis Civic & Commerce v Great Northern*. 137 M 10, 162 NW 689, 163 NW 294.

MINNESOTA STATUTES 1945 ANNOTATIONS

218.40 COMMON CARRIERS; TRANSPORTATION

1320

A lowering of the tariff by absorbing switching charges voluntarily made and reducing rates to all shippers may become effective without the consent of the commission but no reinstatement of the original rate can be made without the consent of the commission after hearing and notice. *National Elevator v Chicago, Milwaukee & St. Paul*, 143 M 166, 173 NW 418.

218.40 LONG AND SHORT HAUL.

HISTORY. 1874 c. 26 s. 9; 1875 c. 103 s. 6; G.S. 1878 c. 6 s. 72; 1887 c. 10 ss. 6, 7; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss. 77f, 77g, G.S. 1894 ss. 384, 385(a), 385(c); R.L. 1905 s. 2017; G.S. 1913 s. 4347; G.S. 1923 s. 4837; M.S. 1927 s. 4837.

Laws 1913, Chapter 536, is construed to mean that a railroad company is permitted to charge three cents per mile for the first five miles of a passenger's trip and two cents per mile for the additional distance. *State ex rel v C. M. & St. P. Ry. Co.* 128 M 25, 150 NW 172.

The Federal Transportation Act of 1920, Section 206f, did not have the effect of reviving causes of action which had theretofore become barred by the statute of limitations of this state. *Fullerton v N. P. Ry Co.* 156 M 20, 194 NW 9; *Fullerton v N. P. Ry Co.* 266 US 435; 45 SC 143.

The varying rates in effect in different portions of the state were legally established under federal or state authority. The making of rates is a legislative and not a judicial function, and the discrimination complained of can only be avoided by a modification by one or the other of the legislative bodies. *State ex rel v N. P. Ry. Co.* 168 M 393, 210 NW 399.

Rate fixing is almost entirely in the sound discretion of the commission, and zones may be established with varying rates to coordinate with a particular movement of particular goods. *Hallett v Foley Bros.* 191 M 335, 254 NW 435.

218.41 COMMISSION TO ADJUST RAILROAD RATES TO PROTECT MINNESOTA INDUSTRIES.

HISTORY. 1872 c. 23; 1887 c. 10 s. 8(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77h; 1913 c. 90 s. 1; G.S. 1913 s. 4348; 1919 c. 235 s. 1; G.S. 1923 s. 4838; M.S. 1927 s. 4838.

This section requiring railroad tariffs for transportation to be based upon distance applies to movements of cars or commodities between stations and not to switching or like movements within a shipping point such as village or city. *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610.

Where one railroad corporation and its stockholders own substantially all of the stock of another railway in establishing freight rates pursuant to the distance tariff law, the commission may consider the roads as one and fix a continuous mileage rate. *State v Chicago & Northwestern*, 133 M 413, 158 NW 627.

Speculative benefits standing alone will not justify an interference with existing rates otherwise reasonable. *North Hennepin v C. St. P. M. & O. Ry. Co.* 160 M 506, 200 NW 808; see supra, *State ex rel v N. P. Ry. Co.* 168 M 393, 210 NW 399.

The establishment of a new rate by the commission in this case impliedly annulled the old and previous rate. *Crookston Milling Co. v Great Northern*, 185 M 563, 242 NW 287; see supra, *Hallett v Foley Bros.* 191 M 335, 254 NW 435.

218.42 OTHER EVIDENCE NOT EXCLUDED; APPLICATION TO ALL RAILWAYS.

HISTORY. 1913 c. 90 s. 2; G.S. 1913 s. 4349; G.S. 1923 s. 4839; M.S. 1927 s. 4839.

218.43 RATES PER 100 POUNDS, PER TON, PER CAR, IN LIKE CLASS TO BE THE SAME IN PROPORTION.

HISTORY. 1913 c. 90 s. 3; G.S. 1913 s. 4350; G.S. 1923 s. 4840; M.S. 1927 s. 4840.

MINNESOTA STATUTES 1945 ANNOTATIONS

1321

COMMON CARRIERS; TRANSPORTATION 218.49

Where onions shipped from Washington state were removed in Minneapolis, and Minnesota onions substituted and cars sent forward to original destination, there must be an adjustment of charges. They cannot go forward on original billing. The signing of a no-recourse agreement does not effect the right to claim under charges. *Chicago v Bernier*, 56 F. Supp. 691.

218.44 APPLICATION OF SECTIONS 218.41 TO 218.47.

HISTORY. 1913 c. 90 s. 4; G.S. 1913 s. 4351; G.S. 1923 s. 4841; M.S. 1927 s. 4841.

The commission has no jurisdiction over industrial railroads. 1934 OAG 8, Aug. 3, 1934(371b).

218.45 POWERS OF COMMISSION NOT ABRIDGED.

HISTORY. 1913 c. 90 s. 5; G.S. 1913 s. 4352; G.S. 1923 s. 4842; M.S. 1927 s. 4842; 1939 c. 191.

The power of the commission applies to movement of cars or commodities between stations but not to switching or like movements within a municipality. *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610.

Where one carrier directly or through its stockholders owns and controls a second carrier, the commission may consider them as one continuous line and fix a joint rate under the distance tariff law. *State v Chicago & Northwestern*, 133 M 413, 158 NW 627.

218.46 COMMISSION TO FIX RATES; SWITCHING; DRAYAGE; FEEDING OF STOCK.

HISTORY. 1913 s. 90 s. 6; G.S. 1913 s. 4353; 1915 c. 367 s. 1; G.S. 1923 s. 4843; M.S. 1927 s. 4843; 1933 c. 233; M. Supp. s. 4843.

This section does not violate the Minnesota Constitution, Article 3, Section 1; it is not an attempt to delegate legislative power, and it does not deprive the carrier of property without due process of law. *St. Paul Association v Chicago, Burlington & Quincy*, 134 M 217, 158 NW 982.

This section does not apply to switching operation or its movements from place to place within a city or district which constitutes a single shipping point. *Commercial Club v Northern Pacific*, 138 M 449, 165 NW 270; *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610.

The legal effect of a through traffic agreement between two or more railroad companies owning and operating connecting lines of road is the creation of a new and independent continuous line. *State ex rel v C. M. & St. P.* 139 M 55, 165 NW 869.

Where connecting railroads were operated by separate corporations and were treated as separate roads for all other purposes in 1914, and the Minnesota railroad and warehouse commission joint rate order when promulgated did not specifically exempt such railroads, this section must apply to them. *Watab Paper v Northern Pacific*, 58 F. Supp. 923.

218.47 REASONABLE RATES; SHIPMENT OVER TWO OR MORE LINES.

HISTORY. 1913 c. 90 s. 8; G.S. 1913 s. 4354; G.S. 1923 s. 4845; M.S. 1927 s. 4845.

218.48 JOINT RATES.

HISTORY. 1867 c. 10 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; 1893 c. 108 s. 1; G.S. 1894 s. 381(b), 381(f); R.L. 1905 s. 2018; G.S. 1913 s. 4358; G.S. 1923 s. 4848; M.S. 1927 s. 4848.

218.49 TRANSFER FACILITIES.

HISTORY. 1867 c. 10 s. 3; 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; G.S. 1878 c. 6 s. 75; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888

MINNESOTA STATUTES 1945 ANNOTATIONS

218.50 COMMON CARRIERS; TRANSPORTATION

1322

Supp.) c. 6 s. 77c; G.S. 1894 s. 381(a); 1895 c. 91; R.L. 1905 s. 2019; 1907 c. 27; 1913 c. 429 s. 1; G.S. 1913 s. 4359; G.S. 1923 s. 4849; M.S. 1927 s. 4849.

Laws 1887, Chapter 14, Section 1, known as the "Freedom of Traffic Act" was superseded by Laws 1887, Chapter 10, Section 3, Subdivision a. *State v St. Paul, Minneapolis & Manitoba Ry.* 40 M 353, 42 NW 21.

Laws 1887, Chapter 10, as amended by Laws 1895, Chapter 91, does not contravene either the federal or state constitution in conferring upon the commission power to require railroads to make connections, transfer and interchange cars, and to make and publish joint rates for through shipments. *Jacobson v Wisconsin, Minnesota & Pacific*, 71 M 519, 74 NW 893; *Wisconsin v Jacobson*, 179 US 287; 21 SC 115.

Both the commission and the trial court found that the Minneapolis Eastern Railway is one of the terminal facilities of the "Milwaukee" and "Omaha" railway systems at Minneapolis, and imposing switching charges on shipments of grain to industries located on the tracks of the "Eastern" is an unjust discrimination. *Minneapolis Civic & Commerce v Chicago, Milwaukee and St. Paul*, 134 M 169, 158 NW 817.

An order of the commission requiring a reciprocal connecting switch at the intersection of the Chicago, Milwaukee & St. Paul with the Great Northern, two interstate railroads, to facilitate the transfer of carlot shipments, was held not to impede or regulate interstate traffic and to be a lawful and reasonable order; but after the opinion filed in the supreme court of the United States on May 24, 1926, decided the case of *Alabama & Vicksburg Ry. Co. v Jackson & E. Ry. Co.* 271 US 244, and which decided that the jurisdiction of the interstate commerce commission over such connections was held exclusive, our supreme court set aside the previous decision. *Citizens of Pipestone v Chicago, Milwaukee & St. Paul*, 167 M 174, 208 NW 809, 209 NW 913.

218.50 TRANSFER; ADJUSTMENT OF COSTS.

HISTORY. 1867 c. 10 s. 3; 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; G.S. 1878 c. 6 s. 75; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; G.S. 1894 s. 381(a); 1895 c. 91; R.L. 1905 s. 2020; G.S. 1913 s. 4360; G.S. 1923 s. 4850; M.S. 1927 s. 4850.

218.51 TRANSFER OF CARLOAD SHIPMENTS.

HISTORY. 1867 c. 10 s. 3; 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; G.S. 1878 c. 6 s. 75; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; G.S. 1894 s. 381(b); 1895 c. 91; R.L. 1905 s. 2021; G.S. 1913 s. 4361; G.S. 1923 s. 4851; M.S. 1927 s. 4851.

218.52 SMALLER SHIPMENTS.

HISTORY. 1867 c. 10 s. 3; 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; G.S. 1878 c. 6 s. 75; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; G.S. 1894 s. 381(b); 1895 c. 91; R.L. 1905 s. 2022; G.S. 1913 s. 4362; G.S. 1923 s. 4852; M.S. 1927 s. 4852.

218.53 DIVISION OF CARS AMONG APPLICANTS.

HISTORY. 1867 c. 10 s. 3; 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; G.S. 1894 s. 355(b); R.L. 1905 s. 2023; G.S. 1913 s. 4364; G.S. 1923 s. 4854; M.S. 1927 s. 4854.

218.54 CARRIERS TO APPORTION CARS; VIOLATION.

HISTORY. 1874 c. 26 ss. 11, 12; 1875 c. 103 s. 9; G.S. 1878 c. 6 s. 75; 1885 c. 188 ss. 15, 19, 26; 1887 c. 10 ss. 3(a) to 3(c); G.S. 1878 Vol. 2 (1888 Supp.) c. 6 s. 77c; 1921 c. 307 ss. 2, 3; G.S. 1923 ss. 4856, 4857; M.S. 1927 ss. 4856, 4857.

MINNESOTA STATUTES 1945 ANNOTATIONS

1323

COMMON CARRIERS; TRANSPORTATION 218.72

Sections 218.55 to 218.65 are held constitutional. *Chicago, Milwaukee & Pacific v Interstate Contracting Co.* 193 M 71, 257 NW 811.

218.66 MINIMUM WEIGHT OF CARLOAD LOTS OF LIVE STOCK.

HISTORY. 1887 c. 17 s. 1; G. S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 62i; G.S. 1894 ss. 2710, 2712; R.L. 1905 s. 2025; G.S. 1913 s. 4379; 1915 c. 254; 1919 c. 301 s. 1; G.S. 1923 s. 4872; 1927 c. 76; M.S. 1927 s. 4872; 1931 c. 215 s. 1; M. Supp. s. 4872.

This section does not authorize railroad companies to maintain stockyards in an improper manner so as to constitute a nuisance to the injury of adjacent property owners. *Anderson v Chicago, Milwaukee & St. Paul*, 85 M 337, 88 NW 1001.

This section, as far as it has to do with rates charged by railroads for carload shipments of mixed live stock, considered, interpreted, and applied to case at bar. *Bennett Commission Co. v Northern Pacific Ry. Co.* 195 M 7, 261 NW 593.

This section permits a carrier to make any charge for shipping a mixed carload of live stock which does not exceed the highest charge that would be made for shipping any kind of live stock contained in the car on a straight carload basis. *Bennett Commission Co. v N. P. Ry. Co.* 199 M 179, 271 NW 468.

218.67 TRANSPORTATION RATES FOR LIVE STOCK IN CERTAIN CARS.

HISTORY. 1887 c. 17 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 62k; 1923 c. 303 s. 1; G.S. 1923 s. 4873; M.S. 1927 s. 4873.

218.68 TRANSPORTATION OF SHIPPERS.

HISTORY. 1899 c. 170; R.L. 1905 s. 2026; 1909 c. 380 s. 1; G.S. 1913 s. 4380; 1921 c. 311 s. 1; G.S. 1923 s. 4874; M.S. 1927 s. 4874.

218.69 LIVE STOCK AT TERMINAL; TIME FOR DELIVERY AT STOCKYARDS AND UNLOADING.

HISTORY. 1913 c. 411 s. 1; G.S. 1913 s. 4381; 1917 c. 378 s. 1; 1919 c. 322; 1923 c. 124 s. 1; G.S. 1923 s. 4875; M.S. 1927 s. 4875.

218.70 DAMAGE TO LIVESTOCK; NOTICE OF CLAIM.

HISTORY. 1909 c. 467 s. 1; G.S. 1913 s. 4384; G.S. 1923 s. 4878; M.S. 1927 s. 4878.

In an action to recover damages for loss of chicks the shipping receipt and consignee's receipt with notations thereon were admissible as was a letter from the defendant's agent at point of destination. There can be no recovery in the absence of proof of the condition of the chicks when delivered to the carrier or proof of actual negligence on the part of the carrier. *Garbisch v American Railway Express Co.* 177 M 494, 225 NW 432.

218.71 VIOLATIONS; PENALTIES.

HISTORY. 1905 c. 176 s. 7; 1907 c. 449 s. 3; 1913 c. 90 ss. 9, 10; G.S. 1913 ss. 4296, 4337, 4356, 4357; G.S. 1923 ss. 4777, 4809, 4846, 4847; M.S. 1927 ss. 4777, 4809, 4846, 4847.

Prosecution by state and county authorities. *Washed Sand & Gravel Co. v Great Northern*, 130 M 272, 153 NW 610; *State v Chicago & N. W. Ry. Co.* 133 M 413, 158 NW 627.

218.72 SECTION 218.69 APPLIES ONLY TO INTRASTATE SHIPMENTS.

HISTORY. 1913 c. 411 s. 3; G.S. 1913 s. 4383; G.S. 1923 s. 4877; M.S. 1927 s. 4877.

MINNESOTA STATUTES 1945 ANNOTATIONS

218.73 COMMON CARRIERS; TRANSPORTATION

1324

218.73 FORFEITURES; VIOLATIONS; PENALTIES.

HISTORY. 1907 c. 97 s. 2; 1913 c. 411 s. 2; 1913 c. 536 s. 2; G.S. 1913 ss. 4287, 4289, 4382; G.S. 1923 ss. 4768, 4770, 4876; M.S. 1927 ss. 4768, 4770, 4876.

Prosecutions under this section. State v C. M. & St. P. Ry. Co. 128 M 25, 150 NW 172; State v C. M. & St. P. Ry. Co. 130 M 144, 153 NW 320; United States v Eason Oil Co. 8 F. Supp. 374.

Suits against state officers. 13 MLR 139.